



CrI.R.C.(MD).No.304 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 16.08.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.RC(MD)No.304 of 2023

K.Ayyadurai

... Petitioner/Complainant

Vs.

1.Ganapathy

2.Nagarajan

... Respondents/Proposed

Accused No.1 & 2

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records in Cr.M.P.No.10183 of 2022, on the file of the learned Judicial Magistrate Court No.II, Kovilpatti, Thoothukudi District and set aside the order dated 06.12.2022.

For Petitioner : Mr.S.Saravanan

For Respondents : Mr.C.Rathinavel Pandian

ORDER

The Criminal Revision Case is filed against the order passed in Cr.M.P.No. 10183 of 2022, dated 06.12.2022, on the file of the learned Judicial Magistrate Court No.II, Kovilpatti, Thoothukudi District.

2.On 05.11.2017 The first respondent lodged a complaint against the complainant, before the Kayathar Police Station with the allegation that, the



Crl.R.C.(MD).No.304 of 2023

petitioner and the other persons said to have trespassed into the shed of the first respondent which was covered with Asbestos Sheet and damaged the articles, which were kept inside the shed. Hence, the first respondent lodged a complaint before the Kayathar Police Station, Thoothukudi District, and the same was registered in Crime No.375 of 2017 for the offences under Sections 147, 448 and 506(i) of IPC and 3 (1) of Tamil Nadu Public Property (Prevention of Damage & Loss) Act, 1992. After investigation, the respondent police filed final report before the learned Principal District & Sessions Court, Thoothukudi, and the same was taken on file in S.C.No.272 of 2018. After completion of full fledged trial, the learned Sessions Judge, acquitted the accused by the order dated 31.01.2022. Thereafter, the petitioner filed an application in Cr.M.P.No.10183 of 2022, before the learned Judicial Magistrate Court No.II, Kovilpatti, Thoothukudi District, under Section 200 Cr.P.C., to take action against the respondents herein for giving false complaint. The said application was dismissed by the learned trial Judge by the impugned order dated 06.12.2022. Challenging the same, the petitioner filed this revision.

3.The learned counsel for the petitioner submitted that even though the offence was made out by the respondents under Section 211 IPC, the learned trial



Crl.R.C.(MD).No.304 of 2023

Judge, without considering the true scope, passed the impugned order on the ground that there is no lawful ground to initiate the proceedings against the respondents under Section 211 IPC. The learned trial Judge has failed to see that the respondents are P.W.1 and P.W.6 in S.C.No.278 of 2018 and they have initiated the criminal proceedings with false allegations and hence, the learned trial Judge acquitted the petitioner. In the said circumstances, the impugned order passed by the learned trial Judge is liable to be set aside.

4.The learned counsel for the respondents submitted that already a suit in O.S.No.211 of 2017 is still pending. The finding of the learned trial Judge in S.C.No.272 of 2018 was not challenged before this Court by the petitioner. In view of the pendency of the said civil suit, the petition in Cr.M.P.No.10183 of 2022 filed under Section 200 of Cr.P.C., is not maintainable and the learned trial Judge has rightly dismissed the petition in accordance with law.

5.This Court considering the rival submission and also perused the materials available on record.



Crl.R.C.(MD).No.304 of 2023

WEB COPY

6. Admittedly, the petitioner is the accused in Crime No.375 of 2017 registered for the offences under Sections 147, 448 and 506(i) of IPC and 3 (1) of Tamil Nadu Public Property (Prevention of Damage & Loss) Act, 1992. In S.C.No.272 of 2018, the learned trial Judge, after considering the witnesses P.W.1 to P.W.13, exhibits Ex.P.1 to Ex.P.17, material objects M.O.1 to M.O.6 and defence side exhibits Ex.D.1 to Ex.D.3, come to the conclusion that the prosecution has not proved the case beyond all reasonable doubts. Further, the petitioner already has obtained interim order by stating that he is in possession of the property.

7. In the said circumstances, the dismissal order passed by the learned trial Judge to prosecute under Section 211 of IPC is not in accordance with law. Hence, this Court is inclined to allow this petition.

8. The respondents' allegation that the petitioner and others committed the offences under Sections 147, 448 and 506(i) of IPC and 3 (1) of Tamil Nadu Public Property (Prevention of Damage & Loss) Act, 1992, was not proved beyond reasonable doubt and hence, the learned trial Judge acquitted the petitioner and others in S.C.No.272 of 2018. Therefore, the petitioner made a



Crl.R.C.(MD).No.304 of 2023

prima facie case to initiate the proceedings against the respondents under Section 211 of IPC. But, the learned trial Judge without taking the petitioner's private complaint on file, erroneously dismissed the petition. Hence, this Court is inclined to allow this Revision.

9. Accordingly, the dismissal order passed by the Judicial Magistrate Court No.II, Kovilpatti, Thoothukudi District, in Cr.M.P.No.10183 of 2022, dated 06.12.2022, is hereby set aside and the Criminal Revision Case is allowed with the following directions:-

i) The Judicial Magistrate Court No.II, Kovilpatti, Thoothukudi District, is hereby, directed to take the private complaint filed by the petitioner on file and proceed further in accordance with law.

ii) Further, the Judicial Magistrate Court No.II, Kovilpatti, Thoothukudi District, is further directed to decide the issues independently without influencing the discussion made in this order.

16.08.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
dss



WEB COPY



Crl.R.C.(MD).No.304 of 2023

K.K.RAMAKRISHNAN, J.

dss

To

- 1.The Judicial Magistrate Court No.II, Kovilpatti,
Thoothukudi District.
2. The Section Officer,
Criminal Record,
Madurai Bench of Madras High Court,
Madurai.

Crl.RC(MD)No.304 of 2023

16.08.2023