



Crl.M.P.(MD)No.15175 of 2022
in Crl.O.P.(MD)No.14549 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2023

CORAM:

The Hon'ble MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.M.P.(MD)No.15175 of 2022
in Crl.O.P.(MD)No.14549 of 2022

B.Saravanan

...Petitioner/1st Respondent
De facto Complainant

-Vs-

1.M.Senthilnadhan

...1st Respondent/Petitioner
Accused

2.The Inspector of Police,
Lalapettai Police Station,
Kulithalai,
Karur District.

...2nd Respondent/ 2nd Respondent
Complainant

Prayer in Crl.M.P.(MD)No.15175 of 2022

in Crl.O.P.(MD)No.14549 of 2022:- Criminal Miscellaneous Petition filed under Section 482 of Cr.P.C., praying to recall the order made in Crl.O.P.(MD)No.14549 of 2022 dated 11.10.2022 and consequently restore the Criminal Original Petition to file and pass order after consider the Petitioner's side argument and pass such further orders.



Crl.M.P.(MD)No.15175 of 2022
in Crl.O.P.(MD)No.14549 of 2022

Prayer in Crl.O.P.(MD)No.14549 of 2022:- Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records pertaining to C.C.No.12 of 2021 on the file of the learned Judicial Magistrate No.I, Kulithalai, Karur District and quash the same.

For Petitioner : M/s.R.Yamuna
For R1 : Mr.Manoj Kumar
For R2 : Mr.Veeranthiran
Govt. Advocate (Crl.Side)

J U D G M E N T

This Criminal Miscellaneous Petition is filed to recall the order made in Crl.O.P.(MD)No.14549 of 2022 dated 11.10.2022 and consequently restore the Criminal Original Petition in Crl.O.P.(MD)No. 14549 of 2022.

2. When the case came up for hearing on 07.07.2023, the learned Counsel for the Petitioner in Crl.M.P.(MD).No.15175 of 2022 in Crl.O.P. (MD)No.14549 of 2022 had submitted his arguments and it is posted only for hearing the argument of the learned Counsel for the 1st Respondent herein/Accused before the trial Court and Petitioner in Crl.O.P.(MD).No. 14549 of 2022.



Crl.M.P.(MD)No.15175 of 2022
in Crl.O.P.(MD)No.14549 of 2022

WEB COPY

3. It is the case of the Recall Petition, the Petitioner herein is the *De facto* Complainant/affected party. By the time the 1st Respondent/Complainant in Crl.O.P.(MD).No.14549 of 2022 had engaged a Counsel, the order was passed by this Court on 11.10.2022. Therefore, the learned Counsel for the 1st Respondent/Complainant/Petitioner in Recall Petition sought to recall the order. As per the direction of this Court, the Petitioner herein had filed recall Petition.

4. The learned Counsel for the Petitioner in the Recall Petition submitted that, as per Section 482 of Cr.P.C., before ever the order is passed, the 1st Respondent/Complainant in Crl.O.P.(MD)No.14549 of 2022 is to be heard. Before the 1st Respondent/Complainant party engaged a Counsel, this Court had disposed of the case by order dated 11.10.2022. Therefore, the same was sought to be recalled.

5. The learned Counsel for the Petitioner in the Recall Petition contended that earlier the Accused had filed a similar Petition in Crl.O.P. (MD).No.14549 of 2022, wherein this Court by order dated 11.10.2022 had quashed the proceedings and set aside the order of the learned Judicial Magistrate No.I, Kulithalai, Karur District, without providing opportunity



Crl.M.P.(MD)No.15175 of 2022
in Crl.O.P.(MD)No.14549 of 2022

WEB COPY

to be heard on the side of the 1st Respondent/Complainant. The learned Single Judge of the Madurai Bench of the High Court had directed the learned Judicial Magistrate No.I, Kulithalai, Karur District, to follow the due procedure prescribed regarding the private complaint taken on file.

6. After this order, the learned Judicial Magistrate No.I, Kulithalai, Karur District, had taken the sworn statement of the witness, perused the document and then only taken the Complaint on file as per the procedure. At this time, the Accused approached this Court by filing the Crl.O.P. (MD).No.14549 of 2022. Therefore, second time C.C.No.12 of 2021 was quashed. Therefore, the learned Counsel for the Petitioner in the Recall Petition seeks recall of the order passed by this Court on 11.10.2022.

7. The learned Counsel for the Petitioner in Crl.O.P.(MD).No.14549 of 2022/Accused before the learned Judicial Magistrate-I, Kulithalai, Karur District, submitted that the order passed by this Court on 11.10.2022 is on merit. This Court had observed that the Complainant before the learned Judicial Magistrate No.I, Kulithalai, Karur District, had converted a civil case into a criminal case. Therefore, this Court allowed the Petition.



Crl.M.P.(MD)No.15175 of 2022
in Crl.O.P.(MD)No.14549 of 2022

WEB COPY

8. Anyhow, considering the fact that the Complainant was not heard, the order passed by this Court on 11.10.2022 is set aside.

9. The learned Counsel for the Petitioner in Crl.O.P.(MD).No.14549 of 2022 is directed to furnish copies in Crl.O.P.(MD).No.14549 of 2022 to the learned Counsel for the 1st Respondent/Complainant/Petitioner in Recall Petition in Crl.M.P.(MD).No.15175 of 2022 in Crl.O.P.(MD).No. 14549 of 2022 and the case was adjourned to 28.07.2023.

10. Today, 28.07.2023, the learned Counsel for the Petitioner in the Recall Petition (Complainant before the learned Judicial Magistrate-I, Kulithalai, Karur District) submitted his arguments. As per his submission, before passing the order in Crl.O.P.(MD)No.14549 of 2022, the Complainant was not heard.

11. The Complainant had filed private complaint earlier. The Petitioner in Crl.O.P.(MD)No.14549 of 2022 had moved Crl.O.P.(MD)No. 14549 of 2022, seeking to quash the private complaint. Accordingly, after hearing the Accused/Petitioner before the High Court and the Complainant, the learned Single Judge of the Madurai Bench of the High



Crl.M.P.(MD)No.15175 of 2022
in Crl.O.P.(MD)No.14549 of 2022

Court had set aside and quashed the private complaint with a direction to the learned Judicial Magistrate-I, Kulithalai, Karur District, to consider a fresh taking the complaint on file. Accordingly, the Complainant had approached the Court for the second time before the learned Judicial Magistrate-I, Kulithalai, Karur District. This time the statements of the Complainant and other witnesses were recorded by the learned Judicial Magistrate-I, Kulithalai, Karur District. Documents were verified by the learned Judicial Magistrate-I, Kulithalai, Karur District, and had by following due procedures, the complaint was taken on file and numbered as C.C.No.12 of 2021.

12. This time, the learned Judicial Magistrate-I, Kulithalai, Karur District, had followed the procedure of the Cr.P.C. and taken the complaint on file. The Accused had approached this Court by filing the Petition in Crl.O.P.(MD)No.14549 of 2022.

13. After hearing the learned Counsel for the Petitioner in Crl.O.P. (MD)No.14549 of 2022 before the Trial Court, this Court instead of hearing the learned Counsel for the 1st Respondent/Complainant recorded it as the 1st Respondent not present in Court had not engaged the Counsel



Crl.M.P.(MD)No.15175 of 2022
in Crl.O.P.(MD)No.14549 of 2022

and had allowed Crl.O.P.(MD)No.14549 of 2022. By the time the learned Counsel for the 1st Respondent/Complainant had filed Vakalat/Memo of Appearance before the Registry of the Madurai Bench, to his surprise he came to know that the Petition in Crl.O.P.(MD)No.14549 of 2022 was allowed. Therefore, he made a mention before the open Court. Based on the mentioning by the learned Counsel for the 1st Respondent/Complainant, the Petitioner herein was directed to file Crl.M.P with appropriate relief. Accordingly, he had filed Crl.M.P.(MD)No.15175 of 2022 in Crl.O.P.(MD)No.14549 of 2022, stating to recall the order passed in Crl.O.P.(MD)No.14549 of 2022 dated 11.10.2022 and to restore the Criminal Original Petition.

14. Heard both sides and perused the materials placed on record.

15. Learned Counsel for the Petitioner/Accused in Crl.O.P.(MD)No. 14549 of 2022 submitted that he is the landlord/*De facto* Complainant is the tenant. The *De facto* Complainant had converted the purely civil dispute between the landlord and tenant into a criminal complaint. Therefore, this Petition has been filed to quash the criminal complaint filed by the 1st Respondent/Complainant before the learned Judicial Magistrate-I, Kulithalai, Karur District.



Crl.M.P.(MD)No.15175 of 2022
in Crl.O.P.(MD)No.14549 of 2022

WEB COPY

16. Learned Counsel for the Complainant present in Court. He submitted that he had entered into a sale agreement with the Petitioner in Crl.O.P.(MD)No.14549 of 2022 for the lease of the properties. So that he can run the shop. By the time the lease was entered, it was Corona lockdown. Therefore, he could not open the shops. Subsequently, he came to know that the landlord had removed the articles kept in the property and inducted a new tenant. When the Complainant sought his money back, the landlord did not return it and threatened him. Since he had threatened the Complainant, the Complainant went to the police. Since the police did not initiate any action, the Complainant had approached the Court of the learned Judicial Magistrate-I, Kulithalai, Karur District.

17. On earlier occasion, when the original complaint was filed, the learned Trial Judge took the private complaint on file and numbered the case. Therefore, the landlord as tenant had approached this Court by order dated 25.03.2022, seeking to quash the private complaint on the ground that the due procedures under the Cr.P.C. were not followed in taking the private complaint on file and the quash Petition was allowed. At the same time, the Petition was granted time to number to move the Court of the learned Judicial Magistrate-I, Kulithalai, Karur District, with a fresh



Crl.M.P.(MD)No.15175 of 2022
in Crl.O.P.(MD)No.14549 of 2022

complaint. The learned Judicial Magistrate-I, Kulithalai, Karur District, was directed to follow the due procedures regarding the private complaint and take the complaint on file. The learned Trial Judge feels that there is a *prima facie* case made out. At this stage, following the due procedures of law, the learned Trial Judge had taken the complaint on file. Immediately, the Accused/landlord approached this Court. This Court allowed the Crl.O.P.(MD)No.14549 of 2022 without hearing the *De facto* Complainant/tenant by order dated 11.10.2022. The learned Counsel for the Complainant states that the submission of the learned Counsel for the Petitioner in Crl.O.P.(MD)No.14549 of 2022 cannot be accepted as it is not a dispute regarding landlord and tenant.

18. It is made clear that it is a criminal case where the *De facto* Complainant had entered into a lease agreement with the landlord/Petitioner in Crl.O.P.(MD)No.14549 of 2022. During the Corona lockdown, the 1st Respondent/Complainant could not run the business. Therefore, he suffered financial crisis. At that time, the landlord had removed the articles belonging to the Complainant and entered into a lease agreement with a new party. The attempt of the Complainant to seek return of the amount already accepted by the Petitioner in Crl.O.P.(MD)No.14549 of 2022 did not evoke any response. Instead, he was threatened. Therefore,



Crl.M.P.(MD)No.15175 of 2022
in Crl.O.P.(MD)No.14549 of 2022

the Recall Petitioner/1st Respondent in Crl.O.P.(MD)No.14549 of 2022 felt insecure when he had approached the Court of the learned Judicial Magistrate-I, Kulithalai, Karur District, and filed his private complaint. This time the learned Judicial Magistrate-I, Kulithalai, Karur District, after following the due procedures in the Cr.P.C. to take cognizance of offence in a private complaint. The private complaint was taken on file. At the stage of summons to the Accused, the Accused had come before this Court and sought to quash the case on the ground that the civil dispute had been converted into a criminal dispute. He had threatened *De facto* Complainant when he sought the return of money. The Petitioner/landlord in Crl.O.P. (MD)No.14549 of 2022 had threatened the 1st Respondent/*De facto* Complainant. Therefore, for the offences under Sections 406, 420, 494, 441 and 506(i) of IPC and other provisions of law, a private complaint was lodged before the learned Judicial Magistrate-I, Kulithalai, Karur District, and it cannot be quashed in the light of the earlier order passed by this Court on 25.03.2022.

19. Point for consideration:

Whether the C.C.No.12 of 2021 on the file of the learned Judicial Magistrate-I, Kulithalai, Karur District, is to be quashed?



Crl.M.P.(MD)No.15175 of 2022
in Crl.O.P.(MD)No.14549 of 2022

WEB COPY

20. On consideration of the rival submission and perusal of the ingredients of the complaint in C.C.No.12 of 2021 and the order passed by the learned Single Judge of the Madurai Bench of the High Court in Crl.O.P.(MD)No.14549 of 2022. By order dated 25.03.2022, the learned Single Judge of the Madurai Bench of the High Court, directed the learned Trial Judge to conduct detailed enquiry and after furnishing the list of witnesses by the Respondent, issue summons to the Petitioner, if any cognizable offences is made out. The learned Trial Judge had taken the criminals on file after following the due procedures under the Cr.P.C. The attempt of the landlord as Accused before the learned Judicial Magistrate-I, Kulithalai, Karur District, seeking to quash the complaint on the ground that the landlord-tenant dispute had been converted into a criminal complaint cannot at all be accepted.

21. In the light of the above discussion, **this Recall Petition in Crl.M.P.(MD)No.15175 of 2022 in Crl.O.P.(MD)No.14549 of 2022 stands allowed. The Petition to quash the complaint in C.C.No.12 of 2021 is dismissed. The Petitioner in Crl.O.P.(MD)No.14549 of 2022 is**



CrI.M.P.(MD)No.15175 of 2022
in CrI.O.P.(MD)No.14549 of 2022

WEB COPY

directed to co-operate with the learned Judicial Magistrate-I, Kulithalai, Karur District, to proceed with the trial. The learned Judicial Magistrate-I, Kulithalai, Karur District, is directed to dispose of the case and pass orders within the reasonable period of six months from the date of receipt of a copy of this order.

28.07.2023

cda

Index : Yes/No

Speaking/Non-speaking order

To

- 1.The Judicial Magistrate No.I,
Kulithalai, Karur District.
- 2.The Inspector of Police,
Lalapettai Police Station,
Kulithalai,
Karur District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.M.P.(MD)No.15175 of 2022
in Crl.O.P.(MD)No.14549 of 2022

SATHI KUMAR SUKUMARA KURUP, J.,

cda

Crl.M.P.(MD)No.15175 of 2022
in Crl.O.P.(MD)No.14549 of 2022

28.07.2023