



WEB COPY

Crl.O.P.No.19589 of 2021
and Crl.M.P.No.10665 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.03.2023

PRONOUNCED ON : 07.03.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Crl.O.P.No.19589 of 2021
and Crl.M.P.No.10665 of 2021

T.Senthilkumaran

...

Petitioner

versus

1.State Represented by
Inspector of Police,
R-1 Police Station (Mambalam),
No.1, Madley Road,
T.Nagar, Chennai - 600 017.
[C.C.No.2446 of 2021]

2.Shanmugapriya

...

Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, praying to call for the records pertaining to C.C.No.2446 of 2021 on the file of the learned XVII Metropolitan Magistrate, Saidapet, Chennai and quash the same.

For Petitioner	:	Mr.Kaushik N.Sharma for M/s.KNS Law Chambers
For Respondent No.1	:	Mr.A.Gopinath Government Advocate (Crl. Side)
For Respondent No.2	:	Mr.G.Prabhakaran for M/s.R&P Partners



ORDER

This Criminal Original Petition has been filed to call for the records pertaining to C.C.No.2446 of 2021 on the file of the learned XVII Metropolitan Magistrate, Saidapet, Chennai and quash the same.

2. The petitioner is the sole accused against whom the second respondent / *de facto* complainant has given a complaint on the allegations that the petitioner had trespassed into her house by breaking the door and threatened to cause danger to her life and safety.

3. The learned counsel for the petitioner submitted that the petitioner and the second respondent / *de facto* complainant are siblings and the property where the petitioner and the second respondent were residing belonged to their father. As the legal heirs of the father, both the petitioner and the second respondent have got equal entitlement over the same and hence the entry of the petitioner into the property cannot be claimed as an act of trespass. There are series of civil litigations pending between the petitioner and the second respondent and just in order to gain some unfair



advantage, the second respondent has given a criminal colour to the civil dispute by giving a false complaint.

3.1. The father of the petitioner is living in one room of the flat where the second respondent was residing. When she locked the entire house and went outside, the petitioner needed to open the house in order to meet out the medical emergency of the father. The second respondent did not take care of the father and it was the petitioner, who needed to attend the medical requirements of his father. Since the medicines of the father were inside the house of the second respondent and she had absconded by leaving her father alone, the petitioner needed to break open the lock only for the purpose of taking the medicines. But the first respondent police without making proper enquiry has filed the charge sheet in a biased manner.

4. The learned Government Advocate (Crl. Side) appearing on behalf of the first respondent submitted that the second respondent and her father were living in the first floor of the whole building belonged to the father; the petitioner is living at the second floor; on 18.04.2017 at about



7.30p.m., when his father was conversing with his friend and the second respondent, the petitioner came there suddenly and picked up a quarrel with them; he also slapped the second respondent and pushed away the father; in view of the violent attack caused by the petitioner on the father, his fingers got affected; the second respondent was prevented by her father from giving a complaint at that time; on 20.04.2017, the petitioner had sent a whatsapp message to the second respondent that he regretted his action and he had also stated that he would not come to the first floor and interfere with the portion of the second respondent; on his assurance that he would not cause any trouble, the second respondent came again to her house at the first floor and was residing there. The father due to his old age could not climb to the second floor and hence he stayed in the first floor itself; since he suffered due to paralysis he had limited mobility.

5. On 26.08.2019, the second respondent had gone outstation by locking the house and handed over the key to one Kumar. When the second respondent returned she found the lock of her house was broken and she came to know that on 29.08.2019 at about 6.30p.m., her brother, who is the



petitioner herein had trespassed into her house by breaking open the door.

His Manager Devarajan had assisted him in executing the above criminal act. On another occasion i.e. on 09.09.2019 at about 7.30p.m., the petitioner once again trespassed into the house and caused threat to the safety of the second respondent and her property; the witnesses, who had witnessed the occurrence have also given a clear statement about the occurrence and the materials available on record would clearly disclose the offences for which the petitioner has been charged with and hence the petition should be dismissed.

6. The second respondent and the petitioner are siblings. The first floor of the building was given to the second respondent and the second floor was given to the petitioner by their father, who is no more now. During his last days, he was residing in a portion of the first floor given to his daughter / second respondent. All is not well between the petitioner and the second respondent and they have lot of civil litigations between themselves. On the alleged date of occurrence, the petitioner is said to have trespassed into the first floor by breaking open the door.



7. The contention of the petitioner is that he needed to break open the lock just in order to save his father from a medical emergency. According to the petitioner, the door was locked by the second respondent by keeping his father inside the house and hence he needed to break open the door.

8. The second respondent had handed over the key of the first floor to one Kumar from whom the second respondent came to know that the lock of the first floor was broken. From the statement of the said Kumar, it is seen that the petitioner was demanding the key of the first floor from Kumar but he refused to give it without the permission of the second respondent.

9. If the petitioner had the intention to open the house just in order to take medicines of his father, he could have directly contacted the second respondent and informed that he needed the medicines. In that case, the second respondent would have instructed Kumar to open the house and take the medicines and give it to the petitioner. Even if the petitioner would



have been aware of the consequences of his act by breaking the door by himself when he was not in good terms with the second respondent and there are series of disputes already pending between themselves. A prudent man in the place of the petitioner would think twice to break open the door and he could have approached the second respondent either directly or through some one before breaking the lock of the house.

10. All the submissions that have been made by the petitioner might serve as his defence when the case posted for trial. Bundle of facts have to be proved in order to establish the submissions made by the petitioner. Since the eye-witnesses, who have witnessed the occurrence have also given statements that the petitioner had broken the lock and gone into the house of the second respondent, I feel it is appropriate to subject the petitioner to undergo the process of trial.

11. It would have been better if the petitioner and the second respondent who are siblings had ironed out their differences and respected to each other's space. The second respondent has stated that she was not



allowed to live peacefully at the first floor given to her by the father. In such circumstances and also taking into circumstances of the materials already placed, I feel the process of trial should not be interfered with.

12. In view of the above said reasons, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

07.03.2023

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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To

- 1.The XVII Metropolitan Magistrate,
Saidapet, Chennai.
- 2.The Inspector of Police,
Government of Tamilnadu,
R-1 Police Station (Mambalam),
No.1, Madley Road,
T.Nagar, Chennai - 600 017.
- 3.The Public Prosecutor,
Madras High Court,
Chennai.



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R.N.MANJULA, J.

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Pre-Delivery Order made in
Crl.O.P.No.19589 of 2021
and Crl.M.P.No.10665 of 2021

07.03.2023