



WEB COPY

Crl.O.P.(MD)No.543 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31/03/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.543 of 2019

and

Crl.MP(MD)No.262 of 2019

Michael Raj : Petitioner/Sole Accused

Vs.

11.State of Tamil Nadu,
represented by Inspector of Police,
Intellectual Property Enforcement Cell,
Trichy. : R1/Complainant

2.Jesukaran Soloman : R2/De-facto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in Crime No.749 of 2018 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.A.Sankararamasubramanian

For 1st Respondent : Mr.SS.Madhavan
Government Advocate
(Criminal side)

For 2nd Respondent : Mr.T.A.Ebenezer

O R D E R

This criminal original petition is filed seeking quashment of the case in Crime No.749 of 2018 on the file of the 1st respondent.

2.The case of the prosecution in brief:-

The 2nd respondent herein lodged a complaint with the following allegations:- He purchased the property in survey Nos.182/A, 182/1B and 183/3, measuring about 1 acres 5 cents from the lawful owner. He sold the property to one Sennivaithiyalingam and later purchased the same through a registered sale deed. He is also in possession and enjoyment of the same. The first accused trespassed into the house, on 29/12/2018 at about 10.00 am, abused in filthy language and also criminally intimidated him. So based upon the complaint given by the de-facto complainant, a case in Crime No.749 of 2018 for the offences under sections 448, 294(b) and 506(i)IPC was registered.

<https://hcservices.ecourts.gov.in/hcservices/>



3. Seeking quashment of the same, this petition is filed by the petitioner.

4. Heard both sides.

WEB COPY

5. The learned counsel appearing for the petitioner would straightway rely upon the civil court decree. It is not in dispute that the property belonged to the de-facto complainant. But the case of the petitioner is that the brother of the petitioner namely Chandrasekar and the 2nd respondent entered into a sale agreement as mentioned above. The suit in O.S No.58 of 2004 was filed by the above said Chandrasekar against the de-facto complainant and another one Seenivaithiyalingam. That was decreed by the Principal District Munsif Court, Tenkasi, in O.S No.58 of 2004, dated 16/04/2004. Against which, appeal was preferred by the de-facto complainant before the Sub Court, Tenkasi. It was allowed, in AS No.41 of 2004, dated 28/04/2005. The appellate court has rendered a finding that the disputed sale agreement is a forged document and the brother of the petitioner is not entitled to get a decree of specific performance.

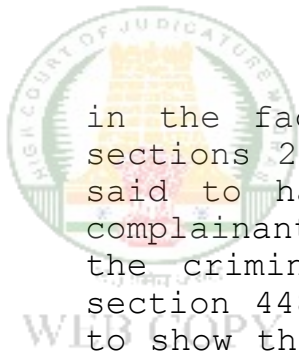
6. Against which, now the legal heirs of the Chandrasekar alleged to have filed the second appeal in the SR stage along with a condone delay petition before this court. So according to the petitioner, after the execution of the above said agreement, property was handed over to the above said Chandrasekar and only Chandrasekar was in possession. So the question of trespass, abusing in filthy language and criminal intimidation may not arise.

7. But I am unable to agree with the line of argument, that was advanced by the learned counsel appearing for the petitioner. Absolutely, there is no agreement between this petitioner and the 2nd respondent. The agreement was only between the Chandrasekar and the de-facto complainant. How the petitioner can claim the possession over the property is not clear on record. So the contention that the offence alleged in the FIR would not have been taken place at all is not sustainable.

8. Now the final report has been presented before this concerned trial court with a petition filed under section 473 Cr.P.C seeking condonation of delay in filing the final report in Crl MP No.573 of 2021. Over that petition, notice has been ordered to the de-facto complainant and the accused. Since the investigation has been completed and final report is made ready and it is going to be presented before the concerned court, after disposal of the Crl.M.P, I find that the disputed question of possession cannot be gone into at this stage.

9. Since there is specific allegation of criminal trespass and criminal intimidation is available. Though

<https://hcs.judges.org.in/hcs/judges>



in the facts and circumstances of this case, the offences under sections 294(b) and 506(i) IPC may not attract, since the offences said to have been taken place within the house of the de-facto complainant and there is no averment to the effect that because of the criminal intimidation, he was threatened under life threat, section 448 IPC is clearly made out. There is *prima facie* material to show that the offence under section 448 IPC is attracted. So the petitioner can very well make his defence during the relevant point of time before the trial court. The trial court may take the observation of this court with regard to the ingredients of 294(b) and 506(i) IPC at the appropriate time.

10. With the above said observation, this criminal original petition is **dismissed**. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

er

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 Inspector of Police,
Intellectual Property Enforcement Cell,
Trichy.

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

+1 CC to M/s.T.A.EBENEZER, Advocate (SR-15998[F] dated 01/04/2022)

Crl.O.P. (MD)No.543 of 2019
31/03/2022

RK(25/05/2022) 3P 4C