



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.07.2019

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

Cr1.R.C. (MD) No. 770 of 2013

WEB COPY

S.M.K. Abdul Muthaliff

... Petitioner

Vs.

1.M.Murugan

2.M.Palaniyandi

3.M.Arumugam

4.Ilavarasan,
The Inspector of Police,
Athampakkam Police Station,
Chennai.

5.Azhagu Raja,
The Sub-Inspector of Police,
Natham Police Station,
Natham, Dindigul District.

... Respondents

Prayer: Criminal Revision Case is filed under Section 397 r/w. 401 of Cr.P.C, to call for the records relating to the order made in C.C.No.70 of 2013, dated 24.10.2013. passed by the learned District Munsif Cum Judicial Magistrate, Natham and set aside the same and direct the Court to take the complaint on the file and issue summons to the respondents and to conduct trial in accordance with law.

For Petitioner : Mr.D.Sadiq Raja

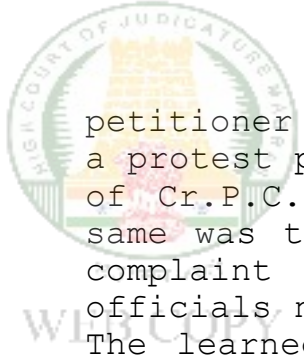
For Respondents: Mr.S.Sviakumar for R1 to R3

: M.RM.Arun Swaminathan
for Mr.Aruna @ Arunachalam for R5

: No appearance for R4

O R D E R

The petitioner's complaint is that the respondents 1 to 3 herein trespassed into his property and cut and removed the standing trees worth about Rs.20,000/- on 21.06.2009. In this regard, the petitioner gave complaint after complaint and finally Crime No.234 of 2012 was registered on the file of Natham Police Station under Sections 147, 148, 427 and 506(ii) and 379 of I.P.C. The said case was referred as mistake of fact by the fifth respondent herein, who was then the Sub Inspector of Police in Natham Police Station. The



petitioner was duly served notice. The petitioner instead of filing a protest petition chose to file private complaint under Section 200 of Cr.P.C., before the learned Judicial Magistrate, Natham. The same was taken on file as C.C.No.70 of 2013. In the said private complaint not only the respondents 1 to 3 but also the police officials namely., respondents 4 and 5 were also arrayed as accused. The learned Trial Magistrate examined the complainant on oath and after taking his sworn statement, came to the conclusion that there is no sufficient ground for proceeding further in the matter. After forming the opinion, the complaint was dismissed under Section 203 of Cr.P.C., by order dated 24.10.2013. challenging the same, this criminal revision case has been filed.

2.Heard the learned counsel on either side.

3.The petitioner's counsel drew my attention to the fact that immediately after the occurrence, on the very next day i.e., 22.06.2009, a complaint was lodged and the fourth respondent herein had also issued a receipt. But then, in the Section 161 statement recorded by the fifth respondent, it has been mentioned that no such complaint was given. He also drew my attention to the fact that even though on 10.01.2013, one Karanthan was examined by the fifth respondent, on the same day, the fifth respondent had made it appear that he recorded the statement of the fourth respondent also. But the fourth respondent was then working as Inspector of Police at Chennai. The petitioner's counsel wondered as to how on the same day, the fifth respondent examined two witnesses, one of whom was at Natham and the other at Chennai. The petitioner's counsel also drew my attention to the fact that in the civil suit filed by the petitioner against the respondents 1 to 3, decree has been passed restraining them from interfering with the petitioner's possession and enjoyment of the property in question.

4.I am of the view that the order passed by the leaned Trial Magistrate does not warrant any interference. The petitioner's counsel would claim that the decision to dismiss the private complaint can be taken only after following the procedure adumbrated in Chapter XV of Cr.P.C. In this regard, he placed reliance on the decision reported in **[(2010) 1 MLJ (Cr1) 956, Pachaiaappan Veerappan Vs. M.A.Sirajudding and Another]**. The learned Trial Magistrate had examined the petitioner on oath. After doing so and after applying her mind, the learned Trial Magistrate dismissed the complaint under Section 203 of Cr.P.C. The approach followed by the learned Trial Magistrate cannot be said to be illegal or improper.

5.This Court wanted to know as to when the decree in favour of the petitioner and against the respondents 1 to 3 was passed. It is seen from the typed set of papers that the decree was passed on 11.12.2013. The occurrence in question had taken place in the year 2009. Therefore, the petitioner would not be justified in placing reliance on a subsequently passed decree.



6.It is true that Section 161 statement attributed to the fourth respondent is factually incorrect. This Court fully agrees with the submission of the petitioner's counsel in that regard. Ilavarasan/fourth respondent herein had received the complaint from the petitioner and had also issued the receipt. It has been erroneously mentioned in the Section 161 statement attributed to him as if no complaint was received. But then, the respondents 4 and 5 could not have been made as co-accused along with the respondents 1 to 3 on this ground. The learned Trial Magistrate rightly pointed out that the complainant could not have clubbed his private adversary along with the Investigating officials in a single complaint.

7.It is true that the fifth respondent had examined the police official, who was posted in Chennai and the local witness on the same day. It is quite possible that by utilizing the modern technology, the fifth respondent could have recorded the statements. Therefore, I do not find any force in this contention of the petitioner's counsel.

8.The occurrence in question had taken place 10 years ago. The petitioner had subsequently obtained decree in his favour. It is also seen that there are other criminal case initiated by the petitioner against the respondents 1 to 3. I am of the view that there is no need to add one more to the catalogue of cases initiated by the petitioner against the respondents 1 to 3. In this view of the matter, I dismiss this criminal revision case.

Sd/-

Assistant Registrar (C.O)

// True Copy //

Sub Assistant Registrar(CS)

To:

The District Munsif Cum
Judicial Magistrate,
Natham.

Copy to : The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2)

+1 CC to Mr.RM.ARUN SWAMINATHAN, Advocate SR-74442.
+1 CC to Mr.S.SIVA KUMAR, Advocate SR-74576.
+1 CC to Mr.D.SADIQ RAJA, Advocate SR-74847.