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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.12.2021

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.R.C.No.837 of 2021

Viswanathan

... Petitioner/ Revision Petitioner

Vs.

State rep. by its,
the Inspector of Police,
Chinna Salem Police Station,
Chinna Salem,
Kallakurichi - 606 201.

.. Respondent/ Respondent

Prayer: The Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C. to set aside the order, dated 03.09.2021 made in Crl.M.P.No.1162 of 2021 on the file of the learned Judicial Magistrate-II, Kallakurichi.

For Petitioner : Mr.J.Jayan

For Respondent : Mr.S.Sugendran,
Government Advocate (Crl. Side)

ORDER

This Criminal Revision has been filed against the dismissal of the petition filed under Section 156(3) of Cr.P.C.

2. The case of the Petitioner is that, he is employed in the Labour Welfare Department and his wife started an Educational Trust to provide Distance Education service in the region of Attur, Chinna Salem. The Petitioner's wife had taken a commercial space for rent from one Arumugham in AT Complex for running the Trust. The Petitioner had put up some Aluminium partition worth about Rs.1,00,000/-, inside the premises. On 31.10.2018, the Petitioner's wife had vacated the commercial space, leaving the Aluminium partition inside the premises. While so, on 02.04.2021, the Petitioner had approached the owner of the premises, Arumugham to retrieve the partition. It is the further case of the Petitioner that the said Arumugham who is the landlord of the premises, denying the request of the petitioner to remove the superstructure, had scolded the petitioner with filthy language and attempted to attack the



petitioner along with his son and Henchmen by using their physical force and muscle power, due to which, the petitioner sustained injuries and hence the petitioner was admitted in Shri Shellapha Hospital, Salem and RK Eye Hospital, Salem to take treatment. Thereafter, the petitioner, narrating the said events, had addressed a Petition to the District Collector, Kallakurichi and the same was forwarded to the District Superintendent of Police, Kallakurichi. Since there was no action taken, the Petitioner had filed a petition under Section 156(3) of Cr.P.C, seeking direction to the respondent to register a case. The learned Judicial Magistrate No-II, Kallakurichi, finding that, it was a dispute between the landlord and tenant and after finding that the averments were suspicious, had dismissed the petition, against which, the present Revision has been filed.

3. Learned counsel for the Petitioner submitted that the Petitioner's wife is a tenant under the proposed accused. On 02.04.2021, the Petitioner had gone into the premises to retrieve the structure. At that time, the petitioner was assaulted by the proposed accused, due to which, he sustained injuries. The Petitioner had produced the copies of the Medical Certificates before the learned Magistrate, whereas, the learned Magistrate, without taking into consideration the Medical Certificates, had dismissed the application holding that the complaint does not disclose the commission of cognizable offence and that the certificates produced by the Petitioner discloses that the cause of treatment undergone by the petitioner is for "fall down from bike". Therefore, the learned counsel for the petitioner seeks to set aside the order of the learned Judicial Magistrate II, Kallakurichi.

4. Per contra, learned Government Advocate appearing for the Respondent would submit that the complaint given by the petitioner to the District Superintendent of Police, Kallakurichi, was forwarded to the Respondent and it was taken up for enquiry in C.No.227/SDO/KLK/P3/2020. During enquiry, it came into the light that one J.Prakash S/o. Jayaraman had taken the premises of the proposed accused for running an educational institution in the name and style of Dr.Abdul Kalam Institute of Higher Studies. The lease agreement had expired on 19.07.2018 and after three months, the said Prakash vacated the premises on 03.11.2018. At that time, the proposed accused had asked him to remove the temporary structures which were inside the premises. The said Prakash had told the proposed accused that, he would remove it later. Thereafter, he did not come to remove the structure. On 02.04.2021, during the pandemic period, an unknown person claiming himself as a Government Servant had come and removed the structures, for which there was a quarrel between them. During enquiry, it was found that, no such incident had



happened. Learned Government Advocate further submitted that the petitioner, in support of his case, had produced two medical certificates. But, a perusal of medical certificates shows that the petitioner had sustained injuries due to "fall from bike".

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5. The learned Magistrate after finding that the case is civil in nature and it was attempted to be projected as a criminal case and the complaint does not disclose any cognizable offence which mandates registration of FIR, had dismissed the petition.

6. I have heard the learned counsel appearing on either side and perused the materials available on record.

7. The case of the petitioner is that the petitioner's wife is a tenant under the proposed accused and that she had taken a commercial space for rent from the proposed accused for running an Educational Institution. It is the case of the petitioner that while the petitioner's wife vacated the commercial space on 31.10.2018, she had left a Aluminium partition inside the premises and that on 02.04.2021, the petitioner had approached the owner of the premises to take back the Aluminium partition from the premises and at that time, the proposed accused along with other persons have started to attack the petitioner and assaulted him and thereby he sustained injuries. The petitioner had also filed his medical certificates in support of his contention. However, the learned Magistrate, after perusing the medical certificates, found that as per medical certificates produced, the petitioner had sustained injuries due to fall from the bike. The learned Magistrate had also found that the case of the petitioner is purely civil in nature and the petitioner by crafty drafting, had attempted to make a civil dispute as a criminal one by giving criminal colour. The trial Court rightly finding that the petitioner had attempted to circumvent and misuse the process of Court, had dismissed the petition.

8. It is relevant to refer to the principles laid down the Hon'ble Supreme Court in Sagar Sharma v. State of Uttarpradesh ((2000) 2 SCC 636), wherein the court has held that

"It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process, a criminal court has to exercise a great deal of caution."

9. As stated above, the Trial Court has exercised due caution and after perusing the materials, had dismissed the



petition. This court does not find any infirmity in the order passed by the learned Magistrate. The Criminal Revision stands dismissed accordingly.

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Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

vum/ssk.

To

1. The Judicial Magistrate-II,
Kallakurichi.
2. Inspector of Police,
Chinna Salem Police Station,
Chinna Salem,
Kallakurichi - 606 201.
3. The Public Prosecutor,
High Court, Madras.

Copy To:

1. The Section Officer,
Criminal Section,
High Court, Madras.

+lcc to Mr.W.Camyles Gandhi, Advocate, S.R.No.67179

Cr1.R.C.No.837 of 2021

SRA(CO)
SB(04/01/2022)