



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.01.2021

Pronounced on : 09.02.2021

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

CRL.R.C. (MD).No.150 of 2017

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P.Pitchiyappan : Petitioner / Petitioner

Vs.

1.Karpagam

2.Raman

3.Muniyandi

4.The Inspector of Police,

Rajapalayam North Police Station,

Virudhunagar District. : Respondents / Respondents

PRAYER: Criminal Revision Petition has been filed under Section 397 and 401 of Cr.P.C, to call for the records and set aside the order passed by the Judicial Magistrate Court, Rajapalayam in CrI.M.P.No.546 of 2017, on 19.01.2017 and allow this Criminal Revision Petition.

For Petitioner : Mr.G.Marimuthu

For Respondents : Mr.Rajesh Saravanan, for R1 and R2.

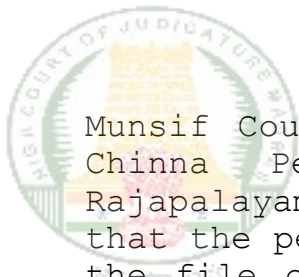
Mr.V.Neelakandan,

Additional Public Prosecutor, for R4.

ORDER

The Criminal Revision Case has been filed under Sections 397 and 401 Cr.P.C., challenging the order passed by the learned Judicial Magistrate, Rajapalayam in CrI.M.P.No.546 of 2017 on 19.01.2017, dismissing the petition filed under Section 156 (3) Cr.P.C.

2.The revision petitioner has filed a petition under Section 156(3) Cr.P.C, against the respondents 1 to 3 alleging that the property situated in Door No.236-A, North Malaiyadipatti, Rajapalayam, Virudhunagar District, was purchased by one Chinna Petchiappan and his wife Sankarammal on 05.10.1987, that since both of them had no issues, they have executed a Will in favour of Chinna Petchiappan's elder brother's son / Pitchiyappan, the petitioner herein on 09.08.2001, settling the said property in his favour; that the said Chinna Petchiappan and his wife Sankarammal had died on 01.09.2010 and 22.12.2009 respectively, that thereafter the petitioner has become the owner of the suit property and he is in enjoyment of the same, that the first accused claiming to be the adopted daughter of the said Chinna Petchiappan and Sankarammal, had created a joint settlement deed on 22.09.2010 in favour of her husband/second respondent, that the first respondent has then filed a suit in O.S.No.388 of 2010 on the file of the Principal District



Munsif Court, Srivilliputur to declare herself as a legal heir of Chinna Petchiappan and Sankarammal against the Tahsildar, Rajapalayam Taluk, that the said suit was dismissed on 12.10.2011, that the petitioner herein has filed a suit in O.S.No.144 of 2011 on the file of the Sub Court, Srivilliputur to declare that the said property belongs to him and for permanent injunction, restraining the defendants therein from interfering with his peaceful possession and enjoyment of the property and to declare that the settlement deed created by the respondents 1 and 2 on 22.09.2010 as null and void and also to declare the petitioner as the sole heir of the said Chinna Petchiappan and Sankarammal, that since the respondents 1 and 2 and the Tahsildar, Rajapalayam Taluk had remained ex-parte, the Court has passed a decree in favour of the petitioner on 10.02.2012, that the said decrees have attained finality, that on 13.11.2016 at about 06.00 pm, the petitioner went to the respondents 1 and 2 and requested them to vacate the house, that the respondents 1 and 2 have abused the petitioner in filthy language and also attacked him with broom stick and threatened him to face dire consequences, that the petitioner was saved by Maniammal and Dhavamani, who were belonging to that street, that the petitioner has sent a complaint to the Superintendent of Police and the Deputy Superintendent of Police, Virudhunagar on 17.11.2016 that the Sub-Inspector of Police attached to Rajapalayam North Police Station has received the complaint on 20.11.2016 and issued a receipt therefor, that the Police has neither registered the FIR nor conducted any investigation and that therefore, the petitioner was forced to file the above complaint, seeking a direction to the Rajapalayam North Police Station, to register FIR on his complaint, dated 17.11.2016, and proceed with the investigation.

3.The learned Judicial Magistrate, Rajapalayam, after receipt of the said petition, on hearing the petitioner's side and on perusal of the records, has passed the impugned order dated 19.01.2017, dismissing the petition. Aggrieved by the said order, the petitioner has come forward with the present criminal revision case.

4.Pending enquiry, the learned counsel for the petitioner has filed a memo stating that the petitioner does not want to pursue his case as against the third respondent and that the revision as against the third respondent may be dismissed. Recording the memo, the revision as against the third respondent is ordered to be dismissed.

5.Whether the order passed by the learned Judicial Magistrate, Rajapalayam in Crl.M.P.No.546 of 2017 on 19.01.2017, is liable to be revised ? is the point for consideration.

6.It is evident from the records that the revision petitioner has filed the petition under Section 156(3) Cr.P.C, against the

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respondents 1 to 3, seeking a direction to register the FIR for the offences alleged to have been committed under Section 294(b), 324 and 506(ii) IPC. The learned Magistrate, by holding that the complaint is of civil in nature, that genealogy and the property rights of the petitioner were not clarified and that the petition seeking to register a criminal case for the civil dispute does not contain sufficient factual particulars, dismissed the petition.

7.The learned counsel for the petitioner would contend that if any petition is filed under Section 156(3) Cr.P.C, the learned Magistrate is duty bound to see whether any *prima facie* case is made out in the complaint or not and he should not go into the merits of the case and that if any complaint is filed under Section 190 of Cr.P.C, the learned Judicial Magistrate is duty bound to forward it to the Police under Section 156(3) Cr.P.C or treat the same as a private complaint under Section 200 Cr.P.C and direct the party to produce the materials to prove the *prima facie* case and that the learned Judicial Magistrate, Rajapalayam without following the settled procedures, dismissed the petition.

8.No doubt, if the petition is filed under Section 156(3) Cr.P.C, the learned Magistrate has to apply his mind to know whether the allegations in the complaint *prima facie* make out a case and the Magistrate should not mechanically pass order directing the Police to investigate the case. In case, if the allegations constitute a cognizable offence, then, the Magistrate is duty bound to forward the complaint to the concerned Police for registering the FIR and for further investigation.

9.It is pertinent to mention that it is not mandatory on the part of the Magistrate to send the complaint to the concerned Police to register and investigate the case, if the said petition does not reveal any *prima facie* case to proceed further.

10.It is settled law that when a complaint is filed before the Court of competent jurisdiction, the Magistrate will have two options and as per the first option, he can take the complaint on file under Section 200 Cr.P.C by examining the complainant and witnesses, if any and he can pass orders either to dismiss the same under Section 203 Cr.P.C or to issue process under Section 204 Cr.P.C. As per the second option, if the complaint discloses any cognizable offence, he can refer the matter for investigation under Section 156(3) Cr.P.C to find out the truth of the allegations. But if a petition is filed under Section 156(3) Cr.P.C, the Magistrate can either forward the said petition to the Police for investigation or treat the said petition as a private complaint under Section 200 Cr.P.C. In cases of civil nature and in the cases, where the police do not entertain the complaint, the persons with vested interest and with some oblique motive, rushes to the criminal Court and files a petition under Section 156(3) Cr.P.C, making some allegations to



constitute the cognizable offence and wants an order or direction to the Police for registering the FIR and for investigation and more petitions under Section 156(3) are being filed in all the Magistrate Courts and are attempting to achieve the desired results through the orders for registration of FIR and investigation.

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11.In such a scenario, the Magistrates are duty bound to see as to whether the averments in the petition would constitute cognizable offences and the same is supported by any materials. More importantly, mere allegation about the commission of the offence without any material in support thereof would not justify the order for investigation under Section 156(3) Cr.P.C.

12.In the case on hand, the petitioner has claimed the right and the title over the property, which was admittedly owned by his paternal uncle and aunt, through the Will dated 09.08.2001, alleged to have been executed by them in favour of the petitioner. The petitioner's case is that the first respondent claiming herself to be the adopted daughter of the said Chinna Petchiappan and Sankarammal had created a joint settlement deed in favour of her husband/second respondent and that they have been claiming the right and title over the said property through the created and fabricated settlement deed, dated 22.09.2010. According to the petitioner, his paternal aunt Sankarammal had died on 22.12.2009 and paternal uncle Chinna Petichiappan had died on 01.09.2010 and that the Will, dated 09.08.2001 came into force and he has become the owner of the said property and he is in enjoyment of the same.

13.The petitioner in his complaint has further stated that after creating the joint settlement deed, dated 22.09.2010, the respondents had trespassed into the property unlawfully and are residing there. According to the petitioner, he filed a suit in O.S.No.144 of 2011, on 24.06.2011 and the suit was decreed ex-parte, on 10.02.2013. The petitioner has nowhere whispered as to when the respondents had trespassed into the property and started to reside therein.

14.Moreover, as rightly contended by the learned counsel for the respondents 1 and 2, in O.S.No.144 of 2011, the petitioner had also obtained permanent injunction along with other mandatory reliefs, restraining the respondents 1 and 2 from interfering with his peaceful possession and enjoyment of the property, which would only go to suggest that he was in possession of the said property on the date of suit. It is not the specific case of the petitioner that he was residing in the said property earlier and till possession was taken by the respondents. The petitioner, in his compliant, has stated that the alleged incident was occurred on 13.11.2016, at about 06.00.p.m and according to him, he visited the respondents 1 and 2 and requested them to vacate the premises and at that time, the respondents 1 to 3 had abused him in filthy language and



attacked him and caused criminal intimidation.

15.It is not the case of the petitioner that after the incident, he had immediately approached the concerned jurisdictional Police and preferred a complaint. In the petition, he has only stated that he sent complaints to the Superintendent of Police and the Deputy Superintendent of Police through the registered post, on 17.11.2016. Though the petitioner has alleged that the respondents had committed the offences under Sections 294(b), 324 and 506(ii) IPC, he has nowhere pleaded that he sustained injury and took treatment therefor. Though the petitioner has alleged that two persons, namely, Maniammal and Dhavamani had saved the petitioner from the respondents at the time of occurrence, he has not elaborated anything further.

16.Considering the entire facts and circumstances of the case, as rightly observed by the learned Magistrate, it is evident that there existed civil dispute between the parties. As rightly pointed out by the learned counsel for the respondents 1 and 2 and the learned Additional Public Prosecutor appearing for the State, the petitioner has neither pleaded nor shown any material in support of his requisition. As rightly contended by the learned counsel for the respondents 1 and 2, when the petitioner had obtained a decree against the respondents 1 and 2 as early as on 10.02.2012, there is no explanation as to why he had waited for four long years to request the respondents 1 and 2 to vacate the premises.

17.On perusal of the petitioner's complaint, this Court is of the view that the commission of cognizable offence is not made out and no *prima facie* case is shown. No doubt, the learned Judicial Magistrate has passed a very brief and short order, but, the same cannot be considered as a reason or ground to impugn the order and this Court is in entire agreement with the finding recorded by the learned Magistrate and there is nothing to interfere with the dismissal order. Hence this Court concludes that the above revision is devoid of merit and the same is liable to be dismissed and the above point is answered accordingly.

18.In the result, this Criminal Revision case is dismissed and the order passed by the learned Judicial Magistrate, Rajapalayam in CrI.M.P.No.546 of 2017 on 19.01.2017, is confirmed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

das

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To

1.The Judicial Magistrate Court, Rajapalayam.

2.The Inspector of Police,
Rajapalayam North Police Station,
Virudhunagar District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

4.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court, Madurai. (2C)

+1 CC to M/s.G.M.LAW OFFICE, Advocate (SR-4039[F] dated 09/02/2021)

Pre-delivery Order made in
CRL.R.C. (MD).No.150 of 2017
09.02..2021

(ES) CO

AP(25/02/2021) 6P 7C