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Crl.R.C.(MD).No.445 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 27.07.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC(MD)No.445 of 2023

and

Crl.MP(MD)Nos.6578 & 6580 of 2023

Selvan

... Petitioner/Petitioner/Sole Accused

Vs.

The Inspector of Police,
Puthukadai Police Station,
Rep by the Assistant Public Prosecutor,
Kuzhithurai.

... Respondent/Respondent/Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records pertaining to the order passed by the learned Judicial Magistrate No.II, Kuzhithurai, in Crl.M.P.No.2629 of 2021 in C.C.No. 99 of 2016 dated 23.11.2022, examine the records, set aside the same and allow this Revision.

For Petitioner : M/s.R.Jenifar Bibin

For Respondent : Mr.R.Sivakumar
Government Advocate (Crl.Side)



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ORDER

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This Criminal Revision Case is filed to set aside the impugned order passed by the learned Judicial Magistrate No.II, Kuzhithurai, in Crl.M.P.No.2629 of 2021 in C.C.No.99 of 2016 dated 23.11.2022.

2.According to the prosecution, the petitioner said to have trespassed into the land of the complainant and caused damages to the stonny pillar and barbed wire fencing worth about Rs.55,000/-. The Investigation Officer has not conducted proper investigation and also not examined the witnesses. In such circumstance, compromised has been arrived between the parties. Even though, the complainant again lodged a complaint against the petitioner for the very same occurrence. Thereafter, the petitioner filed discharge petition in Crl.M.P.No.2629 of 2021 in C.C.No.99 of 2016 wherein, he stated that since he is in possession of the property, the alleged criminal trespass into the land of the defacto complainant does not arise. Already a civil suit in O.S.No.198 of 2015 filed by the petitioner is also pending before the Sub Court, Kuahithurai. However, the learned trial Judge, dismissed the said petition in Crl.M.P.No.2629 of 2021 in C.C.No.99 of 2016 by the order dated 23.11.2022. Challenging the same, the petitioner filed this Revision.



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3.The learned counsel for the petitioner submitted that the petitioner is in possession of the property and also a civil suit is pending before the Sub Court, Kuahithurai, in O.S.No.198 of 2015 regarding the dispute. Further, he submitted that the witnesses are not trustworthy. Hence, he prayed to allow this Revision.

4.The delay in lodging the FIR, non-examination of the witnesses and the contradiction between the statement of the material witnesses are the matter for trial. Further, the above stated defence of the petitioner cannot be considered by this Court at this stage. When the sufficient materials is available to frame the charges, the jurisdiction under Section 239 Cr.P.C., is very much limited and hence, the learned trial Judge correctly dismissed the discharge petition filed by the petitioner. This Court does not find no merits in this petition and not inclined to allow this petition.

5.Accordingly, the order passed by the learned Judicial Magistrate No.II, Kuzhithurai, in Crl.M.P.No.2629 of 2021 in C.C.No.99 of 2016 dated 23.11.2022, is hereby confirmed and the Criminal Revision Case is dismissed. Consequently, the connected miscellaneous petitions are closed.



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6.However, considering the age of the petitioner, the personal appearance of the petitioner before the trial Court is hereby, ordered to be dispensed with, on conditions that he shall appear at the time of initial questioning, proceedings under Section 313 of Cr.P.C., and at the time of passing judgment and on the hearings, specifically directed by the trial court. The petitioner is further directed to give an undertaking in the form of affidavit that he will be duly represented by a counsel on all hearing dates and that the Counsel representing them will cross examine the prosecution witnesses on the date of chief examination. The petitioner shall not dispute the identity of the witnesses. The petitioner shall appear before the Court in the event their presence is insisted by the trial judge for the purpose of identification. If the petitioner adopt any dilatorial tactics, it is open to the Trial Court to insist for his appearance and deal with the petitioner in accordance with the judgment of Supreme Court of India, *in State of Uttar Pradesh Vs. Shambunath Singh*, reported in *2001 (4) SCC 667*.

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NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To

- 1.The learned Judicial Magistrate No.II,
Kuzhithurai.
- 2.The Inspector of Police,
Puthukadai Police Station,
Rep by the Assistant Public Prosecutor,
Kuzhithurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,
Criminal Record,
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

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