



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on : 22.03.2021

Delivered on : 19.04.2021

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**THE HONOURABLE MRS. JUSTICE R. THARANI**

Crl. R.C.(MD)No.5 of 2021

K.S.Ravichandran

.. Petitioner

Vs.

1.Venkatesan

2.Subhashini

.. Respondents

**Prayer :** This Revision Case filed under Sections 397 and 401 of Cr.P.C., to call for the records in order of the Judicial Magistrate, Rajapalayam, in Crl. M. P.No. 2043/2020 in C.C.No. 442/2016 by order dated 18.12.2020 and to set aside the same.

For Petitioner : Mr.S.Ramasamy

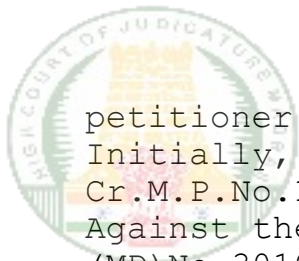
For Respondents : Mr.D.Ramesh Kumar

**ORDER**

This revision has been filed to call for the records and to set aside the order passed by the Judicial Magistrate, Rajapalayam, in Crl.M.P.No. 2043 of 2020 in C.C.No. 442 of 2016, dated 18.12.2020 .

2.The revision petitioner is the defacto complainant and the respondents 1 and 2 are the accused in the case in C.C.No.442 of 2016. The respondents 1 and 2 filed a discharge petition in Crl.M.P.No. 2043 of 2020, before the Judicial Magistrate, Rajapalayam, Virudhunagar District and that petition was allowed by the Judicial Magistrate. Against the same, the petitioner preferred this Revision.

3.On the side of the revision petitioner, it is stated that the petitioner lodged a private complaint in the year 2016 and the same was taken on file as C.C.No.442 of 2016 on the file of the Judicial Magistrate, Rajapalayam. The respondents fabricated some documents regarding the property and they committed theft of fencing materials placed by the revision petitioner and the respondents scolded the revision petitioner in filthy language, hence, the

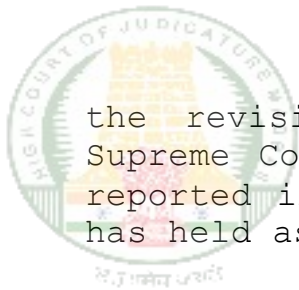


petitioner filed a private complaint in C.C.No.442 of 2016. Initially, the respondents filed a discharge petition in Cr.M.P.No.11792 of 2018 and the same was dismissed on 04.12.2018. Against the same, the respondents filed a quash petition in Crl.O.P.(MD)No.3010 of 2019 and that petition was dismissed by this court on 17.10.2019 and this Court has directed the trial Court to complete the trial, preferably, within a period of six months. Again, the respondents approached this Court by way of another quash petition, in Crl.O.P.(MD)No.1273 of 2020 and the same was dismissed by this Court, in the admission stage itself, on 27.01.2020 and this Court again directed the trial Court to complete the trial within a period of six months. Suppressing all the earlier proceedings, the respondents filed another discharge petition in Crl.M.P.No. 2043 of 2020, before the Judicial Magistrate, Rajapalayam and that petition was allowed by the Magistrate. Hence, the second discharge petition, in Crl.M.P.No. 2043 of 2020, dated 18.12.2020, is liable to be set aside.

4.The learned counsel for the revision petitioner relied upon a judgment of the Hon'ble Supreme Court in the case of ***K.G.Premshanker Vs. Inspector of Police and another*** reported in ***(2002) 8 SCC 87***, wherein, the Hon'ble Supreme Court has held as follows:

"Further, the judgment, order or decree passed in a previous civil proceeding, if relevant, as provided under Sections 40 and 42 or other provisions of the Evidence Act then in each case, Court has to decide to what extent it is binding or conclusive with regard to the matter(s) decided therein. Take for illustration, in a case of alleged trespass by 'A' on 'B's property, 'B' filed a suit for declaration of its title and to recover possession from 'A' and suit is decreed. Thereafter, in a criminal prosecution by 'B' against 'A' for trespass, judgment passed between the parties in civil proceedings would be relevant and Court may hold that it conclusively establishes the title as well as possession of 'B' over the property. In such case, 'A' may be convicted for trespass. The illustration to Section 42 which is quoted above makes the position clear. Hence, in each and every case, first question which would require consideration is whether judgment, order or decree is relevant?, if relevant its effect. It may be relevant for a limited purpose, such as, motive or as a fact in issue. This would depend upon facts of each case."

5.On the side of the revision petitioner, it is further stated that simultaneous civil and criminal proceedings by the creditors against the debtors, subsequent acquittal in a criminal proceedings would not make an abuse of process of law. The learned counsel for



the revision petitioner relied upon a judgment of the Hon'ble Supreme Court in the case of **Vishnu Dutt Sharma Vs. Daya Sapra** reported in **(2009) 13 SCC 729**, wherein, the Hon'ble Supreme Court has held as follows:

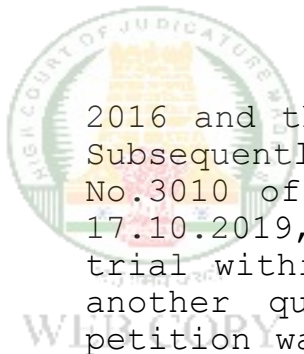
"a judgment / finding given in a criminal proceeding will not be binding in a civil proceeding. Judgment of a criminal Court in a civil proceeding will only have limited application viz. Inter alia, for ascertaining who was the accused and what was the result of the criminal proceedings. "

6.On the side of the revision petitioner, it is further stated that there cannot be a mini trial at the stage of framing of charges or at the stage of considering the validity of the charges framed. The Court cannot appreciate or evaluate the record filed at the time of framing of charges. A Judgment of this Court passed in Crl.R.C. (MD)No.284 of 2019 [S.Junaith Vs. State represented by the Inspector of Police,CBI/ACB, Chennai], dated 03.04.2019 is cited, wherein, it is stated as follows:

" At this juncture, it is pertinent to note that time and again, it had been held by the Honourable Supreme Court in various decisions that no mini trial is contemplated at the stage of framing of charges or at the stage of considering the validity of such charges framed."

7.On the side of the respondents, it is stated that the civil case filed by the revision petitioner was dismissed by the Civil Court. No appeal was filed against the dismissal of the original suit. The civil case was not mentioned in the private complaint and in the sworn statement of the revision petitioner. The expert opinion regarding the documents filed by the revision petitioner was against the revision petitioner. That documents were all forged and the revision petitioner cannot claim right over the property on the basis of the forged documents. The father of the revision petitioner is claiming the property through an un-registered sale deed. The description of the materials alleged to have been stolen by the revision respondents were not stated in the private complaint. The documents filed by the revision petitioner are not sufficient enough to create a *prima facie* case against the revision respondents and prayed the petition to be dismissed.

8.It is seen that the civil case filed by the revision petitioner was dismissed by the trial Court. It is stated that there is no appeal pending. At the same time, a perusal of the records reveals that the revision respondents already filed a discharge petition in Crl.M.P.No.11792 of 2018 in C.C.No.442 of



2016 and the same was dismissed by the trial Court on 04.12.2018. Subsequently, the respondents filed a quash petition in Crl.O.P.(MD) No.3010 of 2019 and that petition was dismissed by this Court on 17.10.2019, with a direction to the trial Court to complete the trial within a period of six months. Again, the respondents filed another quash petition in Crl.O.P.(MD)No.1273 of 2020 and that petition was also dismissed by this Court on 27.01.2020. Again, the respondents filed another petition before the trial Court in Cr.M.P.No.2043 of 2020 in C.C.No.442 of 2016 for discharge. That petition was allowed by the trial Court.

9. That discharge petition was filed before the trial Court, for the second time and the respondents approached this Court twice by filing quash petitions. The respondents filed two discharge petitions before the trial Court. The trial Court, after dismissing the first petition has allowed the second petition. The trial Judge elaborately discussed the civil suit between the same parties. The trial Court on the basis of the available records has come to the conclusion that no *prima facie* case is made out against the respondents. It is seen that the respondents suppressed the previous discharge petition filed before the trial Court and the quash petitions filed before this Court. When a matter is already settled, the Court cannot permit the parties to re-agitate the matter, before the same Court. Suppression of earlier proceedings is wrong on the part of the respondents. A perusal of the private complaint reveals that the case is not only for trespass, but, there are so many other allegations against the respondents, which require detail enquiry.

10.Though this Court already directed the trial Court to complete the trial within a period of six months, the respondents are dragging on the matter by filing various petition. Particularly, in the order passed by this Court in Crl.O.P.(MD)No.1273 of 2020, this Court has given a direction that "if the petitioners (respondents herein) adopt any dilatorial tactics, it is open to the trial Court to insist for their appearance and to deal with the petitioners in accordance with the judgment of Supreme Court of India, in ***State of Uttar Pradesh Vs. Shambunath Singh***, reported in ***2001 (4) SCC 667***". Even then, the respondents herein have filed the second discharge petition before the trial Court.

11.The matter involves enquiry and hence, the order passed by the trial Court in Cr.M.P.No.2043 of 2020, dated 18.12.2020, on the file of the Judicial Magistrate, Rajapalayam, Virudhunagar District, is set aside. In the result, this Criminal Revision Case is allowed. Both parties are at liberty to raise all their contentions before the trial Court. The trial Court is directed to dispose of the case within a period of four months from the date of receipt of



a copy of this order.

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Sd/-

Assistant Registrar (CS-III)

/ /2021

Sub Assistant Registrar(CS)

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NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Judicial Magistrate,  
Rajapalayam.
2. The Section Officer,  
Criminal Section,  
Madurai Bench of Madras High Court,  
Madurai. 2 Copies

Pre-delivery order made in  
Crl. R.C.(MD)No.5 of 2021

19.04.2021

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