

# A.Sudalaimuthu vs Sahayam on 22 November, 2024

Crl.R.C. (MD).

'BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.10.2024

PRONOUNCED ON : 22.11.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C. (MD) No.997 of 2024

A.Sudalaimuthu

... Petitioner/Petitioner

Vs.

1.Sahayam

2.Thamotharan

... Respondents 1 and 2/ Respondents 1

3.The State represented by

The Inspector of Police,

Mukkudal Police Station,

Tirunelveli District.

... 3rd Respondent / Nil

PRAYER: Criminal Revision Petition has been filed under Section 438 r/w of B.N.S.S., to call for the records pertaining to Cr.M.P.No.4961 of 2024 file of the District Munsif cum Judicial Magistrate Court, Cheranmahadevi Tirunelveli District, dated 18.09.2024 and set aside the same and direct respondent to register the case based on the petitioner's complaint.

For Petitioner : Mr.A.Balaji

For Respondents : Mr.K.Sanjai Gandhi

Government Advocate (Crl.Side)

for R.3

1/11

<https://www.mhc.tn.gov.in/judis>

Crl.R.C. (MD)

ORDER

This Criminal Revision is directed against the order passed in Crl.M.P.No. 4961 of 2024, dated 18.09.2024, on the file of the District Munsif cum Judicial Magistrate, Cheranmahadevi, dismissing the petition filed under Section 175(3) BNSS.

2. The case of the petitioner / complainant is that he purchased 3.75 Acres of land in Survey No.107, Idaikal Part-I Village, vide sale deeds dated 23.08.2013 and 27.09.2013, that the lands comprised in Survey Nos.107, 106/1, 102/8, 194/1, 194/3, 195/1, 195/3, 195/4 and 196/1 originally belonged to one Megalingam, son of Uthiravasagam naidu, vide sale deed dated 05.06.1939, that a perusal of the said sale deed would reveal that the said Megalingam had title only to undivided 1/36 share of the properties, that Survey No.107 comprises a total extent of 15.48 Acres and 1/36 share comes to 48 cents, that the said Uthiravasagam had five legal heirs, that the second respondent, son of Uthiravasagam in collusion with the first respondent and fraudulent intention to cause damages to the other pangalis, in pursuance of a criminal conspiracy, had executed a sale deed dated 06.05.2011 selling 9 cents of land in favour of the <https://www.mhc.tn.gov.in/judis> first respondent and came to be registered before the Mukkudal SRO, that the said second respondent Thamodharan nor his predecessors in title had no title for the entire property in S.No.107 and that they were having 1/36 share, that when the same was questioned by the petitioner with the first respondent, he had threatened the petitioner, that on 31.05.2024 at about 10.00a.m., when the petitioner after visiting his property, had proceeded to Mukkudal, the first respondent had threatened him to leave that place and he will not be permitted to enjoy the said property, that the petitioner has immediately lodged a complaint before the Pappakudy Police Station, but they have informed that the Kukkudal Police Station alone was having jurisdiction to entertain the complaint, that the petitioner has sent a complaint to the Deputy Superintendent of Police on 05.06.2024 and again at the instance of the Pappakudy Police Station, online complaint came to be lodged before the Kukkudal Police Station, that since there was no action, the petitioner sent a complaint through e-mail on 03.07.2024 to the Superintendent of Police and that even thereafter there was no action and that therefore, the petitioner was constrained to file the above petition under Section 175(3) of BNSS for direction to the third respondent police to conduct an enquiry and register the F.I.R., and to proceed in accordance with law. <https://www.mhc.tn.gov.in/judis>

3. The learned Magistrate has taken the said petition filed under Section 175(3) of BNSS on file as Crl.M.P.No.4961 of 2024 and upon perusing the petitioner's affidavit and petition and on hearing the arguments of the petitioner's side, has passed the impugned order dated 18.09.2024, dismissing the said petition. Aggrieved by the said order of dismissal, the present Criminal Revision came to be filed.

4. The learned Counsel for the petitioner would submit that the learned Magistrate dismissed the petitioner filed under Section 175(3) BNSS on the ground that 318(4) of BNSS does not attract as against the proposed accused, that the first respondent is a practicing advocate and he has full knowledge about the respective dispute property and with the help of the second respondent, they deliberately created a forged document and as such, the offence under Section 318(4) of BNSS has been made out, that the learned Magistrate has taken another ground to dismiss the petition that the allegations narrated by the complainant appears to be in civil nature, that the sale deed bearing Document No.1406/1939 would reveal that the grandfather of the second respondent Megalingam has title only over an undivided share of 1/36 out of 15 acres and 40 cents, but the second respondent sold the property with the first respondent to the <https://www.mhc.tn.gov.in/judis> extent of 9 Acres by creating forged document, that the learned Magistrate failed to consider the allegations levelled against the first respondent and that on 31.05.2024 when the petitioner went to

his property, the first respondent made life threat.

5. No doubt, as rightly observed by the learned Judicial Magistrate, upon receipt of a complaint, even if the police station where the complaint is lodged is not having jurisdiction to entertain the same, they are duty bound to register “Zero FIR” and then to forward the same to the jurisdictional police station and that thereafter, the jurisdictional police has to register the F.I.R., and then to proceed the investigation. Hence, the contention of the third respondent police that they are not having any jurisdiction to register F.I.R. as rightly observed the learned Judicial Magistrate, cannot legally be sustained.

6. Now turning to the merits of the case, the main complaint is that the predecessor in title of the second respondent / proposed accused has right to the property only to the extent of 1/36 undivided share, but the second respondent / proposed accused without having any title had executed a sale deed in respect of 9 Acres of land. As already pointed out, sale deed came to be executed for 9 <https://www.mhc.tn.gov.in/judis> Acres of land in Survey No.107 of Idakal Village, vide sale deed dated 06.05.2011 in favour of the first accused. To put it in other way, the complaint is that the second respondent / proposed accused has executed a sale deed in excess of his right to the title in favour of the first accused. The learned Magistrate has relied on the judgment of the Hon'ble Supreme Court in MD.Ibrahim and others Vs. State of Bihar and another reported in (2009)8 SCC 751), wherein it has been clarified that there existed a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf.

7. In the case on hand, it is not the specific case of the complainant that the accused has made a false representation of ownership and thereby induced him fraudulently to part with the sale consideration. More importantly, the complainant is not the purchaser and that the purchaser is made as the first proposed accused. As rightly observed by the learned Magistrate, the execution of the document purporting to convey some property of which he is not the owner is not execution of a false document as defined under Section 464 I.P.C., and if what is executed is not a false document, there is no forgery. As rightly <https://www.mhc.tn.gov.in/judis> observed by the learned trial Judge, the averments raised in the petitioner's complaint would only reveal that the dispute referred therein is of civil in nature, but the petitioner has been attempting to give a criminal colour.

8. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in in M/S Indian Oil Corporation vs M/S NEPC India Ltd., and Others, in Crl.A.No.834 of 2002, dated 20.07.2002, wherein, the Hon'ble Apex Court has deprecated the practice of attempting to settle the civil disputes by applying pressure through criminal prosecution and the relevant passage is extracted hereunder:

“10. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen

in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In <https://www.mhc.tn.gov.in/judis> G. Sagar Suri vs. State of UP [2000 (2) SCC 636], this Court observed :

"It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under section 250 Cr.P.C. more frequently, where they discern malice or <https://www.mhc.tn.gov.in/judis> frivolousness or ulterior motives on the part of the complainant. Be that as it may."

9. In *Mitesh Kumar J Sha vs The State Of Karnataka* (Crl.A.No.1285 of 2021, dated 26.10.2021), the Hon'ble Supreme Court has reiterated that cloaking a civil dispute with a criminal nature in order to get quicker relief is an abuse of process of law which must be discouraged.

10. As already pointed out, the petitioner/complainant has been attempting to give a cloak of criminal offence to the matters which are purely civil in nature and hence, the impugned order dismissing the petition filed under Section 175(3) BNSS by the learned Magistrate cannot be found fault with. Consequently, this Court concludes that the revision is devoid of merit and the same is liable to be dismissed.

11. In the result, the Criminal Revision Case is dismissed.

22.11.2024 NCC : Yes/No Index : Yes/No Internet: Yes/No SSL <https://www.mhc.tn.gov.in/judis> To

1.The District Munsif cum Judicial Magistrate Court, Cheranmahadevi, Tirunelveli District.

2. The Inspector of Police, Mukkudal Police Station, Tirunelveli District.

3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

<https://www.mhc.tn.gov.in/judis> K.MURALI SHANKAR, J.

SSL Pre-Delivery order made in 22 .11.2024 <https://www.mhc.tn.gov.in/judis>