

Ambrose and Another Vs. Inspector of Police, Paramakudi and Another

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Court : Chennai Madurai

Decided On : Dec-14-2016

Judge : B. Gokuldas

Appeal No. : Crl.O.P.(MD).No. 8335 of 2009 & M.P.(MD).No. 1 of 2009

Appellant : Ambrose and Another

Respondent : Inspector of Police, Paramakudi and Another

Judgement :

(Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code to call for the records in C.C.No.264 of 2009 on the file of the Judicial Magistrate, Paramakudi and quash the charge sheet filed against the petitioners.)

1. The criminal original petition is filed to quash the proceedings in C.C.No.264 of 2009 on the file of the learned Judicial Magistrate, Paramakudi.
2. The case of the prosecution is that on 29.06.2009 at 9 a.m. the petitioners along with their henchmen trespassed into the house bearing Door No.12/338, V16 and V17 belongs to the complainant and abused the inmates and threatened the complainant and another person who was cited as witness No.2 and also caused damage to the tune of Rs.50,000/-.
3. The learned counsel for the petitioners submitted that the first petitioner namely Ambrose is the owner of the property at Door No.12/338 V16 and V17. While so,

witness No. 1/Ramakrishnan, disturbed the possession of the said property. Hence, a complaint was given by one Sebastian to the respondent police. He further submitted that on 29.06.2009, the Witness No.1/Ramakrishnan witness No.2/Ramakrishnan's son Raghuvveerpandian, and the wife of Ramakrishnan abused Ambrose and attempted to assault him and in this regard, the first petitioner, Ambrose had given a complaint to the respondent police under receipt No.319/2009. But, no action has been taken so far in the said complaint also. However the respondent police acted hurriedly on a false complaint given by the said Ramakrishnan and filed a charge sheet against the petitioners for the offence under Sections 147, 148, 294(b), 354, 427, 379(NP) and 506 (I) IPC and the same was taken on file in C.C.No.264 of 2009 by the learned Judicial Magistrate, Paramakudi. He further submitted that the petitioners have not committed any offence as alleged by the prosecution and the charge sheet is very vague and not specific. The major allegation given in the FIR for the commission of offence under Sections 379 and 354 IPC, were given up by the prosecution witnesses themselves and this would clearly establish that the entire case is nothing but a false case. If the petitioners are directed to face the trial, they have to undergo physical and mental ordeal and great and irreparable hardship would be caused to them. The learned counsel further submitted that this Court vide order dated 02.02.2010, has quashed the proceedings in C.C.No.264 of 2009 against the co-accused in CrI.O.P.(MD).No.7024 of 2010. Therefore, the petitioners pray to quash the proceedings against them in C.C.No.264 of 2009.

4. The learned Government Advocate (Criminal Side) appearing for the first respondent would submit that the first respondent police after due enquiry has filed the charge sheet as against the petitioners and the trial is at the threshold and hence, prays for dismissal of the case.

5. The learned counsel appearing for the second respondent would vehemently oppose this petition and submit that if the petitioners are really innocent, they can very well face the trial and it is not advisable to quash the proceedings at this stage.

6. I have carefully considered the rival submissions of the learned counsel on either side and also perused the materials available on record.

7. The admitted fact is that the disputed houses are originally belongs to one Vasanthammal. She had sold the same in favour of the complainant on 10.06.1990 under the registered document No. 1580/96. Then, the complainant in turn sold a part of the property to one Sebastian under registered document No.2575/01. The remaining portion was sold to one Kanikkai Mary on 16.05.2002 under the registered document No.1111/02. Moreover, Sebastian sold his portion, which was purchased by him, to Ambrose, who is the first petitioner herein under a registered document No. 1345/08. Kanikkai Mary, who is none other than the wife of the first petitioner, and the first petitioner, have enjoyed the entirety of the property with legal right. Meanwhile, O.S.No.120/2006 was filed by Sebastian and Kanikkai Mary and on the death of the plaintiffs during the pendency of the suit, the legal heirs of the plaintiffs are impleaded as per the Court order and they conducted the suit. Since the suit was dismissed, they preferred A.S.No.36 of 2011 on the file of the Subordinate Judge , Paramakudi. In the meantime, the Plaintiffs also filed another suit in O.S.No.1 of 2011 on the file of Subordinate Judge, Ramanathapuram for Partition. The first appellate Court, tried both the cases i.e. O.S.No.1 of 2011 and A.S.No.36 of 2011 jointly and pronounced common judgment.

Aggrieved against the same, the defendants preferred an appeal in A.S.No.14 of 2013 on the file of the Principal District Court, Ramnathapuram. In the said appeal, the constructive possession of the property by the first petitioner and his wife alone confirmed, but not the physical possession.

8. Be that as it may, a perusal of the order of this Court in Crl.O.P.No.6905 of 2006 reveals that a direction was obtained by one Sebastian for registering his complaint against the respondent No.2 herein. Apart from that, a perusal of the copies of the petitions preferred with the police by the first petitioner herein, dated 25.05.2009 and 14.07.2009 respectively along with acknowledgment receipts of the police, would have expose the actions taken by the first petitioner as against the second respondent. Moreover, a reading of the copy of memorandum dated

15.06.2015, in D.Nos.520 and 521 of Sub Court, Paramakudi, wherein the Sub Court, Paramakudi, directed the first respondent herein and the Tahsildar, Paramakudi respectively to provide protection to execute the delivery warrant, would go to show that the first petitioner family and the second respondent family are having continuous grudge and animosity with each other in respect of the disputed house property. At this juncture, the complaint preferred by the second respondent alone taken up for investigation by the first respondent and also filed charge sheet, which has been impugned in this petition. In fact, the first petitioner has also preferred a complaint as against the second respondent upon the alleged incident happened on the same day, at the same time and at the same place. Curiously the said complaint has not been considered by the first respondent. The petitioners have also substantiated their case by filing the copy of petition dated 29.06.2009 preferred by the 1st petitioner along with acknowledgement receipt. In the meantime, the charge sheet as against all the co-accused have been quashed on merits by this Court vide order, dated 02.02.2010, in CrI.O.P.(MD).No.7024 of 2009.

9. In view of the foregoing discussion and observation, if the petitioners are allowed to face the trial in C.C.No.264 of 2009 on the file of learned Judicial Magistrate, Paramakudi, they will put to irreparable hardship. Moreover, this Court already quashed the proceedings in respect of other co-accused. Hence, the proceedings in C.C.No.264 of 2009 on the file of learned Judicial Magistrate, Paramakudi, are quashed against the petitioners. The criminal original petition is allowed. Connected miscellaneous petition is closed.

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