

Palaniappan Vs. Rajamani.

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SooperKanoon Citation : sooperkanoon.com/925866

Court : Chennai

Decided On : Mar-28-2012

Judge : P.R.Shivakumar, J.

Acts : Indian Penal Code (IPC) - Sections 379, 427; Code of Criminal Procedure (CrPC) - Sections 203, 204, 397(2),

Appeal No. : CrI.RC.(MD)No.412 of 2009 and M.P.(MD)No.1 of 2009

Appellant : Palaniappan

Respondent : Rajamani.

Advocate for Pet/Ap. : Mr.R.Perumal, Adv.

Judgement :

ORDER

1. This criminal revision case has been filed against the order passed by the learned Judicial Magistrate, Paramakudi on 17.08.2009 issuing process to the petitioner and three other persons in a case instituted by the respondent herein on private complaint, which was taken on file by the learned Judicial Magistrate, Paramakudi as C.C.No.260 of 2009 for alleged offences punishable under sections 379 and 427 IPC. The said order of the learned Judicial Magistrate issuing summons under section 204 of Cr.P.C. is challenged in this criminal revision case by the revision petitioner, who figures as the 2nd accused in the said

calender case.

2. Notice before admission was issued and both the parties are represented by counsel. The arguments advanced by Mr.R.Perumal, representing the counsel on record for the revision petitioner and by Mr.A.Hajamohideen learned counsel for the respondent are heard. The materials produced in the form of typed set of papers and the records summoned from the court below are perused.

3.Initially, a doubt was raised as to the maintainability of the revision on the premise that the order sought to be challenged in this revision case is an interlocutory order and hence, the revision is barred under section 397(2) Cr.P.C. But the said doubt has been cleared by citing the judgment of a Division Bench of Allahabad High Court in Uma Kant Pandey vs. Additional Chief Judicial Magistrate & another reported in 1997(2) Crimes 27 wherein it has been held that an order passed by the Magistrate issuing process to the accused under section 204 Cr.P.C cannot be necessarily stated to be an interlocutory order and thereby, completely barring the revision. The test to be applied in such cases, as per the said judgment, is whether the proceedings will get terminated, if the decision would have been otherwise or whether the proceedings would not get terminated, even if the decision would be otherwise. A decision to issue summon under section 204 Cr.P.C ensures continuation of the proceedings on the private complaint. On the other hand, if the decision is otherwise, then it would have resulted in the dismissal of the complaint under section 203 Cr.P.C. Therefore, this court is of the view that the order sought to be challenged in the criminal revision is not an interlocutory order and hence, the bar provided under section 397(2) Cr.P.C is not attracted.

4.The mere fact that the revision is maintainable does not mean that the revision petition has got to be allowed. The main ground on which the order of the learned Judicial Magistrate is sought to be challenged is that the complaint has been preferred as a counter-blast for the eviction order obtained against the respondent herein and in order to prevent the landlord, namely the revision petitioner, from enjoying the fruits of the eviction order. In short, the contention of the revision petitioner seems to be that the complaint is an example of abuse of process of

court. In support of the said contention, it is pointed out on behalf of the revision petitioner that an order of eviction was passed long back in RCOP No.2 of 1998 on the file of District Munsif, Paramakudi and an execution petition was filed in E.P.No.16 of 2001 on the file of the said court in 2001 itself and still the revision petitioner, who suffered an eviction order was creating hurdle for the execution of the eviction order. It is also brought to the notice of the court that the respondent herein, after suffering an order of eviction in the court of the Rent Controller, failed in his attempt to challenge the eviction order in the appellate forum and also in the High Court in the revision filed against the judgment of the appellate authority and that with a view to prevent execution of the eviction order, a false complaint had been lodged and on the failure of the police to take action as wished by the respondent herein, he preferred a private complaint in which the learned Judicial Magistrate has chosen to issue process.

5.Per contra, it is the contention of the learned counsel for the respondent that though an order of eviction was passed by the learned Rent Controller, the same was challenged before the Rent Control Appellate Authority and during the pendency of the appeal, there was automatic stay and that after the disposal of the Rent Control Appeal, a revision was preferred on the file of this court in 2001 and during the pendency of the revision, an order was obtained from the Rent Controller on the execution side on 13.01.2005 staying further proceedings in the execution proceedings and that only on 17.10.2008, the Rent Controller on the execution side chose to pass an order directing delivery.

6.It is the further contention of the learned counsel for the respondent that before-ever such an order could be obtained, the landlord, namely Chokkalingam (A1), along with the other accused, including the revision petitioner herein, ransacked the office run by the respondent in the premises in which he was a tenant and stole the furnitures and other articles from the said premises; that the said occurrence took place on 25.07.2007; that on 26.07.2007 itself, a complaint was lodged with the police for which a receipt was given without registering a case; that on the failure of the Station House Officer to register a case, a complaint was given to the Superintendent of Police, Ramanathapuram in vain and that thereafter, a private complaint was preferred on 24.04.2008. It is the further

contention of the learned counsel for the respondent that the order for delivery was passed only on 17.10.2008 i.e. subsequent to the complaint and the inventory report and delivery report were prepared by the Amin on 8.11.2008. Pointing out the above said fact, the learned counsel for the respondent would submit that before-ever lawfully taking possession of the premises in execution of the eviction order, the landlord took law in his hands and committed the above said acts along with other co-accused, including the revision petitioner; that the same would amount to mischief and theft punishable under sections 427 and 379 IPC and that the very fact that the complaint came to be lodged about one year and four months prior to the date of delivery through court will negative the contention of the revision petitioner that the complaint is an abuse of process.

7.It is also the contention of the learned counsel for the respondent that the truth or otherwise of the contents of the complaint cannot be decided without having a full fledged trial and it shall be proper to issue process, if sufficient materials have been placed before the court for issuing process against the accused. It is also the contention of the learned counsel for the respondent that sufficient materials have been placed before the court below in the form of sworn statements of the respondent herein/complainant and witnesses and also in the form of documents and that the genuineness or otherwise of the said evidence cannot be gone into at the time of taking a decision as to whether process has to be issued or not.

8.Upon perusing the records, this court is also satisfied with the contention raised by the learned counsel for the respondent that the complaint came to be lodged several months prior to the dates on which the learned Rent Controller passed an order directing delivery of the property in execution of the eviction order. This court is also satisfied that there are enough materials to support the decision of the learned Judicial Magistrate holding that there were sufficient materials to proceed against the accused and that process should be issued. In view of the same, this court is of the view that there is no merit in the criminal revision case and the same deserves to be dismissed.

9.In the result, the criminal revision case is dismissed. Consequently, connected Miscellaneous Petition is closed.

