



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.R.C.No.1063 of 2021

R.Boopathy

...Petitioner

versus

1.The Inspector of Police,
Varapalayam Police Station,
Varapalayam - Post, Nambiyur - Taluk,
Erode District.

2.The Deputy Superintendent of Police,
O/o.The Deputy Superintendent of Police,
Gobichettipalayam - Post,
Erode District.

3.The Superintendent of Police,
O/o.The Superintendent of Police,
Erode District.

...Respondents

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of the Code of Criminal Procedure, praying to call for the records relating to the order made in Crl.M.P.No.2491 of 2021 on the file of the learned Judicial Magistrate No.II, Gobichettipalayam, Erode District dated 24.11.2021 by setting aside the order and further direct the first respondent to register the case based upon the complaint dated 05.10.2021 given by the petitioner against the accused and investigate the same.

For Petitioner : Mr.D.Veerasekharan

For Respondents : Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl.Side)

O R D E R

This Criminal Revision Case has been filed to call for the records relating to the order dated 24.11.2021 passed in Crl.M.P.No.2491 of 2021 on the file of the learned Judicial Magistrate No.II, Gobichettipalayam, Erode District, by setting aside the order and further direct the first respondent



to register the case based upon the complaint given by the petitioner as against the accused / respondents.

2. Before the trial Court, the revision petitioner herein filed a petition under Section 156(3) Cr.P.C. praying to direct the respondent police to register the First Information Report, in reference to the complaint dated 05.10.2021. The said complaint presented by the revision petitioner was assigned with case number as CrI.M.P.No.2491 of 2021 and after perusing the same, the learned Judicial Magistrate No.II, Gopichettipalayam, Erode District, by order dated 24.11.2021, dismissed the said complaint. Challenging the same, the petitioner is before this Court with the present Criminal Revision Case.

3. The learned counsel appearing for the petitioner would submit that during the relevant point of time, the petition mentioned accused and others wrongfully entered into the property, which belongs to the petitioner and caused mischief whereby they damaged the gate, which was fixed by the petitioner. It is his further submission that without considering the said act committed by the proposed accused, in the impugned order the learned Judicial Magistrate by citing that, there was a suit filed in O.S.No.251 of 2020 is in respect of the alleged occurrence, criminal liability does not attract and therefore, it is not necessary to direct the respondent police to register the First Information Report. Therefore, the said order passed by the learned Judicial Magistrate is perverse and the same is not having any reason.

4. In this regard, the learned Government Advocate (CrI. Side) appearing for the respondent police would submit that in respect of the said complaint already the respondent police conducted C.S.R. enquiry in C.S.R.No.44 of 2021 wherein before the competent authority either side party are appeared and made an endorsement as they are willing to settle the issue by approaching the Civil Court.

5. The said submissions made by the learned counsel appearing on either side are considered.

6. It is well settled law if any perversity or cross injustice is found in the impugned order, it would appropriate for this Court to set aside the same and further direct the respondent police to register the case. Now, in the impugned order, the learned Judicial Magistrate categorically held that in respect of the same dispute, civil suit is pending.



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Further, it is not in dispute that in respect of the alleged occurrence, C.S.R. enquiry has been initiated and when at the time, the Revenue Divisional Officer posted the matter for the appearance of parties instead of appearing before him, the petitioner herein appeared before this Court and filed this Criminal Revision Case. However, as of now, C.S.R. enquiry has been completed as civil suit is pending.

7. In the said circumstances, on going through the complaint given by the petitioner before the Court, he himself admitted that the proposed accused can also claim the disputed property as his own. It shows that both the petitioner and his rival group claim the petition mentioned property as their property. Therefore, the appropriate forum to decide the right and title of the landed property is the Civil Court. Here, it is a case, already civil suit is pending in O.S.No.251 of 2020 and therefore, it is not necessary to lodge a criminal case for determining the right of the party. Accordingly, the petitioner does not show alleged cognizable offence committed by the proposed accused. Hence, this Court finds that there was no perversity or cross injustice found in the impugned order passed by the trial Court.

8. Resultantly, this Criminal Revision Petition is dismissed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

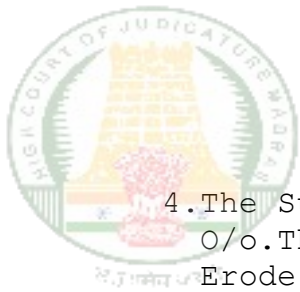
sri

To

1.The Judicial Magistrate No.II,
Gobichettipalayam, Erode District.

2.The Inspector of Police,
Varapalayam Police Station,
Varapalayam - Post,
Nambiyur - Taluk,
Erode District.

3.The Deputy Superintendent of Police,
O/o.The Deputy Superintendent of Police,
Gobichettipalayam - Post,
Erode District.



4.The Superintendent of Police,
O/o.The Superintendent of Police,
Erode District.

5.The Public Prosecutor,
High Court, Madras.

6. The Section Officer
Criminal Section
High Court, Madras 104.

+1 CC to Mr.D.Veerasekharan, Advocate sr 14920.

Crl.R.C.No.1063 of 2021

PMK(CO)
SP(21/03/2022)