

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2020

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

Cr1.O.P.No.28173 of 2013
and
M.P.Nos.1 & 2 of 2013

1.N.T.Sampath
2.Christy Raj Kumar ...Petitioners/Accused 1 & 2

vs.

1. State Rep. by
Sub-Inspector of Police,
Odaiyansalai Police Station,
Puducherry. ...1st Respondent/Complainant

2.R.Ramya ...2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records C.C.No.183 of 2012 pending on the file of Chief Judicial Magistrate, Puducherry and quash the same.

For Petitioners : Mr.S.Ashok Kumar

For Respondents : Mr.D.Bharathachakravathy
Additional Public Prosecutor
(Pondy) for R1

Mr.C.Sivanesan
for R2

O R D E R

The petitioners herein, who have been arrayed as accused 1 and 2, were implicated for the offences under Sections 452, 427 r/w Section 34 of IPC in Crime No.183 of 2012. The case of the prosecution is that on 10.02.2012 at about 11.30 A.M, the petitioners in furtherance of their common intention had criminally trespassed into the complainant's mother building and caused damage to the inside compound wall worth about Rs.15,000/-. Due to the said act, the petitioners were punished

under Sections 452, 427 r/w 34 of IPC. Aggrieved by the same, the present petition has been filed.

2.The learned counsel for the petitioners submitted that the defacto complainant one Ramya, daughter of G.Rishiyasiragan has lodged a complaint stating that they own a factory in No.434, Anna Salai for the past 40 years and her mother is the sole proprietor of that factory. On 10.02.2012, it is alleged that the petitioners had damaged her property and a complaint was lodged before the respondent police.

3.The learned counsel for the petitioners further submitted that the mother of the defacto complainant had sub-tenanted the property of Mrs.Afsaby to one Deivendiran. After sub-tenancy in the year 2000, a dispute arose between Deivendiran and the defacto complainant's mother and therefore, he directly paid rent to the original owner and filed a suit in O.S.No.383 of 2000 on the file of Principal District Munsif Court, Puducherry restraining the defacto complainant's mother from interfering with the possession of the property. After her appearance, the said suit was decreed against her and she was set ex-parte, which reached finality.

4.While that being so, the first petitioner had purchased the said property in the name of his wife from the original owner and executed a sale deed. After the execution of sale deed, the person who was in possession immediately vacated and handed over the property to the first petitioner's wife on 05.08.2003. Thereafter, in order to wreak vengeance against the petitioners, the defacto complainant has filed a complaint before the respondent police and she has also filed a suit in O.S.No.1160 of 2012 for permanent injunction restraining the petitioners from interfering with the possession of the property and the said suit was dismissed for default. Hence, the learned counsel for the petitioners prays for allowing the present criminal original petition.

5.The learned counsel appearing for the second respondent did not dispute the facts submitted by the learned counsel for the petitioners.

6.I have given careful consideration to the submissions made by the respective counsels.

7.In view of the Civil Court decision, it is evident that when the defacto complainant was not in possession of the property and the suit in O.S.No.383 of 2000 was also dismissed against her, she cannot claim for damages from the petitioners herein. This Court is also of the view that when the petitioner is in possession of the property, the question of damage does

not arise as against the petitioner. Hence, I have no hesitation in allowing the present petition.

8. Accordingly, the Criminal Original Petition stands allowed and the proceedings in C.C.No.183 of 2012 pending on the file of Chief Judicial Magistrate, Puducherry is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Chief Judicial Magistrate,
Puducherry.
2. The Sub-Inspector of Police,
Odaiyansalai Police Station,
Puducherry.
3. The Public Prosecutor,
Puducherry.

+1cc to Mr.S.Ashok Kumar, Advocate, S.R.No.2313
+1cc to Mr.M.Baskaran, Advocate, S.R.No.1240

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PVS(CO)
KKV/10/06/2020