

HIGH COURT OF MADRAS**Bench: THE HONOURABLE MR. JUSTICE R.SAKTHIVEL****Date of Decision: 18th January 2024**

Crl.O.P(MD) No.15110 of 2020 and Crl.M.P(MD) No.7243 of 2020 in
Crl.O.P(MD) No.15110 of 2020

M.K.Suppuroyal ... Petitioner/Sole Accused**Vs.****Abdul Pari ... Respondent/Complainant****Legislation:**

Section 482 of the Code of Criminal Procedure, 1973

Subject: Criminal Original Petition for quashing proceedings in C.C.No.81 of 2019 concerning property dispute and alleged criminal trespass.

Headnotes:

Criminal Original Petition – Quashing of Proceedings – Petition under Section 482 of Cr.P.C. to quash proceedings in C.C.No.81 of 2019 at the Judicial Magistrate, Bodinayakanur – Petitioner/sole accused seeking to quash the criminal case against him on grounds of being baseless and filed with malafide intent. [Para 1, 3]

Property Dispute and Criminal Allegations – Dispute over property ownership leading to criminal allegations – Original property owner's legal heirs involved in partition suit (O.S.No.148 of 2014) – Petitioner, a tenant, regularly depositing rent – Respondent's purchase of property during the pendency of the suit and subsequent alleged trespassing and damage to petitioner's property – Counter-complaints filed by both parties leading to multiple criminal cases. [Para 3, 6-7]

Judicial Cognizance and Application of Law – Challenge to the manner of taking cognizance by the Judicial Magistrate under Section 200 of Cr.P.C. – Petitioner's argument on the necessity of an affidavit in 156(3) petition as per Priyanka Srivastava's case – Judicial Magistrate's decision to record a statement instead of requiring an affidavit considered sufficient. [Para 6, 9]

Assessment of Complaint's Validity – Examination of the validity of the respondent's complaint and the legal basis for the Judicial Magistrate's cognizance – Analysis of the respondent's possession claims and suppression of material facts in the complaint – Determination of the complaint as false and filed with ulterior motives. [Para 8-9]

Application of Bhajan Lal's Guidelines – Reference to State of Haryana and Others v. Bhajan Lal for parameters to quash prosecution – Case fitting under the 5th parameter of Bhajan Lal's guidelines, highlighting the absurdity and improbability of the allegations against the petitioner. [Para 10-11]

Decision – Quashing of Proceedings in C.C.No.81 of 2019 – Criminal Original Petition allowed, leading to quashing of proceedings against the petitioner on grounds of being an abuse of the process of law and based on improbable allegations – Connected Miscellaneous Petition also closed. [Para 12]

Referred Cases:

State of Haryana and Others v. Bhajan Lal (AIR 1992 SC 604)

Representing Advocates:

For Petitioner: Mr.M.Kaliraj

For Respondent: Mr.R.Murugappan

ORDER

The petitioner/sole accused has filed this Criminal Original Petition under Section 482 of Cr.P.C praying to call for the records in C.C.No.81 of 2019 on the file of the learned Judicial Magistrate, Bodinayakanur and quash the same.

2.Heard Mr.M.Kaliraj, learned counsel for the petitioner and Mr.R.Murugappan, learned counsel for the respondent.

3.The learned counsel appearing for the petitioner submitted that the petitioner is running a hotel in the name and style of 'Saravana Bhavan', at Door No.12-1-63, Opp. to Bodinayakanur Bus Stop in a rented building which along with some more extent of property is originally owned by one V.J.Thomas; that V.J.Thomas died leaving behind 10 persons as his legal heirs including his wife Elizabeth; that V.J.T.Vincent, S/o V.J.Thomas, filed a suit for partition and separate possession in O.S.No.148 of 2014 on the file of the learned Subordinate Judge, Theni wherein the defendant 11 to 26 are arrayed as tenants; that this petitioner is arrayed as 21st defendant therein; that the petitioner and other tenants are depositing the rent in the said Court vide order passed in I.A.No.249 of 2014 in O.S.No.148 of 2014 without any default till date; that Rani D/o V.J.Thomson fraudulently fabricated records and executed a sale deed in favour of the respondent herein vide Doc.No.2561 of 2016; that the plaintiff in O.S.No.148 of 2014 filed W.P.No.3184 of 2017 on the file of this Court wherein interim order of status quo was ordered on 23.02.2017; that on 06.01.2017, the respondent herein and his henchmen attempted to trespass and measure the property; that V.J.T.Vincent filed a police complaint against the respondent and Rani in Crime No.221 of 2017 under sections 452, 420, 465, 468, 471 and 506(ii) and the same culminated into C.C.No.488 of 2018 on the file of the learned Judicial Magistrate, Bodinayakanur; that on 21.06.2017, the respondent herein and his henchmen in the absence of the petitioners, broke open and trespassed into the petitioner's hotel, damaged and stolen the articles therein; that the petitioner lodged a complaint against the respondent and 20 others in Crime No. 627 of 2017 under section 143, 448, 380, 294 (b) and 506(i) of IPC on 27.06.2017 and the same culminated into C.C.No.386 of 2018 on the file of the learned Judicial Magistrate, Bodinayakanur; that the quash petition filed by the respondent was dismissed on 02.01.2019 in CRL.O.P(MD) No. 22706 of 2018 by this Court; that after dismissal of the quash petition, the respondent herein filed a false complaint against the petitioner, suppressing the entire facts and the criminal cases pending against him, before the learned Judicial Magistrate, Bodinayakanur with *malafide* intention, vengeance and to grab the property from the petitioner; and that the learned Judicial Magistrate, Bodinayakanur without applying his mind, took cognizance over the complaint for the offences under section 448, 294(b), 506(ii) of IPC, under section 200 of Cr.P.C and ordered summons to the

petitioner. He further submitted that as per the decision of the Hon'ble Supreme Court in **Priyanka Srivastava's** case [**Priyanka Srivastava Vs. State of Uttar Pradesh** reported in (2015) 6 SCC 287], 156(3) petition should be annexed and filed in the form of affidavit, which is a mandatory provision; that the procedure adopted by the the learned Judicial Magistrate is also not in consonance with the dictum laid down in **Priyanka Srivastava's case**; and that the respondent's allegations are so absurd and inherently improbable. Accordingly, he prayed to allow the Criminal Original Petition.

4. Per contra, learned counsel appearing for the respondent submitted that the respondent purchased the property from one co-owner Rani and property tax is also assessed in the name of the respondent; that the respondent is in possession and enjoyment of the property; that the respondent has filed a copy of the sale deed and the property tax receipt along with the complaint to the learned Judicial Magistrate, Bodinayakanur; and that based on the averments made in the complaint and the documents, learned Judicial Magistrate took cognizance for the offence under Sections 448, 294(b) and 506(ii) of I.P.C. He further submitted that whether the offence stated in the complaint is made out or not is a question for trial and it cannot be decided in a petition under section 482 of Cr.P.C. Accordingly, he prayed to dismiss the petition.

5. This Court has considered both side submissions and perused the records.

6. Admittedly, complaint under section 156(3) was not filed in the form of affidavit, however, learned Judicial Magistrate recorded the statement of the respondent/complainant. Since the learned Judicial Magistrate, Bodinayakanur, himself recorded the sworn affidavit of the respondent, the argument advanced by the petitioner that the sworn affidavit is mandatory does not hold water. Admittedly, civil suit in O.S.No.148 of 2014 on the file of the learned Subordinate Judge, Theni is pending between the legal heirs of the original owner and the petitioner herein is arrayed as the 21st defendant therein and described as a tenant in a portion of the suit property. According to the petitioner, he is in possession and enjoyment of the property and paying rent regularly in the Court as per the order of the Court.

7. The Respondent claims title through one of the legal heir of V.J.Thomas. According to him, after demise of the original owner i.e., V.J.Thomas, his wife namely, Elizabeth executed a gift deed in favour of her daughter-Rani on 15.04.2011 vide Doc.No.2433 of 2011. Rani, in turn, executed a sale deed on

11.05.2016 in favour of the respondent vide Doc.No.2561 of 2016. On the strength of the alleged sale deed, the respondent tried to interfere with the demised property. Hence, the petitioner filed a complaint against the respondent and the same was registered in Crime No.627 of 2017 on the file of the Bodinayakanur Town Police Station. To counter blast, the respondent sent a complaint to the police officials on 03.04.2019 and within a week, on 10.04.2019, he filed a private complaint before the learned Judicial Magistrate, Bodinayakanur suppressing the real facts. It is stated that the said suit in O.S.No.148 of 2014 on the file of the learned Subordinate Judge, Theni was decreed as prayed for. Feeling aggrieved with the Judgment, respondent herein preferred an appeal before the District Court.

8.This Court has carefully considered the averments stated in the complaint filed by the respondent before the learned Judicial Magistrate, Bodinayakanur. The alleged sale deed in question, is the subject matter of the civil suit. The respondent has not produced any document to show that he is in possession and enjoyment of the property. On the other hand, the petitioner's possession as tenant in a portion of suit property was recognized in O.S.No.148 of 2014 on the file of the learned Subordinate Judge, Theni and the petitioner was permitted to deposit his rent before the Court in the said suit. The respondent allegedly purchased from a co-owner pending disposal of O.S.No.148 of 2014. In short, the respondent is a *pendente lite* purchaser and he can claim his possession only through court of law. It is learnt that the respondent has been impleaded as 28th respondent during the pendency the said suit. The respondent suppressed the factum of pendency of original suit and the pendency of C.C.No386 of 2017 and C.C.No.488 of 2018, both on the file of the learned Judicial Magistrate, Bodinayakanur against him.

9.The respondent has annexed 7 documents in support of his complaint before the learned Judicial Magistrate, Bodinayakanur which includes copy of the sale deed, and one property tax receipt obtained pending the suit in O.S.No.148 of 2014 on the file of the learned Subordinate Judge, Theni. Hence, as alluded to *supra*, the respondent could not be in possession and enjoyment of the suit property and he has suppressed multiple material facts including the pendency of criminal cases against him in respect of the demised property and filed a false complaint with a view to bend the petitioner and to expel him from the demised property. The learned Judicial Magistrate took cognizance of the case without sufficient materials and *prima facie*

evidence. Hence, this Court decides that the cognizance taken by the learned Judicial Magistrate, Bodinayakanur is erroneous in law. Moreover, except the respondent, no witness statement was recorded by the learned Judicial Magistrate and no list of witness was annexed in the complaint.

10. It's apposite to cite here ***State of Haryana and Others v. Bhajan Lal (AIR 1992 SC 604)*** wherein the Hon'ble Supreme Court has laid down the parameters for quashing a prosecution. The relevant portion of the judgment is extracted hereunder:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a noncognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) **Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.**

(6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

(7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

(Emphasis supplied)

The facts of the case in hand gets snugly slotted under the 5th Parameter above.

11. In view of the facts and circumstances and the Bhajan Lal's case, this Court is of the view that continuation of the criminal case against the petitioner amounts to abuse of process of law. The allegation made in the complaint are so absurd, incorrect and improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient grounds for proceeding against the petitioner.

12. In view of the dispositive reasoning alluded to *supra*, this Court is inclined to quash the proceedings as prayed for. Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.81 of 2019 on the file of the learned Judicial Magistrate, Bodinayakanur is quashed. Consequently, connected Miscellaneous Petition is closed.

*Disclaimer: Always compare with the original copy of judgment from the official website.