



Crl OP No.2799 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No.2799 of 2021
and Crl.M.P.Nos.1549 and 9111 of 2021

Mr.S.Raja

... Petitioner/Accused

Versus

Mrs.B.Shanthi

... Respondent/ Petitioner

Prayer : Criminal Original Petition has been filed under Section 482 of the Criminal Procedure Code seeking to call for the records in C.C.No.2238 of 2019 on the file of the XV Metropolitan Magistrate at George Town, Chennai 600 001 and quash the above Calendar Case.

For Petitioner : Mr.R.Thangamani

For Respondent : Mr.Om Prakash, Senior Counsel
M/s.G.Veerapathiran



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ORDER

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The Criminal Original Petition has been filed to quash the private complaint filed for the offences under Sections 120, 406, 420 & 468 of the Indian Penal Code.

2. It is alleged in the complaint that the accused petitioner was a tenant under the respondent complainant; that the complainant had filed a petition to evict the petitioner in RCOP No.1903 of 2015 before the XIII Small Causes Court, Chennai; that the petitioner was ordered to be evicted by the order dated 26.08.2014 and thereafter EP was filed for taking possession; that the possession was handed over to the respondent on 07.03.2015; that the accused had filed OS No.6587 of 2013 before the X1 Assistant City Civil Court for a permanent injunction in respect of his tenancy portion; that after the respondent had filed a written statement the said suit was dismissed for default; that thereafter the respondent had filed a suit for arrears of rent as against the first accused; that thereafter the petitioner had lodged a complaint against the respondent stating that the super structure belonged to him; that the respondent interfered in his possession; that the respondent had given a complaint to the Police stating all the above facts and since no action was taken, the respondent had preferred



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the private complaint.

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3. The learned counsel appearing for the petitioner would submit that the property mentioned in the Rent Control Proceedings are different from the property claimed by the petitioner and the survey number in respect of two properties are different. The property claimed by the petitioner was settled in his favour by his father by a settlement deed. Thereafter, the respondent filed a civil suit to declare the said settlement deed as null and void. Since there are civil suits pending between the parties, the impugned complaint is nothing but an abuse of process of law. The property claimed by the respondent and the property claimed by the petitioner are two different properties and this has to be adjudicated only before the Civil Court and prayed for quashing the complaint.

4. The learned Senior Counsel for the respondent in reply would however submit that the property claimed by the petitioner and the respondent are one and the same. The respondent had filed the Rent Control Proceedings against the petitioner, that after the order was passed and the same was executed and possession was handed over to the respondent, the petitioner has come up with this false claim of title over the property making



it appear that his father had executed the Settlement Deed. The petitioner had also filed the Rent Control Proceedings against fictitious persons stating that they were tenants under him and obtained *exparte* decree and making use of the *exparte* decree sought to disturb the possession of the respondent. Since there are allegations in the impugned complaint, the matter has to be adjudicated only before the Trial Court and prayed that the quash petition may be dismissed.

5. This Court finds that there is a factual dispute as to whether the property claimed by the petitioner and the respondent are one and the same. It is the case of the respondent that the respondent got possession of the property pursuant to the execution petition pursuant to the Rent Control Proceedings and thereafter the petitioner had made a false claim of title. The question as to whether the property claimed by the petitioner and the respondent are two different properties and whether the offences alleged in the complaint are made out are matters which cannot be adjudicated in a quash petition. The factual controversy has to be decided only before the Trial Court.

6. Hence this Court is not inclined to entertain the quash petition.



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However, the petitioner is at liberty to raise all his contentions before the Trial Court. The learned counsel appearing for the petitioner would pray that the appearance of the petitioner may be dispensed with before the Trial Court. In view of the same, the personal appearance of the petitioner before the Trial Court is dispensed with, unless the Trial Court deems his presence necessary for the progress of the Trial.

7. In the result, the Criminal Original Petition is dismissed.
Consequently, the connected miscellaneous petitions are closed.

jv

09.06.2023

Index: Yes/No
Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No

To

The XV Metropolitan Magistrate
George Town,
Chennai 600 001.



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SUNDER MOHAN, J.

jv

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