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Dharmapalan vs H.Ranjith

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SooperKanoon Citation : sooperkanoon.com/1647964

Court : Kerala

Decided On : Apr-07-2021

Judge : Honourable Mr. Justice P.Somarajan

Appeal No. : Crl.MC/3127/2020

Appellant : Dharmapalan

Respondent : H.Ranjith

Judgement :

AND CONNECTED CASES 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN WEDNESDAY, THE 07TH DAY OF APRIL 2021 / 17TH CHAITHRA, 1943 Crl.Rev.Pet.No.311 OF 2020 AGAINST THE ORDER/JUDGMENT IN CC 528/2015 OF CHIEF JUDICIAL MAGISTRATE, THRISSUR PETITIONER/ACCUSED NO.1 ANANDAN, AGED 64, S/O.KOCHUKANNAPPAN, NAVANEETHAM HOUSE, VAZHUR, LOKAMALLESWARAM VILLAGE, KODUNGALLUR, THRISSUR DISTRICT. BY ADVS. SRI.ANIL K.MOHAMMED SRI.M.K.FAISAL SRI.V.S.MANSOOR SMT.BINU K.B. SMT.YADUKRISHNAN N.

RESPONDENTS/COMPLAINANT & STATE: 1 H.RANJITH, AGED 58, S/O.HARIDAS, C.V.R.A-13, EDAPPALLY SOUTH VILLAGE, KANAYANOOR TALUK- 682 024 2 STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM - 682 031 R1 BY ADV. SRI.JOHNSON GOMEZ R1 BY ADV. SRI.C.UNNIKRISHNAN (KOLLAM) R1 BY ADV. SRI.SANJAY JOHNSON R1 BY ADV. SHRI.ANANDA PADMANABHAN PUBLIC PROSECUTOR SRI.RAMESH CHAND THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 07.04.2021, ALONG WITH Crl.MC.3127/2020(A), Crl.MC.1084/2021(E), THE COURT ON THE SAME DAY PASSED THE FOLLOWING: AND CONNECTED CASES 2

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN WEDNESDAY, THE 07TH DAY OF APRIL 2021 / 17TH CHAITHRA, 1943 Crl.MC.No.3127 OF 2020(A) AGAINST THE ORDER/JUDGMENT IN CC 528/2015 OF CHIEF JUDICIAL MAGISTRATE, THRISSUR PETITIONER/2ND ACCUSED: DHARMAPALAN AGED 75 YEARS S/O RAMAKRISHNAN,VAIKKATTIL HOUSE, VELIYANNUR,THRISSUR. BY ADV. SRI.BABU PAUL RESPONDENTS/COMPLAINANT/ACCUSED 1 & 3:

1 H.RANJITH, AGED 63, S/O HARIDAS,C.V.R.A-13,EDAPPALLY SOUTH VILLAGE, KANAYANNUR TALUK,ERNAKULAM - 682 035 2 ANANDAN, AGED 69, S/O KOCHUKANNAPPAN,NAVANEETHAM HOUSE, VAZHUR,LOKAMALLESWARAM VILLAGE, KODUNGALLOOR - 682 034 3 ABDHUL RAZACK, AGED 70, RTD.VILLAGE OFFICER,HML NAGAR, KOORKENCHERRY,THRISSUR -682018 R1 BY ADV. SRI.C.UNNIKRISHNAN (KOLLAM) R1 BY ADV. SRI.SANJAY JOHNSON R3 BY ADV. SRI.BABU KARUKAPADATH R3 BY ADV. SMT.M.A.VAHEEDA BABU R3 BY ADV. SRI.P.U.VINOD KUMAR R3 BY ADV. SMT.ARYA RAGHUNATH R3 BY ADV. SMT.VAISAKHI V.

PUBLIC PROSECUTOR SRI.RAMESH CHAND THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON

07.04.2021, ALONG WITH Crl.MC.1084/2021(E), Crl.Rev.Pet.311/2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: AND CONNECTED CASES 3

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN WEDNESDAY, THE 07TH DAY OF APRIL 2021 / 17TH CHAITHRA, 1943 Crl.MC.No.1084 OF 2021(E) AGAINST THE ORDER/JUDGMENT IN C.M.P.NO.7052/2016 IN CC 528/2015 DATED 22-12-2016 OF CHIEF JUDICIAL MAGISTRATE, THRISSUR PETITIONER/2ND ACCUSED: DHARMAPALAN, AGED 75, S/O RAMAKRISHNANA, VAIKKATTIL HOUSE, VELIYANNUR, THRISSUR. BY ADV. SRI.BABU PAUL RESPONDENTS/COMPLAINANT/ACCUSED 1 & 3:

1 H.RANJITH, AGED 65, S/O HARIDAS, HOUSE NO.C.V.R.A-13,VENNALA DESOM, EDAPPALLY SOUTH VILLAGE, KANAYANNUR TALUK, ERNAKULAM, PIN - 682 028 2 ANANDAN, AGED 71, S/O KOCHUKANNAPPAN, VAZHOOR NAVANEETHAN HOUSE, LOKAMALLESWARAM VILLAGE, DO.. DESOM, KODUNGALLOOR TALUK, PIN - 680 664. 3 ABDHUL RAZACK, AGED 72, RTD.VILLAGE OFFICER, HMI NAGAR, KOORKENCHERRY P.O, THRISSUR. PIN - 680 007 4 STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM - 682 031 R2 BY ADV. SRI.M.K.FAISAL PUBLIC PROSECUTOR SRI.RAMESH CHAND THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON

07.04.2021, ALONG WITH Crl.MC.3127/2020(A), Crl.Rev.Pet.311/2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: AND CONNECTED CASES 4

ORDER

The order framing charge for the offence under Sections 415, 420, 120 B, 464, 465, 468 r/w Section 34 IPC after the dismissal of a discharge application is brought under challenge by accused No.2 in Crl.M.C.Nos.3127/2020 and 1084/2021. The accused No.1 also came up against the said order in Crl.R.P.No.311/2020. The accused No.1 is the owner of adjoining property. The defacto complainant is the husband and court guardian of his wife appointed in O.P.(MH) No. 86/2007 of the District Court, Ernakulam. It is submitted that he was appointed as the court guardian after entering into a finding that she is capable of doing her things personally. But he was appointed as the Manager of the properties belonged to her. An appeal is pending against the said order. About 99 cents of property originally belonged to mother-in-law of the defacto complainant. Out of the said property,

15 cents given to the wife of defacto complainant. When the property was measured out, the total extent found to be lesser than what is stated in the document of title. So a claim was raised over the adjoining property belonged to the accused which was purchased by them from some other person, for which a crime was registered in Crime No.3004/2014 alleging offence under Sections 415, 420, 120 B, 464, 465, 468 r/w Section 34 IPC at the instance of the defacto complainant, the husband, that too, without any valid reason. The police after investigation submitted a referred charge. Yet another complaint was also filed (Annexure A2) before the Magistrate in connection with the very same transaction and on the very same allegation on which the learned Magistrate took cognizance overlooking all settled principles. It is seemed to be so strange that in connection with the mutation effected based on the sale deed in favour of the accused persons, the defacto complainant, the husband opted to file a criminal complaint before the

vigilance court which was referred under

AND CONNECTED CASES 6 Section 156(3) Cr.P.C. for investigation. Thereby, the defacto complainant, husband had misused the machineries and process of the court simply to wreck vengeance without any valid ground. From the

facts involved, even an arguable case or a

debatable civil dispute not brought out. Instead of seeking civil remedy, the defacto complainant opted to misuse the process of the court and the machinery - the police department. Filing of a complaint before the vigilance court in connection with the mutation effected based on the document of title of the accused would show the manner in which the defacto complainant tried to entangle the accused No.1 and 2 in a criminal proceeding, that too, without any basis. The mischievous intention on the part of the defacto complainant is well evident. Further, the registration of crime for the offence under Sections 415, 420, 120 B, 465, 468 r/w Section 34 IPC and the subsequent complaint would also show the extent of misuse done by the defacto complainant, the husband simply to wreck vengeance against the accused No.1 and 2. Hence, he

AND CONNECTED CASES 7

cannot be allowed to go with free hand and it is a fit case wherein exemplary cost can be imposed by exercising the inherent power under Section 482 Cr.P.C.. The legal position is very much settled by the Apex Court in Mary Angel and others v. State of Tamil Nadu (AIR 1999 SC 2245) and Ismile and others v. State of Rajasthan and others (1998 CRI.L.J. 3703). Hence, it is ordered to pay an amount of Rs.10,000/- (Rupees Ten thousand) each as exemplary cost to the accused Nos.1 and 2 by the defacto complainant, who is the first respondent in Crl.M.C.No.3127/2020 and it shall be paid within a period of three months from today, failing which it shall be recovered as if it were a fine imposed under the provisions of the Code of Criminal Procedure, in

default he shall undergo default sentence of simple imprisonment for a period of twenty days.

2. The Registry shall forward a copy of this

order to the concerned Magistrate. The Magistrate

shall initiate proceedings against the first respondent to recover the exemplary cost in AND CONNECTED CASES 8

accordance with the provisions of the Code of Criminal Procedure, if it is not remitted within the time stipulated above. In the event of non-recovery of the said amount, he shall undergo default sentence as ordered above and the learned Magistrate shall take steps in that behalf. Crl.M.C.Nos. 3127/2020, 1084/2021 and Crl.R.P.No.311/2020 are allowed accordingly.

Sd/- P.SOMARAJAN JUDGE msp AND CONNECTED CASES 9

APPENDIX OF Crl.Rev.Pet 311/2020 PETITIONER'S/S ANNEXURES: ANNEXURE A PHOTOCOPY OF COMPLAINT IN C.C.NO.528 OF 2015 OF THE COURT OF CHIEF JUDICIAL MAGISTRATE, THRISSUR. ANNEXURE B CERTIFIED COPY OF ORDER DATED 28.02.2020 IN C.C.NO.528 OF 2015 OF THE COURT OF CHIEF JUDICIAL MAGISTRATE, THRISSUR. ANNEXURE C THE TRUE COPY OF THE FIR IN CRIME NO.3004/2014 OF THRISSUR EAST POLICE DATED 4-10-2014 ANNEXURE D THE TRUE COPY OF THE STATEMENT RECORDED BY THE THRISSUR EAST POLICE IN CRIME NO.3004/2014 DATED 19-03-2014 ANNEXURE E THE TRUE COPY OF THE NOTICE ISSUED BY THE THRISSUR EAST POLICE IN CRIME NO.3004/2014 DATED 21/10/2015. ANNEXURE F THE TRUE COPY OF THE FINAL REPORT FILED BY THE THRISSUR EAST POLICE IN CRIME.NO.3004/2014 DATED 21-10-2015 ANNEXURE G THE TRUE COPY OF THE ORDER OF THE CHIEF JUDICIAL MAGISTRATE

COURT IN RC.NO.22/2016 DATED 15-07-2016 ANNEXURE H THE TRUE COPY OF THE SALE DEED NO.8016/2006 OF THRISSUR SUB REGISTRY DATED 27-11-2006

AND CONNECTED CASES 10 APPENDIX OF Crl.MC 3127/2020 PETITIONER'S/S ANNEXURES: ANNEXURE A1 CERTIFIED COPY OF THE ORDER DATED 28/2/2020 IN C.C.NO.528/2015 OF THE CHIEF JUDICIAL MAGISTRATE COURT,THRISSUR. ANNEXURE A2 TRUE COPY OF THE COMPLAINT FILED BY THE 1ST RESPONDENT DATED 8/10/2014 BEFORE THE CJM,COURT,THRISSUR ANNEXURE A3 TRUE COPY OF THE ORDER DT.17/8/2017 OF THE ENQUIRY COMMISSIONER & SPECIAL JUDGE, THRISSUR IN C.C.507/2013. AND CONNECTED CASES 11 APPENDIX OF Crl.MC 1084/2021 PETITIONER'S/S ANNEXURES: ANNEXURE A1 CERTIFIED COPY OF ORDER DATED 22.12.2016 IN CMP NO 7052/2016 IN CC 528/15 OF THE CHIEF JUDICIAL MAGISTRATE COURT, THRISSUR ANNEXURE A2 TRUE COPY OF THE ORDER DATED 17.8.2017 OF THE ENQUIRY COMMISSIONER & SPECIAL JUDGE, THRISSUR IN CMP 376/17,377/17 AND 378/17 IN CC 507/2013. ANNEXURE A3 TRUE COPY OF THE COMPLAINT FILED BY THE 1ST RESPONDENT DATED 8.10.2014 IN CMP 3267/14 BEFORE THE CJM, COURT, THRISSUR RESPONDENTS ANNEXURES: ANNEXURES R2-A THE TRUE COPY OF THE POWER OF ATTORNEY EXECUTED BY THE 2ND RESPONDENT IN FAVOR OF MR.BABU DATED 11.03.2020 ANNEXURE R2-B THE TRUE COPY OF THE FIR REGISTERED BY THE THRISSUR EAST POLICE AS CRIME NO.3004/2014 DATED 04.10.2014 ANNEXURE R2-C THE TRUE COPY OF THE STATEMENT RECORDED BY THE THRISSUR EAST POLICE IN CONNECTION WITH CRIME NO.3004/2014 OF THRISSUR EAST POLICE. ANNEXURE R2-D THE TRUE COPY OF THE NOTICE ISSUED BY THE THRISSUR EAST POLICE IN CRIME NO.3004/2014 DATED 21.10.2015 ANNEXURE R2-E THE TRUE COPY OF THE FINAL REPORT FILED BY THE THRISSUR EAST POLICE IN CRIME NO.3004/2014 DATED 21.10.2015 ANNEXURE R2-F THE TRUE COPY OF THE ORDER OF THE CHIEF JUDICIAL MAGISTRATE COURT IN RC.NO.22/2016 DATED 15-07-2016 //TRUE COPY// P.A. TO JUDGE

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