



WEB COPY



Crl.O.P.No.27917 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2024

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

Crl.O.P.No.27917 of 2024

and

Crl.M.P.No.15478 of 2024

Subanath @ Subananth

Petitioner

Vs

1. The Inspector Of Police
Vazhapadi Police Station,
Vazhapadi,
Salem District.

2. K.P.Shanmugam

Respondents

PRAYER: Criminal Original Petition filed under Sections 438 and 442 of BNSS, to set aside the docket order passed by the learned Judicial Magistrate at Vazhapadi, Salem in Crl.M.P.No. unnumbered of 2024 in C.C.No.13 of 2023 dated 13.09.2024, dismissed as not maintainable and consequently direct the Judicial Magistrate, Vazhapadi, Salem to take the petition on file and pass orders in accordance with law.

For Petitioner : Mr.F.Wellington

For R1 : Mr.S.Sugendran
Additional Public Prosecutor

For R2 : Mr.S.T.Bharath Gowtham



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ORDER

This Criminal Original Petition has been filed to set aside the docket order passed by the learned Judicial Magistrate at Vazhapadi, Salem in Crl.M.P.No. unnumbered of 2024 in C.C.No.13 of 2023 dated 13.09.2024, dismissed as not maintainable and consequently direct the Judicial Magistrate, Vazhapadi, Salem to take the petition on file and pass orders in accordance with law.

2. Heard the learned counsel appearing for the petitioner, the learned Government Advocate (Crl.Side) appearing for the respondent police and the learned counsel appearing for the private respondent and perused the materials available on record.

3. The petitioner submitted that an exchange of deed of lands was entered into between the petitioner and the second respondent. Thereafter, the petitioner removed the wire fencing from his property. The second respondent has given a false complaint as if the petitioner



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had trespassed into his property. Hence, the petitioner filed a original suit in O.S.No.24 of 2022 on the file of the District Munsif cum Judicial Magistrate Court, Vazhapadi, Salem as against the defacto complainant and the same is pending. Subsequently, the petitioner, filed a petition under Section 39(1) of BSA 2023 seeking expert opinion before the Magistrate in Crl.M.P.No.un-numbered of 2024 in C.C.No.13 of 2024 and the same was rejected by the Magistrate as not maintainable.

4. On a perusal of the records, it is found that already a civil dispute is pending between the parties and the same has to be decided by the civil court. Further, the learned Magistrate has rightly rejected the petition filed by the petitioner. There is no reason to interfere with the order passed by the learned Magistrate. However, the petitioner is at liberty to work out his remedy in the manner known to law before the civil court.



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5. In view of the same, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

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mfa

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

To

1. The Inspector Of Police
Vazhapadi Police Station, Vazhapadi,
Salem District.

2. The Public Prosecutor,
High Court, Madras.



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P.VELMURUGAN, J.

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