



*CrI.O.P.No.8920 of 2023
& C.R.P(NPD)No.1473 of 2023*

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	14.09.2023
Pronounced on	11.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CrI.O.P.No.8920 of 2023
and
C.R.P(NPD)No.1473 of 2023
and
C.M.P.No.9765 of 2023

CrI.O.P.No.8920 of 2023

1.Senthilkumar

2.Muthukumar

3.Mohammed Riyas

4.Sundaravadivel

5.Thangavel : Petitioners

Vs.

State by,

The Inspector of Police,

Dhali Police Station,

Crime No.65 of 2023. : Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 438 of Cr.P.C.
to enlarge the petitioners on bail in the event of arrest by the respondent
police, pending investigation in Crime No.65 of 2023 on the file of the
respondent police.



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For Petitioners : Mr.A.Palaniappan
For Respondent : Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl. side)
For Intervenor : Ms.Hema Sampath
Senior Counsel

C.R.P(NPD)No.1473 of 2023

Thangavel : Petitioner/Petitioner/2nd Respondent/
/2nd Respondent/Judgment Debtor
Vs.

1.M.Rananathan : 1st Respondent/1st Respondent/
Petitioner/Auction Purchaser
Krishnasamy (Died)
2.Arukkani
3.Karuppusamy : 2nd & 3rd Respondents/2nd & 3rd Respondents/
Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Fair and Decreetal Order dated 05.04.2023 in Un Numbered E.A. in E.A.No.51 of 2015 in E.P.No.182 of 2006 in O.S.No.261 of 2003 by the District Munsif, Udumalpet.

For Petitioner : Mr.A.Palaniappan
For Respondent : Ms.Hema Sampath
Senior Counsel
for Mr.S.Prabhu for R1
No Appearance for R2 and R3



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COMMON ORDER

Based upon the administrative order passed by the Hon'ble The Chief Justice, both the Civil Revision Petition and the Criminal Original Petition for pre-arrest bail have been posted before this Court.

2. Arguments in both the cases have been heard and the orders have been passed on the same day, i.e., 14.09.2023.

C.R.P.No.1473 of 2023:

3. This Civil Revision Petition is filed to set aside the Fair and Decretal Order dated 05.04.2023 in Unnumbered E.A. in E.A.No.51 of 2015 in E.P.No.182 of 2006 in O.S.No.261 of 2003 by the District Munsif, Udumalpet.

4. The Judgment Debtor is the revision petitioner herein. The first respondent is the Auction Purchaser in the Court auction. The facts relating to the filing of the above civil revision petition are as under:



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4.1. The deceased Krishnaswamy has filed a suit in O.S.No.216 of 2003 seeking for recovery of money based upon the promissory note dated 15.10.2002 for a sum of Rs.15,000/-. The said suit was decreed by the trial Court in terms of judgment and decree dated 12.01.2004, directing the defendant to pay a sum of Rs.15,956/- along with interest at the rate of 6% p.a., from the date of plaint till the date of realization. No appeal was filed. Thus decree has become final. Thereafter, the decree holder, the said deceased Krishnaswamy had filed E.P.No.182 of 2006 seeking for execution of aforesaid judgment and decree dated 12.01.2004. Based upon which, the property of an extent of 10 acres 31 cents of agricultural land situated at Valayapalayam Village, Udumalaipettai Taluk comprised in S.Nos.304, 306/A2, 306/B2 was brought on auction. The trial Court had brought the entirety of the attached property for auction on 09.06.2008 and the first respondent herein was declared by the trial Court as the successful bidder for an amount of Rs.7,50,300/-.

4.2. One of the defendants (Judgment Debtor's lenders), namely, Mr.T.Nallamuthu S/o Tirumalai Gounder had filed E.A.Nos.168 of 2008,



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189 of 2008 and 199 of 2008 under Order XXI Rule 90 of CPC challenging the sale that he also charged over the property. The same were dismissed by the trial Court. Subsequent to which, the trial Court had issued sale confirmation on 19.04.2011 and had executed the sale deed dated 19.04.2011 bearing Document No.21 of 2011 on the file of the SRO Komangalam in favour of the first respondent.

4.3. In the meanwhile, the petitioner's sons, namely, Senthilkumar and Muthukumar had filed O.S.No.19 of 2010 on the file of the District Court, Udumalpet, seeking for 1/3rd share in all the joint family properties including the present subject matter property. The said suit was compromised and Court was pleased to pass compromise Judgment and decree dated 14.10.2011. The said total extent of property was partitioned as between the petitioner and his two sons in terms of partition deed dated 04.06.2014 bearing Document No.1406 of 2014 on the file of the SRO Komangalam including the present subject matter of property which was allotted to the petitioner's son Muthukumar.

4.4. Thereafter, the first respondent had filed E.A.No.51 of 2015



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seeking for possession of the suit schedule properties and the petitioner was contesting the execution proceedings on merits. As the first respondent had taken steps in order to take possession of the suit schedule properties with the help of police aid, the petitioner has filed the present E.A.SR.No.1327 of 2023 seeking to declare the auction dated 09.06.2008 with respect to the suit schedule properties as null and void and also to reject the E.A.No.51 of 2015 filed by the first respondent seeking for possession of the suit schedule properties. The trial Court without numbering the said application under Section 47 of CPC had resorted to dismiss the same on the ground that the irregularity subsequent to the sale can only be challenged under Order XXI Rule 90 of CPC within the period of limitation under Article 127 of the Limitation Act, 1963 being a period of 120 days from the date of sale. The trial Court ought to have brought only a portion of suit schedule property for auction in consonance with Order XXI Rule 64 CPC. Rather the sale of total extent of property only for the suit principal claim of Rs.15,000/- is a material irregularity vitiating the entirety of the auction. The trial Court without numbering the application had dismissed the application in *limine* in total disregard of the ground of excessive



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execution taken by the petitioner before the trial Court. Aggrieved against the order of the trial Court, the petitioner has preferred the present Civil Revision Petition.

5. Pursuant to the dismissal of the above order, on 05.04.2023, the first respondent along with Ameen, police had entered into the suit schedule property for the purpose of demonstrating the petitioner from the suit schedule property. The petitioner had stated that the said application under Section 47 is pending before the trial Court and the same is coming up for judgment on the same day, on account of which, they *bonafidely* requested them to wait till the outcome of the said application. The respondents have lodged a false complaint as against him and his sons to the Sub Inspector of Police, Dhali. Based upon which, the First Information Report in Crime No.65 of 2023 was filed by the Sub Inspector of Police, Dhali and the investigation was commenced. The petitioner further stated that the suit schedule properties are agricultural land being personally cultivated by him. The deceased Krishnaswamy had suppressed the existence of 900 coconut trees even on the date of execution.



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6. The learned counsel for the revision petitioner/Judgment Debtor would contend that the suit schedule properties are agricultural land and being under personal cultivation and there existed 900 coconut trees.

7. Ms.Hema Sampath, the learned Senior Counsel for the first respondent would contend that after six rounds of litigations, the 21 years old execution petition in E.P.No.182 of 2006 came to be disposed of and the suit is of the year 2003 and all the execution applications are disposed of. At this juncture, he has filed the petition under Section 47 on the ground that there is no limitation and would contend that the facts of the case are squarely covered by the Judgment of the Hon'ble Supreme Court in ***Dipali Biswas and Others Vs. Nirmalendu Mukherjee and Others*** reported in ***2021 SCC Online SC 869***.

8. Per contra, the learned counsel for the revision petitioner/Judgment Debtor would contend that the facts of the case are squarely covered by the Judgment of the Hon'ble Supreme Court of India in ***Arun Lal & Ors. Vs. Union of India*** reported in ***AIR 2011 SC 506***.



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9(a). After perusing the lower Court records and the submissions made by the rival parties through their counsel, I find that the first round of litigation was commenced on 12.01.2003 by filing O.S.No.261 of 2003 before the District Munsif Court, Udumalpet based on the pro-note dated 15.10.2002 against Thangavel was decreed for a sum of Rs.15,956/- with interest. The defeated defendant has not filed any appeal against the decree.

9(b). The first round of litigation was proceeded further on 08.11.2005 by filing E.P.No.182 of 2006 by the decree holder against the said Thangavel for recovery of Rs.18,073/- and cost of Rs.3475.50/- and the said Thangavel has filed counter on 31.07.2007 and also contested the execution petition. On 16.02.2008, a detailed order was passed directing sale of the property already attached. Further, on 09.06.2008, E.P.No.182 of 2006 was filed by the decree holder sale of the attached 10 acres 30 cents was held and Ranganathan was the successful purchaser for Rs.7,50,300/-.

9(c). The second round of litigation was commenced in the year 2008, where, third parties to the decree in O.S.No.261 of 2003 have



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started filing various claim petitions, namely, E.A.Nos.168 of 2008, 190 of 2008, 200 of 2008 and 198 of 2008. The third round of litigation was commenced in the year 2010, the sons of the petitioners filed O.S.No.19 of 2010 against their father for partition. Further, on 17.04.2010, the consent preliminary decree was passed and I.A.No.1021 of 2011 was filed for final decree. On 19.04.2011, the sale certificate was issued in the execution petition and the same was registered on 06.06.2011. Thereafter, on 14.10.2011, the final consent decree was passed in the partition suit in O.S.No.19 of 2010 and further on 04.06.2014, the partition deed as per the decree was registered before the SRO Komangalam and the suit property was allotted to Muthukumar. Further, the said Muthukumar filed O.S.No.210 of 2012 against Ranganathan seeking for injunction and the same was dismissed on 02.03.2023 on contest and the said Muthukumar admitted to knowledge of the sale.

9(d). In the meanwhile, one Thangavel filed Insolvency Application in I.P.No.9 of 2006 before the Sub Court, Udumalpet and another Insolvency Petition in I.P.No.68 of 2004 before the District Munsif Court, Tiruchi and the same were also dismissed. Further, the third parties filed Execution Application in the execution proceedings in



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E.A.Nos.32 and 31 of 2017 to restore the execution applications. The petitioner's sons also filed E.A.Nos.27 of 2018 and 58 of 2016 in E.A.No.51 of 2015 and the same were also dismissed and E.A.No.51 of 2015 for possession was also allowed on the same day.

10(a). In the meanwhile, all the formalities in respect of sale of the property has been completed, the sale certificate was issued in the execution proceedings and the sale certificate was registered before the Competent Sub Registrar Office on 06.06.2003. Pursuant to the same, all the claim petitions were dismissed and again restored and again dismissed.

10(b). Furthermore, the fourth round of litigation by way of E.A.51 of 2015 was filed for possession by Ranganathan, Thangavelu through their counsel and in the collusive decree, a final consent decree was passed in partition in O.S.No.19 of 2010. While things be so, the Judgment Debtor based upon the consent decree of partition obtained a decree and registered the decree before the SRO, Komangalam on 04.06.2014, while the property was allotted to Muthukumar ignoring the sale certificate issued by the Court.



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10(c). The fifth round of litigation was commenced in the year 2012. One Muthukumar filed O.S.210 of 2012 based upon the consent decree in O.S.No.19 of 2010, dated 14.10.2011 was filed against Ranganathan seeking for injunction and the same was dismissed after contest and the said Muthukumar also admitted the knowledge of the Court sale.

11. As stated *supra*, one Mr.Thangavel filed I.P.No.9 of 2006 before the Sub Court, Udumalpet and the same was dismissed. Another I.P.No.68 of 2004 before the District Munsif Court, Trichy was filed and the same was also dismissed and the third parties have filed E.A.Nos.27 of 2018 and 58 of 2016 in E.A.51 of 2015 were also dismissed and in E.A.51 of 2015 filed by the Court Auction Purchaser, the possession was allowed.

12. Finally on 05.04.2023, , Firka Surveyor, Village Administrative Officer, Special Sub Inspector of Police, namely, Ashok Kumar and two Constables, Ranganathan and his family, Thangavel and his sons and 25



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persons were present. Pursuant to the order passed by the Execution Court, the property was measured in the presence of these persons. At this juncture, it is alleged that Senthilkumar, son of Thangavel, who is working as Head Constable and the Sub Inspector of Police stabbed the defacto complainant, Ranganathan, while Muthukumar attempted to strangle him.

13. From the lower Court records, it reveals that on 12.04.2023, police aid was granted in the Execution Court. While the First Information Report was registered against eight persons in Crime No.65 of 2003 before the Dhali Police Station, three persons were arrested and remanded and the other accused remains absconded. At this juncture, on 12.04.2023, when the Court Ameen along with Sheristadar and Surveyor went to measure the land, Thangavel filed the petition under Section 47 of C.P.C. After hearing the arguments of the counsel, the Court refused to number the petition and accordingly, rejected the same and hence, the Civil Revision Petition.

14(a). On the ancillary line, three persons were arrested pursuant to



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the registration of FIR in Crime No.65 of 2023. Out of them, one person, namely, Sekar @ Chandrasekar was granted bail on 04.05.2023 and another person was granted bail on 05.05.2023. Thangavel (the Judgment Debtor) has filed this present Civil Revision Petition against the Unnumbered E.A in E.A.51 of 2015 in E.P.182 of 2006 in O.S.No.261 of 2023.

14(b). It is an admitted fact that no appeal has been filed based upon the decree granted in O.S.No.261 of 2003 as early as on 12.01.2004. Multiple and multiple number of civil suits had been filed and insolvency suits had been filed and various execution applications had been filed and dismissed. Court auction was conducted on 09.06.2008 and the sale certificate was issued in favour of the first respondent as the successful auction purchaser as early as on 19.04.2011.

15. The learned counsel for the revision petitioner/Judgment Debtor would contend that there is a material irregularity in conducting of the Court auction. The decree in the suit is a contested decree. When the upset price was fixed bringing the property to sale, I find from the lower Court records, that the Judgment Debtor has not filed any objection



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that has been raised now. Beside in the execution application for possession, the Judgment Debtor has appeared and contested the matter and he has not raised any plea that are been raised in the grounds of appeal. Two sets of insolvency proceedings in I.P.No.9 of 2006 on the file of the Sub Court, Udumalpet and I.P.No.68 of 2004 on the file of the District Munsif Court, Trichy were also dismissed, no plea has been raised with regard to the price of excessive execution was raised. Injunction suit filed by one of the decree holder has also been dismissed. At no point of time, no such plea has been raised as several pleas that have been raised now. Thus, this Court finds that what was not raised at any point of time appears to be now raised.

15(b). Now, the learned counsel for the petitioner stated that there are 300 coconuts the said field. Absolutely, there is no material placed either before the Execution Court or before this Court that on the date of the auction sale, those coconut trees are situated in the said property. At this juncture, the contentions of the learned Senior Counsel, Ms.Hema Sampath for the first respondent/Auction Purchaser that on the date of the auction, there is no coconut trees, they are all subsequent development made by the parties.



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15(c). It remains to be stated that the real estate price in the area of Udumalpet which is on the boundary of Theni and Coimbatore Districts and the hike under real estate is only for the last ten years and not before and hence, the contention of the learned counsel for the revision petitioner that the present market value of the property has to be taken into account cannot be countenanced. The upset price was fixed and the notice has been duly served upon the Judgment Debtor, he has not raised any plea, much less, the plea of excessive execution has not raised either before the Execution Court in E.P.No.182 of 2006 nor in E.A.No.168 of 2008 nor in E.A.No.190 of 2008 nor in E.A.No.200 of 2008 nor in E.A.No.198 of 2008 claiming to be creditors. Further, even the third parties who have filed E.A.Nos.31 and 32 of 2017 have also not raised any value of the property and hence, several attempts have been made by the Judgment Debtor to prevent the Auction Purchaser from enjoying the fruit of his auction purchase made as early as on 2008.

15(d). The present Ranganathan, who is injured in the above said crime number, who is the Auction Purchaser has taken the property as the successful Auction Purchaser as on 09.06.2008 is unable to realise the fruits of his Court auction purchase.



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16. Considering the facts of the case, I find that the Judgment of the Hon'ble Supreme Court of India in ***Dipali Biswas and Others Vs. Nirmalendu Mukherjee and Others*** reported in ***2021 SCC Online SC 869***, wherein, the Hon'ble Supreme Court has held in paragraph 33, 34 and also the conclusion portion of paragraph 37 reads as under:

“33. The above sequence of events would show that the judgment--debtor had sufficient opportunity to object to the inclusion of the entire property when an order was passed under Order XXI, Rule 54. *Subsequently he had an opportunity to object to the inclusion of the whole of the property, by taking advantage of the amended clause (a) of sub rule (2) of Rule 66 of Order XXI, which speaks about a part of the property that would be sufficient to satisfy the decree. But the judgmentdebtor despite filing a petition under [Section 47](#) on 02.09.1975, did not point out how the property being a vacant land of an extent of 17 decimals could have been divided. It must be pointed out at the cost of repetition that the notice of attachment under Order XXI, Rule 54 was ordered on 10.01.1975 and the sale proclamation under Order XXI, Rule 66 was directed to be issued on 16.07.1975. It is only thereafter that the first petition under [Section 47](#) was filed on 02.09.1975. Therefore, the appellants cannot compare themselves to the judgmentdebtors in T.P. Subba Reddi or*



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Ambati Narasayya (supra).

34. As we have pointed out elsewhere, the objection relating to Order XXI, Rule 64 has been raised by the appellants for the first time in the 5th round of litigation in execution. In the 1 st round, the appellants exhausted the gun-powder available under Order XXI, Rule 90, by taking recourse to a compromise with the auction purchasers, after alleging material irregularity in the conduct of the auction. The 1st round which commenced in 1979 came to an end in 1992 with the dismissal of SLP(C) No.18092 of 1991. In the order of the High Court dated 20.12.1990 that was under challenge in the said SLP, the High Court made it clear that none of the parties shall have any claim whatsoever as against the auction purchaser in respect of the purchased property (we have extracted this in Para 10 above).

.....

Conclusion

37. The appellants cannot be allowed to raise the issue relating to the breach of Order XXI, Rule 64 for the following reasons:

(i) A judgmentdebtor cannot be allowed to raise objections as to the method of execution in instalments. After having failed to raise the issue in four earlier rounds



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of litigation, the appellants cannot be permitted to raise it now;

(ii) As we have pointed out elsewhere, the original judgment debtor himself filed a petition under [Section 47](#), way back on 02.09.1975. What is on hand is a second petition under [Section 47](#) and, hence, it is barred by res judicata. It must be pointed out at this stage that before Act 104 of 1976 came into force, there was one view that the provisions of Section 11 of the Code had no application to execution proceedings. But under Act 104 of 1976 Explanation VII was inserted under [Section 11](#) and it says that the provisions of this Section shall apply to a proceeding for the execution of a decree and reference in this Section to any suit, issue or former suit shall be construed as references to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree;

(iii) Even in the 5th round, the appellants have not pointed out the lay of the property, its dimensions on all sides and the possibility of dividing the same into two or more pieces, with a view to sell one or more of those pieces for the realisation of the decree debt;



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(iv) *The observations in paragraph 4 of the order of the High Court dated 20.12.1990 in C.O.No.2487 of 1987 that, “none of the parties shall have any claim whatsoever as against the applicant in respect of the purchased property which shall be deemed to be his absolute property on and from the expiry of 15th December, 1980”, has attained finality;*

(v) *Section 65 of the Code says that, “where immovable property is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute”. The sale of a property becomes absolute under Order XXI, Rule 92(1) after an application made under Rule 89, Rule 90 or Rule 91 is disallowed and the court passes an order confirming the same. After the sale of an immovable property becomes absolute in terms of Order XXI, Rule 92(1), the Court has to grant a certificate under Rule 94. The certificate has to bear the date and the day on which the sale became absolute. Thus a conjoint reading of [Section 65](#), Order XXI, Rule 92 and Order XXI, Rule 94 would show that it passes through three important stages (other than certain intervening stages). They are, (i) conduct of sale; (ii) sale becoming absolute; and (iii) issue of sale certificate. After all these*



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three stages are crossed, the 4th stage of delivery of possession comes under Rule 95 of Order XXI. It is at this 4th stage that the appellants have raised the objection relating to Order XXI, Rule 64. It is not as if the appellants were not aware of the fact that the property in entirety was included in the proclamation of sale. Therefore, the claim on the basis of Order XXI, Rule 64 was rightly rejected by the High Court.”

17. Considering the facts of the case as discussed *supra*, I find that the ratio laid down in the above cited case is squarely applicable and hence, I have no hesitation to hold that the rejection of the 47 application by the Execution Court is in accordance with the law laid down by the Hon'ble Supreme Court and there is no error or irregularity or illegality in the order passed by the Execution Court. Consequently, the Civil Revision Petition is devoid of merits and is liable to be dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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18. The defacto complainant, Ranganathan is the Auction



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Purchaser in the Court Auction, who suffered injury at the hands of the Judgment of Debtor, who is working as the Sub Inspector of Police in the Tamil Nadu Police, who is said to be absconding.

19. The petitioners/A1, A2, A3, A7 and A8 were apprehending arrest at the hands of the respondent police for the alleged offences under Sections 147, 148, 294(b), 353, 307 and 506(2) of IPC in Crime No.65 of 2023 on the file of the Dhali Police Station, Tirupur, seeks pre-arrest bail.

20. As per the averments made in the First Information Report, on 05.04.2023, as per the order of the District Munsif Court, Udumalpet, the s namely, Senthilkumar, Arulprasad with Surveyor Veerakumar, VAO Rajamanickam, his assistant Manjuladevi and Sub Inspector of Police and two Constables of the second respondent came to measure and execute the warrant. At that time, the petitioners/accused along with others came there and beat the de-facto complainant and pushed him down. A1 abused the defacto complainant in filthy language and stabbed him with knife and hence, he sustained severe injuries. Immediately, the respondent police came and rescued the defacto complainant from the



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brutal assault. At that time, the petitioners/accused threatened the defacto complainant that they would finish him off. Hence, the complaint.

21. The learned counsel for the petitioners/accused would contend that the report of the amin on the said date to the Court and the FIR averments are self contradictory and hence, seeks pre-arrest bail.

22. The learned counsel for the intervenor/defacto complainant would contend that based upon the civil suit in O.S.No.261 of 2003 passed by the District Munsif Court, Udumalpet, the decree holder filed E.P.182 of 2006 and the Execution Court has passed the orders in favour of auction purchaser to delivery the property and the same was completed. After prolonged execution applications for more than 15 years, the Court staff namely, Sheristadar and Bailiff with the aid of police went to the spot for taking possession of the property to hand over the same to the Auction Purchaser. At that time, an altercation said to have occurred between the parties, resulted in, injury to the Auction Purchaser and hence, the crime number.



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23. The Accident Register copy was produced by the learned Government Advocate (Crl. Side).

24. Perused the materials available on records.

25. Injuries noted on the stomach, head and stitches have been made.

26. Initially, the case was registered for the offence under Section 324 of IPC and subsequently, it was altered into Section 307 IPC based upon the medical opinion.

27. A1 is the Sub-Inspector of Police so far, who has a specific overt act of stabbing the Court Auction Purchaser with knife on the elbow, stomach and shoulder. All the petitioners' name have been mentioned in the FIR, it came into existent immediately after the incident and hence, I find that the apprehension expressed by the defacto complainant/intervenor that in view of this occupation as Sub Inspector of Police in the said locality, he mayhamper the investigation and tamper



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with witnesses cannot be ruled out. The matter is under preliminary stage of the investigation.

28. Considering the overt act alleged against these petitioners, preliminary stage of the investigation, specific overt act as against these petitioners and the injuries sustained by the defacto complainant and the possession occupied by the first respondent in the Police Department, I am inclined to dismiss this petition.

29. Accordingly, this Criminal Original Petition is dismissed.

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Index : Yes / No

Internet : Yes / No

NCC : Yes/No

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To

1. The District Munsif, Udumalpet.

2. The Inspector of Police,
Dhali Police Station,
Tirupur District.



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3. The Additional Public Prosecutor,
Madras High Court, Madras.

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