



Crl.O.P.No.10526 of 2024..

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :18.07.2024

Pronounced on :24.07.2024

CORAM:

THE HONOURABLE DR JUSTICE G.JAYACHANDRAN

Crl.O.P.No.10526 of 2024

R.Gopi Krishnan

.. Petitioner

/versus/

1.The Deputy Commissioner of Police,
Tambaram City,
Tambaram Commissionerate,
Chennai.

2.The Assistant Commissioner of Police,
Manimangalam Range,
Manimangalam, Chennai 602 301.

3.The Inspector of Police,
T-11, Somangalam Police Station,
Somangalam, Chennai-602 109.

4.Mr.Umar Farook

5.Mr.Aravindhan

6.Mr.K.S.Kumar

.. Respondents



Crl.O.P.No.10526 of 2024..

WEB COPY

Criminal Original Petition has been filed under Section 482 of Cr.P.C., to set aside the order passed by the learned Judicial Magistrate, Sriperumpudhur in Crl.M.P.No.1208 of 2024, dated 11.03.2024 and thereby direct the respondent police to register the petitioner's complaint pending in CSR No.267 of 2023, dated 21.07.2023.

For Petitioner :Mr.A.Nataraj, Senior Counsel
for M/s A.Madhumathi

For R1 to R3 :Mr.S.Udaya Kumar
Govt.Advocate (Crl.Side)

For R5 & R6 :Mr.A.Nagarajan

ORDER

The petitioner herein claiming himself and his brother as owners of the land measuring to an extent of 3.81 acres in S.No:13/1 at Somangalam Village, Sriperumbudur Taluk, had given a complaint to the 3rd respondent police against the respondents 4, 5 and 6 alleging that these respondents had trespassed into their land and damaged the fencing using JCB and took over the possession of the land by force and erected a name Board, “ZHIYA AQUA SOLUTIONS“ inside the property. The



Crl.O.P.No.10526 of 2024..

3rd respondent had given a receipt in C.S.R.No:224 of 2023, dated 29.06.2023 acknowledging the receipt of the complaint.

2. Again, on 21/07/2023, he had given a complaint to the 3rd respondent reporting that there is a civil suit pending in Kanchipuram Court and pending suit, the 5th respondent who is the son of 6th respondent had entered into a rental agreement with the 4th respondent and trying to interfere their possession. For this complaint, the 3rd respondent had given a receipt in CSR No: 267/2023 dated 21/07/2023.

3. Since no action was taken on his complaint, the petitioner had sent a representation to the Commissioner of Police, Tambaram on 09/08/2023 stating that the property in dispute originally purchased by their maternal grand mother Ranganayagi. She had two daughters by name Rajeswari and Dhanalakshmi. During her life time, Ranganayagi bequeathed this property and some more property to her daughter Rajeswari through a Will dated 16/06/1995 and the same was duly registered. After the death of Ranganayagi on 13/02/2011, the possession



Crl.O.P.No.10526 of 2024..

of the property came to Rajeswari. She enjoyed it till her life time and died intestate on 20/12/2019. The petitioner being one of the son of Rajeswari, shares the property with his brother and sisters. While so, the 6th respondent, Kumar who is son of Dhanalakshmi through his son Aravindan, had conspired with the 3rd respondent Umar Forook had created a rental agreement and had trespassed into the land and put up a hut and name board “Zhiya” thereby trying to grab the land illegally. Referring the partition suit O.S.No.54/2020 pending on the file of II Additional District Court, Kanchipuram filed by Kumar and his admission in the plaint that the possession is with the petitioner, it is contended by the petitioner that with malafide intention through unknown persons, the 4th respondent had trespassed into the property based on the rental agreement with Kumar the 5th respondent, who has no right in the property.

4. Due to inaction by the police, even after complaint to the Commissioner of Police, the petitioner has resorted to Section 156(3) of Cr.P.C. for necessary action. The Learned Judicial Magistrate after



Crl.O.P.No.10526 of 2024..

considering the application filed under Section 156(3) of Cr.P.C, dismissed it stating that O.S.No.54/2020 and O.S.No.137/2023 are pending before II Additional District Court, Kanchipuram and the Munsif Court, Sriperumbudur respectively. Further, in the complaint registered in CSR No.267 of 2023, dated 21/07/2023, there is no allegation of trespass and erection of hut. Whereas in the application under 156(3) Cr.P.C there is allegation of putting up hut. Therefore, there is doubt about the allegation of criminal trespass. Against the dismissal of the application filed under Section 156(3) Cr.P.C, the petitioner has preferred this petition under Section 482 Cr.P.C.

5. Initially, the Registry had entertained doubt about the maintainability of the petition under Section 482 Cr.P.C. against the order passed by the Judicial Magistrate on an application filed under Section 156(3) Cr.PC after citing the judgment of the Supreme Court in *Prabu Chawla –vs- State of Rajasthan [2016 (16) SCC 30]*, the Registry has numbered the petition.



Crl.O.P.No.10526 of 2024..

WEB COPY

6. On receipt of the private notice, the respondents 5 to 6 had entered appearance through counsel. The 4th respondent, who received notice on 14/05/2024 remained absent.

7. The Learned Senior Counsel appearing for the petitioner submitted that, the title and possession of the property is with the petitioner. In the partition suit in O.S.No.54/2020 filed by the legal heirs of Dhanalakshmi claims share in the property already bequeathed to the other daughter Rajeswari, the possession of the property with the legal heirs of Rajeswari is admitted. Likewise, in the suit for injunction filed by Umar Forook in O.S.No.137/2023, the ad-interim injunction granted in I.A.No.02/2023 was vacated on 19/09/2023 in I.A.No.04 of 2023 after hearing the respondents/petitioner herein. Despite placing all these facts in the complaint filed under Section 156(3) Cr.P.C, the learned Judicial Magistrate had dismissed the application without proper appreciation of the facts placed on record.



CrI.O.P.No.10526 of 2024..

WEB COPY

8. The learned Senior Counsel for the petitioner further submitted that, the rental agreement executed between Aravindan, S/o Kumar (5th respondent) and Umar Farook (4th respondent) on 21/06/2023 is singularly enough to direct the police to register the complaint and investigate, since in that agreement, Kumar claims himself as the absolute owner of the property measuring to an extent of 3.81 acres and agreed to let out it for a rent of Rs.35,000/- per month. This is on the face of the record an attempt to grab the land by 4th and 5th respondents. Pendency of the suit does not permit the 5th and 6th respondents to enter into rental agreement with the third party and take possession by force and threat.

9. The Learned Counsel appearing for the respondents 5 and 6 per contra submitted that the Learned Judicial Magistrate had taken note of the improvement and embellishments in the complaint filed under Section 156(3) Cr.P.C and held that the complaint deserves to be dismissed. The dispute is purely civil in nature and the parties are before



CrI.O.P.No.10526 of 2024..

the civil Court to ascertain their right over the property. While so, this complaint, which has been rightly closed by the 3rd respondent police after enquiry that it is purely civil dispute and an attempt is made to give criminal colour to the civil dispute, the complaint with embellishment has been preferred.

10. Heard the Learned Senior Counsel appearing for the petitioner and the learned counsel appearing for the private respondents. Also, the Learned Government Advocate (Criminal Side) appearing for the official respondents 1 to 3.

11. The specific averments in the complaint under Section 156(3) Cr.PC before the Judicial Magistrate as well as the earlier complaints dated 29/06/2023 and 21/07/2023 as found in C.S.R.No.224/23 and C.S.R.No.267/23 respectively, is the criminal trespass into the land in S.No.13/1 at Somangalam village. The petitioner claims right through a Will purportedly executed by Ranganayagiammal, who purchased the property in the year 1960 and thereafter. Presently, the



Crl.O.P.No.10526 of 2024..

patta stands in the name of the petitioner. O.S.No.54/2020 for partition between the siblings of Ranganayagiammal is pending before the II Additional District Court, Kanchipuram. While so, on the strength of a rental agreement dated 21/06/2023 purportedly executed by Kumar (5th respondent) falsely claiming as owner of the land in favour of Umar Forook (4th respondent). In turn, the said Umar Farook had admittedly entered into the property and also had obtained interim injunction in I.A.No.04/2023 in O.S.No.137/2023. The said interim injunction had got vacated on 19/09/2023. All these facts are available in complaint and two complaints are given earlier. The Learned Magistrate ought to have read all the earlier complaints to the police to gather whether any material is available to order registration of complaint and investigate.

12. The petitioner to substantiate the complaint to take cognizance had placed all the documents, which provides material *prima facie* to exercise the power under Section 156(3) of Cr.P.C. Pendency of civil dispute is not a bar for initiating criminal proceedings, if commission of cognizance offence is *prima facie* available. Filing a civil



Crl.O.P.No.10526 of 2024..

suit does not give immunity from the prosecution of offences committed in connection with the civil dispute. The Court has to examine all the material placed, before passing order either way. If it orders investigation, what weighs the Court to order investigation has to be reflected. Likewise, while dismissing the complaint, the reasoning must be supported by the material available.

13. In the case under consideration, pendency of civil suit and certain omission in the earlier complaints *per se* cannot be a reason to dismiss the complaint. These two reasons does not take away the rigor of commission of a cognizable offence, if the allegations of trespass and erection of name board are found to be true in the investigation. It should be bear in mind that, after the judgment of the Hon'ble Supreme Court in *Priyanka Srivatsava –vs- State of Uttarpradesh [(2015) (16) SCC 287]* the aggrieved parties are not permitted to file complaints under Section 156(3) Cr.P.C directly without resorting to the other alternate course of action. While so, there may be some reluctance exhibited by the police in interfering disputes which also involves title of the property. However



Crl.O.P.No.10526 of 2024..

when the complaint is tested by the Judicial Magistrate, scrutiny should be done carefully to ascertain whether the complaint is an attempt to give criminal colour to a pure civil dispute. If it is otherwise, then the complaint requires a full fledged investigation.

14. After institution of a civil suit for partition admitting possession with the defendants, plaintiff's cannot disturb the possession of the defendants illegally without following due process of law. The trespasser claims that it is purely a civil dispute and he is immune from prosecution. The said plea is not tenable under law. In the considered opinion of this Court, the allegation of erection of name board on the strength of the alleged rental agreement dated 21/06/2023 entered between 4th and 5th respondents for the entire extend of land, despite pendency of suit for partition discloses *prima facie* case of commission of cognizable offence. Hence, on the face of the records, this complaint requires investigation regarding the allegation of trespass into the land, which is subject matter of the suit in O.S.No.54/2020.



Crl.O.P.No.10526 of 2024..

WEB COPY

15. As a result, **this Criminal Original Petition is allowed.**

The order of the Judicial Magistrate, Sriperumpudur in Crl.M.P.No:1208/2024, dated 11/03/2024 is set aside. The 3rd respondent is directed to register the complaint in C.S.R.No.267/2023 dated 21/07/2023 and investigate the same as per the procedure established under law and complete the investigation, within period of 3 months, from the date of receipt of a copy of this order and report the outcome of the investigation to the Judicial Magistrate, Sriperumpudur.

24.07.2024

Index:yes

Speaking order/non speaking order

Neutral citation:yes/no

ari

To

- 1.The Deputy Commissioner of Police, Tambaram City, Tambaram Commissionerate, Chennai.
- 2.The Assistant Commissioner of Police, Manimangalam Range, Manimangalam, Chennai 602 301.
- 3.The Inspector of Police, T-11, Somangalam Police Station, Somangalam, Chennai-602 109.
- 4.The Public Prosecutor, High Court, Madras.



WEB COPY



Crl.O.P.No.10526 of 2024..

Dr.G.JAYACHANDRAN,J.

ari

delivery Order made in
Crl.O.P.No.10526 of 2024

24.07.2024