



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 15.03.2022
PRONOUNCED ON: 12.04.2022
CORAM
THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

Crl.O.P. (MD)No.16754 of 2019

K.V.Ponnambalam : Petitioner/Complainant

Vs.

1.V.Kannaiya

2.S.Kamaraj : Respondents/Proposed Accused

PRAYER : Criminal Original Petition has been filed under Section 482 Cr.P.C, to set aside the order passed by the Principal District Judge, Pudukkottai in Crl.R.P.No.08 of 2018, dated 18.07.2019 by confirming the order passed by the Judicial Magistrate, Thirumayam in Crl.M.P.No.1393 of 2018, dated 06.04.2018 and consequently issue a direction to the Judicial Magistrate, Thirumayam totake cognizance of the complaint filed by the petitioner on file and issue summons to the proposed accused and punish the accused after trial.

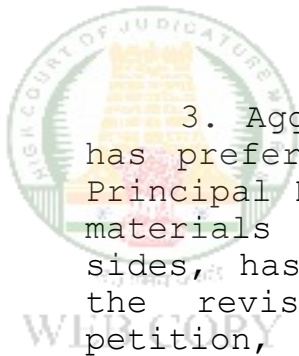
For Petitioner : Ms.Lakshmi Gopinathan

For Respondents : Mr.S.Alagu Sundar

ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to set aside the order passed in Crl.R.P.No.8 of 2018, dated 18.07.2019, on the file of the Principal District Court, Pudukkottai, confirming the order passed in Crl.M.P.No.1393 of 2018, dated 06.04.2018, on the file of the Court of Judicial Magistrate, Thirumayam.

2. The petitioner is the complainant. He filed a complaint under Section 200 Cr.P.C., against the respondents herein for the alleged offences 406, 109, 506(ii) and 41 I.P.C. The learned Magistrate has taken the complaint on file in Crl.M.P.No.1393 of 2018 and proceeded with the enquiry under Section 202 Cr.P.C. The learned Judicial Magistrate, upon considering the evidence adduced and the arguments put forth on behalf of the petitioner, has passed an order dated 06.04.2018, dismissing the complaint under Section 203Cr.P.C.

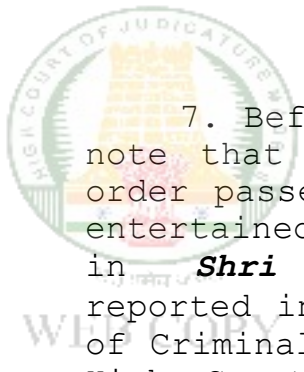


3. Aggrieved by the dismissal of the complaint, the petitioner has preferred a revision in Crl.R.P.No.8 of 2018 and the learned Principal District and Sessions Judge, Pudukottai, upon perusing the materials available on record and on hearing the arguments of both sides, has passed the impugned order dated 18.07.2019, dismissing the revision. Challenging the order dismissing the revision petition, the petitioner/complainant has come forward with the present Criminal Original Petition, invoking Section 482 Cr.P.C.,

4. It is the specific case of the petitioner that the first respondent was related to the petitioner, that both of them were residing in the same house in which a portion was occupied by the petitioner and the other portion was occupied by the first respondent, that the said property was the ancestral property of the petitioner and the first respondent was only allowed to reside in the house, that he is not having any right or title upon the property, that the respondents 1 and 2 had fraudulently obtained patta for a portion of the said property in their names and started claiming right upon the property based on patta, that the first respondent along with the second respondent and others, without having any document of title and without having any separate possession of the property, had demolished the house on 22.02.2018 and 25.08.2018 and also caused life threat to the wife of the petitioner, that the petitioner has already filed a suit in O.S.No.95 of 2016 and got an injunction order in respect of the said property, that though the said injunction order was informed to the respondents, they have forcibly demolished the house with the help of rowdy elements and that thereby they had committed the offences under Sections 406, 109, 506(ii) and 41 I.P.C.

5. The learned Counsel for the petitioner would submit that the Courts below have failed to see that the complaint is only about the demolition of the residential house of the petitioner and not with regard to title dispute, that they have also failed to see that the house was demolished inspite of the order of injunction granted by a competent civil Court, that the allegations raised by the petitioner involves the commission of offences under Sections 406, 109, 506(ii) and 41 I.P.C. and therefore, the Courts ought to have taken cognizance of the case and that the Courts below, without considering the disputes in proper perspective, have given a wrong decision that the dispute is of civil nature and that therefore, the order of the learned Principal District Judge confirming the order of the learned Judicial Magistrate is liable to be set aside.

6. The learned Counsel for the respondents would submit that since the dispute is of civil nature, the learned Magistrate as well as the learned Principal District Judge have correctly come to the decision that there were no sufficient grounds to proceed against the respondents.

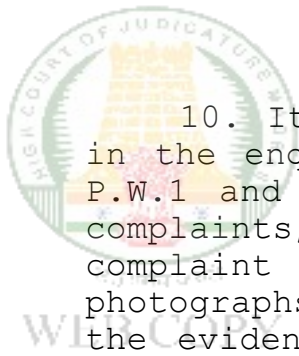


7. Before entering into further discussions, it is pertinent to note that generally the second revision petition challenging the order passed by the Sessions Court in the first revision cannot be entertained under Section 482 Cr.P.C., The Honourable Supreme Court in **Shri Ganesh Narayan Hegde vs. Shri S.Bangarappa and others** reported in **1995 SCC (4) 41**, has held that Section 482 of the Code of Criminal Procedure is not a bar for invoking jurisdiction of the High Court, if in the given circumstances, it is found to be necessary to prevent abuse of process of Court and the relevant passage is extracted hereunder:-

"12.While it is true that availing of the remedy of the revision to the Sessions Judge under Section 399 does not bar a person from invoking the power of the High Court under Section 482, it is equally true that the High Court should not act as a second Revisional Court under the garb of exercising inherent powers. While exercising its inherent powers in such a matter it must be conscious of the fact that the learned Sessions Judge has declined to exercise his revisory power in the matter. The High Court should interfere only where it is satisfied that if the complaint is allowed to be proceeded with, it would amount to abuse of process of Court or that the interests of justice otherwise call for quashing of the charges."

8. The Hon'ble Supreme Court in **Narinder Singh and Others Vs. State of Punjab and another** reported in **(2014)6 SCC 466**, has observed that the decisions of the High Court ought to be guided by following twin objections as contemplated under Section 482 Cr.P.C.,, (i) to prevent abuse of the process of any court, or (ii) to secure the ends of justice.

9. At the outset, it is pertinent to note that the petitioner has not even attempted to show that the orders passed by the Courts below are abuse of process of Court or that for the securing the ends of justice, the said orders are to be set aside. In the case on hand, the petitioner has himself specifically admitted that both are living in separate portions of a same house and that such portions were separated by a common wall. According to the petitioner, there was no partition between them and inspite of that, the respondents have managed to get patta and on that basis, they have been attempting to claim ownership over the property. Moreover, the petitioner has himself stated that he has already filed a civil suit in O.S.No.95 of 2016 and got the injunction order. The main contention of the petitioner is that the respondents, without having any right and without informing the petitioner, have demolished the common wall and also the other portions of the property and thereby causing loss to the complainant.



10. It is further evident from the records that the petitioner in the enquiry under Section 202 Cr.P.C., has examined himself as P.W.1 and his wife as P.W.2 and produced the copy of the police complaints, receipts issued therefor and also the copy of the complaint sent to the Deputy Superintendent of Police and the photographs of the house. The learned Magistrate, after considering the evidence adduced by the petitioner, has come to the decision that the petitioner has to approach the civil Court and since there are no sufficient grounds to proceed against the accused for the offences 406, 109, 506(ii) I.P.C, he could not take cognizance of the case and by holding so, dismissed the complaint. The learned Principal District Judge by observing that the complaint of the petitioner is highly exaggerated and that the alleged activities of the respondents will not attract the offences 406, 109, 506(ii) I.P.C and by holding that the findings arrived at by the trial Court are perfectly valid, dismissed the revision.

11. On considering the materials available, the finding of the learned Magistrate that the dispute is of civil in nature and there are no grounds to take cognizance of the case and the consequent dismissal of the complaint under Section 203 Cr.P.C., cannot be found fault with. The learned Principal District Judge has also rightly dismissed the revision. As already pointed out, the petitioner has not shown any specific or special reason so as to enable this Court to invoke Section 482 Cr.P.C., for setting aside the orders of the Courts below. Hence, this Court decides that this Criminal Original Petition, which is devoid of merits, is liable to be dismissed.

12. In the result, the Criminal Original Petition is dismissed.

Sd/-

Assistant Registrar (AE)

// True Copy //

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Sub Assistant Registrar(CS)

SSL

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 Principal District Judge, Pudukkottai.

2. The Judicial Magistrate, Thirumayam.

+1 CC to M/s.S.ALAGU SUNDAR, Advocate (SR-14426[F] dated 25/03/2022)

+1 CC to M/s.POLAX LEGAL SOLUTIONS, Advocate (SR-18634[F] dated 13/04/2022)

CrI.O.P. (MD) No.16754 of 2019
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