

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.10.2019

PRONOUNCED ON : 25.10.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Cr1.R.C.No.754 of 2013

Jayapal,
S/o.Ganapathi,
5, Yahusain Palli Street,
Nagapattinam Police limit.

... Petitioner/Complainant

Vs.

1. R.Meenachi Sundaram
2. S.Vinayak
3. F.V.Jerald
4. S.R.Anbalagan
5. R.Krishnamoorthy
6. K.R.Sabarathinam
7. Karthik
8. P.S.Jayaraman (died)
9. P.S.Rajeshwaran
- 10.K.Balu @ Subramanian

11. V.Vijayakumar

12. V.Senthil Kumar

... Respondents/Accused

Criminal Revision filed under Section 397 r/w 401 Cr.P.C.,
to set aside the order dated 10.03.2010 passed in C.C.No.30 of
2008 on the file of the Judicial Magistrate Court No.I,
Nagapattinam.

For Petitioner : Jayapal - Party in Person

O R D E R

This criminal revision has been filed seeking to set aside the order dated 10.03.2010 passed in C.C.No.30 of 2008 on the file of the Judicial Magistrate Court No.I, Nagapattinam.

2. For the sake of convenience, the petitioner and the respondents will be referred to as complainant and accused, respectively.

3. The precis of the facts is as under:

3.1 It is the case of the complainant that he was in occupation of the lands belonging to a temple in Survey Nos.436 and 439 in Pandareegakulam, North Bank Street and had built a house thereon. Meenachi Sundaram (A1) filed a suit in O.S.No.202 of 1985 before the District Munsif Court, Nagapattinam, against the temple and three others for declaration and injunction and obtained a decree in respect of the land in Survey No.436. Since Meenachi Sundaram (A1) was not able to execute the decree, he filed another suit in O.S.No.260 of 1998 before the District Munsif Court, Nagapattinam, in which, the complainant was shown as defendant. The complainant had the suit transferred from the file of the District Munsif Court, Nagapattinam, to the file of the District Court, Nagapattinam and the suit was re-numbered as O.S.No.76 of 1998, which ended in favour of Meenachi Sundaram (A1) and against the complainant.

3.2 Meenachi Sundaram (A1) initiated an execution proceedings in E.P.No.42 of 2005, in which, he included the property in Survey No.439 also, though the decree was passed only in respect of the land in Survey No.436.

3.3 It is the specific case of the complainant that on 07.02.2006, the bailiff took possession of the house in Survey No.436 and on the next day i.e., on 08.02.2006, all the accused took possession of the house in Survey No.439 also.

3.4 On these allegations, the complainant filed a private complaint in CrI.M.P.No.2618 of 2007 before the Judicial Magistrate No.I, Nagapattinam, against twelve accused including the advocate, who appeared for Meenachi Sundaram (A1). The said petition was dismissed at the threshold on 01.10.2007, aggrieved by which, the complainant filed CrI.R.C.No.61 of 2008, in which, this Court issued the following directions on 25.02.2008:

"6. In view of the above, the impugned order passed by the learned Judicial Magistrate No.I, Nagapattinam in CrI.M.P.No.2618 of 2007 dated 01.10.2007 stands set aside and he is directed to consider afresh the evidence on record let in on the side of the complainant in

the light of the above directions of this Court and pass an order in accordance with law. The Criminal Revision Case stands ordered accordingly."

3.5 Pursuant to the aforesaid directions, the learned Judicial Magistrate No.I, Nagapattinam, took the private complaint on file as C.C.No.30 of 2008 and directed the complainant to examine his witnesses. The complainant examined two witnesses viz., Farook (PW1) and Balusamy (PW2). Thereafter, the trial Court discharged the accused under Section 245 (1) Cr.P.C., aggrieved by which, the complainant has preferred the present revision under Section 397 r/w 401 Cr.P.C.

4. Heard Jayapal, the complainant herein who appeared as party- in-person. Notice has not been served on the respondents.

5. The complainant submitted that despite the order dated 25.02.2008 passed by this Court in Crl.R.C.No.61 of 2008, the trial Court has not dealt with the case in the proper manner and has illegally discharged the accused.

6. This Court gave its anxious consideration to the submission made by the complainant.

7. Pursuant to the order dated 25.02.2008 passed in Crl.R.C.No.61 of 2008, the trial Court had given an opportunity to the complainant to adduce evidence under Section 244 Cr.P.C. As stated above, the complainant examined two witnesses and after considering their evidence, the trial Court had thought it fit to discharge the accused by holding that there was no prima facie evidence to frame charges against the accused for the offences under Sections 294-B, 120-B, 147, 148, 506 (II) and 452 IPC and discharged them under Section 245 (1) Cr.P.C.

8. This Court does not find any infirmity in the order passed by the trial Court, warranting interference, inasmuch as the grievance of the complainant is that while executing the decree, the accused had taken possession of the property in Survey No.439 also. Even according to the complainant, the lands in Survey Nos.436 & 439 belong to the temple and he had constructed the house spread over both the Survey numbers. Thus, possession had been taken of the entire property that was spread over the lands in Survey Nos.436 and 439, for which, a criminal prosecution against the advocates is not the remedy. The remedy to the complainant is before the Execution Court.

In view of the foregoing discussion, this criminal revision is dismissed as being devoid of merits.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

nsd
To

1.The Judicial Magistrate No.I,
Nagapattinam.

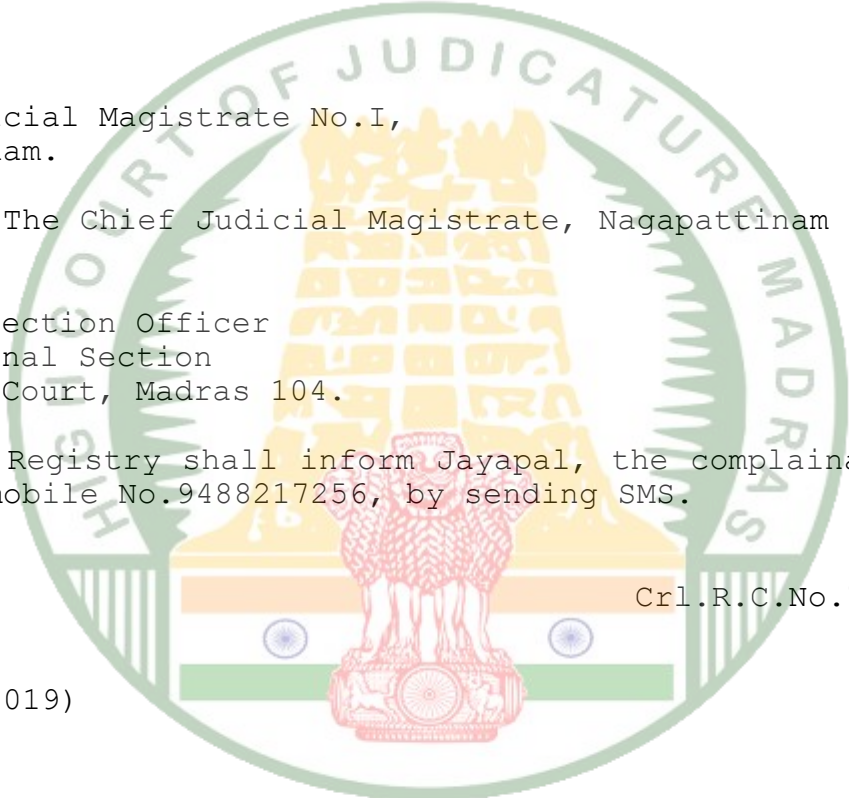
2.Do Thro The Chief Judicial Magistrate, Nagapattinam

Copy to
The Section Officer
Criminal Section
High Court, Madras 104.

Note: The Registry shall inform Jayapal, the complainant herein, over his mobile No.9488217256, by sending SMS.

Crl.R.C.No.754 of 2013

SV(CO)
SP(29/11/2019)

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. The gopuram is flanked by two green trees. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a green circle around the central image. Below the gopuram, there is a red lion capital on a base. The motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script below the lion capital.

सत्यमेव जयते

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