

(1998) 12 MAD CK 0111

In the Madras High Court

Case No : Criminal Original Petition No. 8926 of 1997

C. Santhosh Agarwal

APPELLANT

Vs

State by Inspector of Police, C2. Elephant and Others

RESPONDENT

Date of Decision : 24-12-1998

Acts Referred:

Citation : (1999) 1 LW(Cri) 138

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : A. Thiagarajan Erstwhile counsel, Mr. R. Thiagarajan Present, for the Appellant; C.M. Gunasekaran, Govt. Advocate for 1st Respondent, Mr. C. Selvaraju for Respondents 2 to 3, M/s. Shah and Shah for Respondents 4 and 5 and Mr. S. Shanmughavelayutham for Respondent No.6, for the Respondent

Judgement

M. Karpagavinayagam, J.—This case has got a chequered history.

2. Santhosh Agarwal, the petitioner herein, on 9.7.1997 filed this application in Crl. O.P.No.8926 of 1997 u/s 482 Cr.P.C. to transfer the investigation of his complaint registered as a petition in No.54/97 on the file of C2 Elephant Gate Police Station to Crime Branch C.I.D., Chennai.

3. In the said complaint, he stated that he was a tenant under one T. Vilas and that old tenants Dalichand and others trespassed into his premises and attacked him.

4. In the above Original Petition, he also filed an interim application in Crl. M.P.No.2811 of 1997 for a direction to C2 Elephant Gate Police to hand over the key of the premises bearing Door No.7, Hanumantha Rayan Koil Street, Chennai, which was locked by them to the custody of the petitioner pending disposal of the above QLO.P.No.8926 of 1997.

5. After admission, the matter came up before Hon'ble Jayarama Chouta, J. for passing interim order in Crl.M.P.No.2811 of 1997. After hearing the petitioner and the respondent-Police, the learned Judge, since it was represented by -he

police that the key of the premises was with one Ramesh, directed the respondent-police to open the premises and hand over the possession of the premises to the petitioner after taking inventory.

6. In pursuance of the said interim order dated 11.7.1997, the respondent-police opened the premises in the presence of the petitioner and handed over the possession to the petitioner after taking inventory of 13 items. Though the

interim application had been disposed of on 11.7.1997, the main application in Crl.O.P.No.8926 of 1997 was pending before this Court.

7. Thereafter, on 20.10.1997 Dalichand along with his son Jayanthilal filed an application in Crl.M.P.No.6105 of 1997 for impleading them as respondents in the main application stating that he was the tenant under T. Vilas and was dispossessed by the landlord by setting up the said Santhosh Agarwal to give a false complaint to the police and to get an interim order for getting possession of the premises from this Court behind his back. Along with the said application, he filed Crl. M.P. No.6106 of 1997 for a direction to hand over the possession of the premises in question, to them.

8. In the meantime, the petitioner Santhosh Agarwal filed a suit in O.S.No.4699 of 1997 in the City Civil Court, Madras, on 11.7.1997 seeking permanent injunction as against the landlord T. Vilas, as if he was being disturbed by the said landlord demanding enhancement of rent.

9. Similarly, on 11.7.1997 Dalichand also filed a suit in O.S.No.4705 of 1997 as against the landlords T. Vilas and his brother seeking permanent injunction.

10. On 18.11.1997 after hearing the parties, the impleading petition filed by Dalichand and another in Crl.M.P.No.6105 of 1997 was allowed. The main matter was posted for final hearing on 24.11.1997.

11. Since it was brought to the notice of this Court that the interim order was passed earlier on 11.7.1997 by this Court without hearing the tenant Dalichand and in order to decide Crl.M.P. No.6106 of 1997 praying to hand over the possession to Dalichand, the tenant, who came to be in possession of the premises, this Court directed Mr. A. Thiagarajan, the counsel for the petitioner Santhosh Agarwal to hand over the key to the respondent-police as interim arrangement. To this effect, the order was passed on 25.11.1997.

12. On 28.11.1997 Mr. A. Thiagarajan, the counsel for the petitioner filed an application in Crl.M.P.No.6736 of 1997 requesting one week's

time to comply with the order stating that the petitioner had already gone to Rajasthan and he was not able to get at him.

13. Then on 2.12.1997, since the counsel for the petitioner was not able to get at the petitioner, he requested the Court to pass an order directing the police officer to put the seal on the premises till the petitioner comes back and hands over the key. Accordingly, on 2.12.1997, the respondent-police was directed to put the

seal on the premises after taking inventory. In pursuance of the said order, the premises was sealed by the respondent-police.

14. At this stage, the landlords T. Vilas and T. Deepak filed Crl.M.P.No.6706 of 1997 to implead them as other respondents in the main petition stating that the said Santhosh Agarwal was a sub-tenant and subsequently, he was recognised as a direct tenant and thereafter, he surrendered the possession to them after collecting the advance amount and that later, one portion was rented out to one Sekar.

15. On 4.12.1997 the said Sekar also filed Crl. M.P.No.6893 of 1997 to implead him as a co-respondent in the main petition, as he took possession of portion of the premises as a tenant under T. Vilas on 11.9.1997.

16. On 16.12.1997 T. Vilas and T. Deepak filed Crl. M.P.No.1051 of 1998 u/s 195 read with Section 482 Cr.P.C. seeking for a direction to the Registrar of the High Court to give a complaint, since some of the particulars contained in the affidavit filed by Dalichand in Crl.O.P.No.8926 of 1997 are false.

17. In the meantime, the landlords filed another unnumbered application u/s 482 of Cr.P.C. requesting this Court to decide and declare that the order passed by Justice Jayarama Chouta on 11.7.1997 directing the police to hand over the key to the petitioner Santhosh Agarwal was a final order as a preliminary issue. On the objection of the Registry, this matter also was posted before the Court for maintainability. The counsel for the landlords insisted that the preliminary issue should be decided first before passing final order in the main petition and the Registrar shall be directed to give a complaint to the appropriate Court, since the false affidavit was filed by the said Dalichand.

18. Since this Court felt that Santhosh Agarwal, the petitioner herein, after getting the interim orders and taking possession of the premises, surrendered the possession to the landlords and absconded without giving any instruction to Mr. A. Thiagarajan, the counsel for the petitioner and without obtaining any permission from this Court, in order to evade the process of the Court, warrant was issued against the petitioner.

19. Thereafter, the landlords T. Vilas and his brother filed Crl. M.P.No.2457 of 1998 for directing the tenant Sekar or in the alternative, the police to pay the rent to them. They also filed Crl. M.P.Nos.2458 and 2459 of 1998 to take action against Dalichand and another for having committed perjury, as some of the records filed before this Court are contrary to the records filed by him before the Civil Court

20. In the meantime, the case was periodically adjourned, as this Court felt that all the matters could be decided only after the production of the petitioner Santhosh Agarwal, in execution of the warrant issued by this: Court on 26.2.1998.

21. In pursuance of issue of warrant, a Special Team was constituted by the

Commissioner of Police and the same was sent to Rajasthan to trace him out. Several of his relatives were enquired. Here also, the petitioner's brother and other relatives had been interrogated. However, no clue was available. Therefore, the respondent..police filed affidavits on various dates intimating this Court, the details of the steps taken to execute the warrant and requesting for further time. Accordingly, the time was extended on various dates.

22. In" the meantime, since the summer vacation intervened, this Court asked the parties as to whether possession of the premises could be handed over to any one of them as interim arrangement. However, all the respective parties filed the affidavits claiming the possession for them-selves as an interim arrangement. Therefore, a detailed order was passed on 14.5.1998 by this Court directing the police to hand over the key to Mr. S.C.Shah, who happens to be the counsel for the landlords to keep the key with him as Court custody. Accordingly, the key was handed over to him.

23. After nearly six months, the petitioner Santhosh Agarwal engaged a new counsel Mr. R. Thiagarajan, and filed an application in CrI.M.P.No.5496 of 1998 to recall the warrant dated 26.2.1998 issued by this Court. He surrendered before this Court on 7.8.1998. Since the reasons given in the petition to recall the warrant were not satisfactory, the request for recalling the warrant was turned down and the petitioner Santhosh Agarwal was remanded. However, on 13.8.1998 this Court in the bail application filed by him in CrI.M.P.No.5456 of 1998 ordered bail to him imposing certain conditions.

24. At this stage, the landlords filed another application in CrI.M.P.No.6328 of 1998 requesting for restoration of possession to them by directing the counsel Mr. Shah to hand over the key to them.

25. In the light of the above facts, this Court is constrained to decide the issue that arises in this case.

26. The main CrI.O.P.No.8926 of 1997 is for a direction for handing over the investigation of the case to the Crime Branch C.I.D. from C2 Elephant Gate Police. Therefore, in order to pass an order in the main petition with reference to the act of trespass and other allied offences committed by the accused persons, this Court has to necessarily go into the question of lawful possession on the date of complaint, which has been registered as a petition.

27. On 9.7.1998, the main petition was admitted and an interim order was passed in CrI.M.P.No.2811 of 1997 directing the first respondent-police to open the locked premises and hand over the possession of the premises to the petitioner after taking inventory. Thereafter, Dalichand and Jayanthilal, the original tenants filed an application for impleading and the same was ordered on 18.11.1997 after hearing the available parties then/ impleading them as respondents 2 and 3.

28. Thereafter, the landlords T. Vilas and T. Deepak filed the impleading petition.

Accordingly, they were impleaded as respondents 4 and 5. Similarly, one Sekar also filed another application for impleading in the main petition. He was also impleaded as respondent No.6.

29. In the meantime, as indicated earlier, since the petitioner was absconding, this Court ordered for keeping of the premises in the possession of the police and some time later, this Court handed over the possession to the counsel Mr. S.C. Shah by directing the police to hand over the key of the premises to him as Court custody.

30. In view of the above order, the present custody is with Mr. S.C. Shah by way of interim custody on behalf of the Court. Now as noticed earlier, the said Santhosh Agarwal surrendered before the Court and submitted that he got the possession of the premises, in pursuance of the interim orders passed by this Court and handed over the same to the landlords, the respondents 4 and 5.

31. In the light of the above situation, let me now first consider, whether the earlier order passed by the Hon''ble T.Jayarama Chouta, J. on 11.7.1997 directing the police to hand over the possession of the premises to Santhosh Agarwal, the petitioner herein, is an interim order or a final order.

32. It is vehemently contended by the counsel on behalf of the landlords, the respondents 4 and 5 by citing several authorities that the earlier order passed by the Hon''ble T. Jayarama Chouta, J. handing over the custody to Santhosh Agarwal was a final order and that the same cannot be reviewed thereafter by passing a different order in the main petition.

33. The above submission made by the counsel for the landlords cannot be countenanced for the reasons given below.

34. The main prayer by Santhosh Agarwal, the petitioner herein in Crl.O.P.No.8926 of 1997 is this:-

For the reasons stated in the accompanying affidavit it is prayed that this Hon''ble Court may be pleased to pass an order directing the complaint in Petition No.54/97 on the file of the respondent herein to be investigated by Crime Branch C.I.D. police, Chennai....

35. The prayer in the petition for interim direction in Crl.M.P.No.2811 of 1997 in Crl.O.P.No.8926 of 1997 is as follows:-

Petition for interim direction For the reasons stated in the affidavit filed in support of the above petition for direction it is prayed that this Hon''ble Court may be pleased to pass an interim order, directing the respondent herein to hand over the key of the premises bearing Door No. 7, Hanumantha Rayan Koil Street, Chennai which was locked by him, to the custody of the petitioner herein pending disposal of the above petition for direction....

36. In view of the above prayers, on 11.7.1997 Hon''ble T.Jayarama Chouta, J.passed interim order in Crl.M.P.No.2811 of 1997 in the following manner:-

It is informed to me by the learned Government Advocate after ascertaining from the concerned police officer that the key is with one Ramesh. The petitioner has given a complaint which has been registered as petition No.54/97. Since the said Ramesh is having the key illegally, I direct the respondent to open the premises in the presence of witnesses and to hand over the key to the present petitioner. Compliance should be reported forthwith. The respondent can make an inventory to the effect in respect of the things which are found in the premises.

37. On this day, the main petition was not disposed of, since there was no direction given for the transfer of investigation from C2 Elephant Gate Police to Crime Branch C.I.D. Moreover, only in the main matter, it could be decided, whether there was actually trespass by the accused persons mentioned in the said complaint given by the petitioner and that the petitioner was in legal possession of the premises and Police acted mala fide and then to give a direction of the transfer of investigation.

38. So long as the main petition was not disposed of, the order passed on 11.7.1997 directing the police to open the locked premises and hand over the key to the petitioner, would be an interim and temporary order and more particularly when it was submitted that at that time the key was with one Ramesh and the police was directed to open the premises and to make an inventory of the articles found in the premises under Mahazar in the presence of witnesses. The question whether the interim order is to be made absolute and any further direction should be given in the main petition could be decided by this Court only when the main matter in CrI. O.P. No.8926 of 1997 is disposed of. Therefore, there is no difficulty in coming to the conclusion that the order passed by Hon"ble T. Jayarama Chouta, J. on 11.7.1997 was only an interim order and not a final order.

39. Furthermore, the prayer in CrI. M.P.No.2811 of 1997 is itself only for an interim order. Under the said circumstances, this Court has got the jurisdiction to deal with the entire matter in full, in order to give the final relief to the parties concerned either by confirming the interim order earlier passed or vacating the same.

40. As stated earlier, the key of the premises is claimed by the various parties. In view of the permission granted by this Court to several persons to implead themselves as parties, this Court has to necessarily go into the question, who is entitled to the key to have a lawful possession at this juncture.

41. In view of the above conclusion that the order passed on 11.7.1997 was an interim order pending main petition before this Court, it is clear that the petitioner who was given custody of the premises by this Court ought not to have surrendered possession to the landlords, who were not the parties then in this petition without permission of the Court. Consequently, the landlords also should not have handed over the said custody to a third party. However, since all the parties got possession of the premises only for a temporary period till this Court

intervened by directing the police to keep the key of the premises for some period and thereafter, directing Mr. S.C. Shah, the counsel to take custody of the key on behalf of the Court, this Court is constrained to decide the issue, while disposing of all the applications including the main petition, as to who is entitled to have the key and the possession of the premises.

42. It is also brought to the notice that both the petitioner Santhosh Agarwal and the original tenants Dalichand and Jayanthilal, the respondents 2 and 3 filed separate suits with reference to the question of possession of this premises. Therefore, this Court is called upon to decide the question as to whom the key has to be handed over till the final decision is taken by the competent Civil Court, since the said decision requires the appreciation of evidence and factual finding by the Civil Court.

43. Bearing this in mind, let me now go into the merits of the case of each of the parties who have putforth their respective pleas before the Court.

44. I shall first take the case of Santhosh Agarwal, who is the petitioner in the main petition.

45. In this petition, he filed an affidavit on 9.7.1997 contending as follows:-

Santhosh Agarwal is a tenant under one T. Vilas from 29.4.1997 under a rental agreement. On 8.7.1997 one Dalichand, Hitesh, Ramesh and Jayantilal and 3 others trespassed into the premises and attacked him. He gave a complaint to the police. The same was registered as a petition in No.54/97. The Inspector of Police locked the premises and kept the key with him. Since there was no proper action by police, the investigation must be handed over from the local police to the Crime Branch C.I.D. Pending disposal of the main petition, the key shall be directed to be handed over to the petitioner.

46. Along with the said affidavit, he filed a rental agreement dated 29.4.1997 entered into between T. Vilas, the landlord and himself. The complaint copy also was enclosed. In the said complaint, it was stated that in pursuance of the rental agreement dated 29.4.1997 he was staying in the premises and doing the catering business from 1.5.1997 and that on 8.7.1997 at about 12.00 noon Dalichand and others, the former tenants trespassed into the house and asked the petitioner to vacate the premises and attacked him.

47. On 11.7.1997 the petitioner Santhosh Agarwal filed a suit in O.S.No.4699 of 1997 against the landlord T. Vilas seeking permanent injunction restraining the said landlord and his men from interfering with his possession of the property in question. In the affidavit filed along with the plaint he stated as follows:—

Santhosh Agarwal, the plaintiff is the tenant under T.Vilas as per the rental agreement dated 29.4.1997. He has paid the advance of Rs.25,000/-. He has been paying Rs.1,500/- per month as rent as per the agreement. The said landlord violating the terms and conditions of the rental agreement began to demand enhanced rent of Rs.5,000/- per month. When the plaintiff refused to

pay the enhanced sum, on 8.7.1997 the defendant, the landlord with the help of his men attacked him and threatened to kill him, if the plaintiff does not vacate the premises immediately. Therefore, he sought for permanent injunction as against the landlord.

48. He also filed application in I.A.No. 12666 of 1997 seeking temporary injunction as against the landlord. In the typed set filed along with the plaint, he filed the complaint copy which was given by the petitioner to police. In the said complaint, there is no allegation against the landlord. But as stated earlier, the complaint which was registered as Petition No.54/97 was only against the former tenants under T. Vilas, the landlord. Thus, the perusal of the plaint and affidavit filed in the suit would make it clear that Santhosh Agarwal, the petitioner herein has given a different picture before the Civil Court, as if the landlord gave trouble and disturbed his possession and sought for permanent injunction against the landlord without showing the alleged accused mentioned in the complaint given by the petitioner to the police on 8.7.1997 as defendants. Furthermore, the complaint given on 8.7.1997 by the petitioner as against the former tenants Dalichand and others was used as one of the documents in the suit filed by the petitioner against the landlord, as if he gave a complaint against the landlord to the police.

49. On the basis of this affidavit, the documents and the plaint, the learned VII Assistant Judge also granted interim injunction as against the landlord. In the affidavit filed before this Court in Crl. O.P.No.8926 of 1997 on 9.7.1997 he stated that he was disturbed by Dalichand and others and the matter was enquired by the police, that his landlord T.Vilas appeared in person and gave a statement in favour of the petitioner stating that he was staying lawfully in the premises belonged to him under the rental agreement, as permitted by him. Either in the affidavit filed before this Court on 9.7.1997 or in the complaint given to the police on 8.7.1997, the petitioner did not whisper anything against the landlord, as if he disturbed his possession. On the other hand, he mentioned in the said affidavit that the landlord T. Vilas supported his case by appearing in person and told the police that the petitioner has been in the premises on a lease agreement and produced the same to the police.

50. In the suit filed by the petitioner before the Civil Court on 11.7.1997 he did not give those particulars nor made the accused in the complaint, namely, Dalichand and others as defendants but made a statement in the affidavit filed before the Civil Court, as if the landlord only gave disturbance, despite the rental agreement dated 29.4.1997. It is clear from this that on the basis of these averments which are quite contra to the contents of the affidavit filed before this Court on 9.7.1997, the Civil Court also granted injunction in favour of the petitioner. The worst part of it is, one of the documents filed in the suit is the complaint by the petitioner to police which was given against Dalichand and not against the landlord. Therefore, the stand taken before this Court on 9.7.1997 in his affidavit is entirely contrary to his stand taken on 11.7.1997 before the Civil

Court, which granted the injunction in favour of the petitioner as against landlords.

51. In this context, it is to be noticed that he stated in the plaint that as per the rental agreement dated 29.4.1997 the-possession was delivered by the defendant/landlord on 29.4.1997 for

the period of tenancy for 11 months from 1.5.1997 to 31.3.1998. Both in the affidavit and the plaint, he stated that he has been residing and doing the catering business from 1.5.1997. It is further stated that since he was disturbed by the landlord before the expiry of the lease period upto 31.3.1998 by seeking enhanced rent of Rs.5,000/, he approached the Civil Court for injunction against the landlord. As indicated earlier, this is not the stand taken by the petitioner either before the police on 8.7.1997, when he gave the complaint or before this Court on 9.7.1997. when he filed the affidavit in Crl. O.P.No.8926 of 1997.

52. While referring about the contradictory stand taken by the petitioner as referred to above, this Court is to take note of yet another stand taken by the petitioner in his subsequent applications to recall the warrant and to grant bail in Crl.M.P.Nos.5496 and 5654 of 1996.

53. The stand taken by the petitioner in these applications is as follows:-

The petitioner was in possession and enjoyment of the property in his status as sub tenant. Later, the landlord recognised him as a direct tenant in respect of the premises. After getting the interim direction for possession of the key of the premises from this Hon"ble Court dated 11 7.1997, he surrendered possession on 10.9.1997 voluntarily on his own accord to the landlord Vilas. Thereafter, he left for his native village Didwana in Rajasthan.

54. It is to be noted at this juncture that this stand now taken by the petitioner in these applications filed on 7.8.1998 and 13.8.1998 staling that he was a sub-tenant originally and he was subsequently recognised as a direct tenant by the landlord was never raised by him in any of the earlier documents either before the police or before this Court or before the Civil Court.

55. Furthermore, in the affidavits filed before this Court in Crl. M.P.Nos. 5496 of 1998 and 5654 of 1998, the details such as, when he became the sub-tenant and under whom, when he became the direct tenant under the landlords and how he got the possession of the premises and from whom he got the possession have not been mentioned. It is also obvious that in these affidavits he never mentioned about the alleged disturbance by the landlord as he stated before the Civil Court.

56. Furthermore, it is stated in the affidavit in Crl.M.P. No. 5496 of 1998 seeking to recall warrant that Dalichand and Jayanthilal were contemplating to interfere with his possession which warranted the action in law and that therefore, he had secured an order of injunction in the Civil Court. These wordings in the affidavit would mean that since he was disturbed by Dalichand and Jayanthilal, the

original tenants, he approached the Civil Court as against them. But, this is not factually true.

57. As stated earlier, the petitioner did not file any suit against the said Dalichand and Jayanthilal, but only against the landlord and obtained injunction. This would show that he has not only taken a different stand in this affidavit, but also gave false particulars as if he filed a suit against Dalichand and Jayanthilal and obtained an order of injunction.

58. The above discussion would clearly reveal that the petitioner Santhosh Agarwal has been taking various stands at various stages, in order to hoodwink the Courts of Law to obtain some orders in his favour.

59. That apart, I shall expose yet another misconduct shown by the petitioner, who has given scant respect to the Court by causing lot of inconvenience.

60. As noticed earlier, on 11.7.1997 the interim order was passed by this Court in favour of the petitioner. When the matter was taken up for hearing on 24.11.1997, this Court felt that the first respondent-police can keep the key of the premises with them, since the earlier interim order was passed without hearing Dalichand who claimed that he is entitled to the possession as original tenant. Therefore, Mr. A. Thiagarajan, the counsel for the petitioner was directed to hand over the key to police pending disposal of the main matter.

61. On 26.11.1997 Mr. A/Thiagarajan, the counsel represented on the instruction of the petitioner's brother that the petitioner has left for Rajasthan and so he sought for one week's time to comply with the order. He also filed an application requesting time in Crl.M.P.No.6736 of 1997 on 28.11.1997. Accordingly, time was granted.

62. During this time, the counsel for the petitioner Mr. A. Thagarajan sent telegrams and registered letter to the party, but there was no response. So, on 2.12.1997 Mr. A. Thiagarajan, the counsel for the petitioner expressed inability to get the key because the party was in Rajasthan and requested this Court to direct the police officer to put the seal on the premises till he gets the key from the petitioner. Accordingly, the police was directed on 2.12.1997 to put the seal on the premises after taking inventory.

63. In the meantime, it is stated that the petitioner handed over the key of the premises to landlord T. Vilas, who in turn handed over the key to one Sekar, a new tenant, hereafter, the matter was adjourned to several dates, in order to enable the petitioner's counsel to get at the petitioner.

64. Ultimately, Mr. A. Thiagarajan through a Memo submitted on 26.2.1998 that all the efforts that he took to contact his client, the petitioner through his brother and telegrams and registered letters were proved to be in vain and that he was not in a position to state anything about him.

65. This Court, taking serious view of the conduct of the petitioner, in having

obtained the key of the premises in pursuance of the interim order, in handing over the key to the landlord without the permission of the Court and in absconding even without intimating his counsel, in order to avoid the further course of proceedings before this Court, was constrained to issue warrant to the Commissioner of Police to arrest the petitioner and produce before this Court by order dated 26.2.1998. In pursuance of this order, the Commissioner of Police constituted a Special Team to go to Rajasthan and to execute the warrant. From February 1998 to August 1998 the Special Team constituted by the Commissioner of Police took efforts for arresting the petitioner in Rajasthan and went to several places taking strain and pain in order to secure the petitioner.

66. In the meantime, the counsel for the other respondents filed several applications raising several grounds insisting for the disposal of those applications. However, this Court felt that the presence of the petitioner is quite essential before this Court for disposal of the main petition as well as other applications and so, gave further time to the Commissioner of Police to execute the warrant.

67. It is also to be noted that while interrogating the brother of the petitioner by the police, in order to know about the whereabouts of the petitioner, the brother of the petitioner sent letters to this Court objecting to the efforts of the police in searching for the petitioner and interrogating the relatives of the petitioner.

68. In the meantime, with fond hope of seeing the result of the direction issued by this Court for securing the presence of the petitioner to the police, the matter was periodically adjourned to several dates and Mr. Shah, the counsel for one of the parties, was asked to keep the key of the premises as Court custody. Ultimately, after six months, i.e. on 7.8.1998 the petitioner Santhosh Agarwal surrendered before this Court through a new counsel Mr. R. Thiagarajan with an application to recall the warrant.

69. When the original counsel Mr. A. Thiagarajan has been regularly appearing on his behalf on every hearing, the petitioner did not choose to contact him to explain the circumstances under which he left for Rajasthan. When the name of the original counsel Mr. A. Thiagarajan was still in the list as the counsel for the petitioner, the new counsel Mr. R. Thiagarajan chose to appear for the petitioner by filing two applications in CrI.M.P.No.5496 of 1998 for recalling the warrant and CrI. M.P.No.5654 of 1998 for bail.

70. There is no reason as to why the petitioner had to engage a new counsel, while the original counsel's appearance was not cancelled. The new counsel Mr. R. Thiagarajan, in my view, ought to have advised the petitioner to get a change of vakalat from Mr. A. Thiagarajan or the petitioner must have been asked to engage the same counsel Mr. A. Thiagarajan.

71. It cannot be debated that the choice of the lawyers is purely at the hands of the clients. It is everybody's right to choose his own Lawyer. But, it does not mean that the petitioner could change the Lawyers at his will and pleasure at any

time without following the procedure. If on any reason known to the petitioner, the petitioner chooses the new Lawyer, he has to obtain a change of vakalat from the erstwhile Lawyer. If such a request is made to the Lawyer, who already appeared, no Lawyer would say that he would not give such a change of vakalat.

72. Similarly, the Lawyers who are approached in a pending matter, normally, would ask the parties about the consent of former counsel and would not incline to accept the brief, unless they get the change of vakalat from the counsel who already entered appearance.

73. Thus, the petitioner not only gave scant respect to the orders of this Court, but also did give a similar treatment to his erstwhile counsel who fought for him and got an interim order in his favour. This act on the part of the petitioner is highly condemnable. I am of the view that the Lawyers, who have been approached in a part-heard matter, should have advised the party and pointed out to them relating to the procedure to be followed for a change of vakalat. However, I do not want to comment more upon this, because less said is better.

74. Yet another aspect is to be noticed in this case. The suit was filed by the petitioner against the landlords on 11.7.1997. According to him, he surrendered possession to the landlords on 10.9.1997 even though the main petition is pending before this Court. If the petitioner wants to settle once for all in Rajasthan, he must have contacted the counsel Mr. A. Thiagarajan and informed him about the handing over of the possession and informed one Mr. Aravind, the counsel appearing in the civil suit about the settlement out of Court. This was not done by the petitioner for the reasons best known to him. On the other hand, the petitioner surrendered before this Court on 7.8.1998 and was released on bail on 13.8.1998. Thereafter, he made an endorsement in the civil Court records in O.S.No.4699 of 1997 stating that the advance amount was received, the matter was settled, the possession was delivered to the defendant on 10.9.1997 and the suit may be dismissed as settled out of Court.

75. The Civil Court records summoned by this Court for verification would show that the defendant T. Vilas also signed by endorsing that he is not pressing for the costs. It is also seen from the records that the said T. Vilas filed a written statement in the said suit that the plaintiff delivered vacant possession after taking compensation of Rs.25,000/- and as such, suit has become infructuous.

76. Curiously, Mr.Aravind, the counsel who is appearing for the petitioner in the civil suit has not made any endorsement identifying the petitioner for the suit endorsement of requesting the Court to dismiss the suit on 17.8.1998.

77. These things would go to show that the petitioner has not only obtained interim order from various Courts by taking different stands but also acted in a most irresponsible manner. Therefore, his plea supporting landlords cannot be accepted.

78. Let me now go to the claim of the landlords T. Vilas and T. Deepak, the

respondents 4 and 5.

79. The case of the landlords as projected through the affidavits filed in Crl. M.P.Nos.6706 of 1997, 6105 of 1997, 1051 of 1998, 2457 to 2459 of 1998 and 6328 of 1998 could be summarised as follows:-

The landlords T. Vilas and T. Deepak purchased the premises in question. Dalichand and another were the chief tenants under them. They had sublet tenancy portion to Santhosh Agarwal as subtenant. The said sub-letting was unauthorised as it was without consent of the landlords in any form. Since Dalichand and another had sub-let the premises unauthorisedly to Santhosh Agarwal and the said Santhosh Agarwal was in actual physical possession of the premises, the landlords recognised the said sub-tenant as a direct tenant. They also entered into a rental agreement with him. The chief tenants stopped sending the rent from 1.3.1997 to the landlords. There was some misunderstanding between the chief tenants Dalichand and another and sub-tenant Santhosh Agarwal. Since the possession of Santhosh Agarwal was disturbed by Dalichand and another, Santhosh Agarwal gave a complaint to the police. On application being filed by Santhosh Agarwal, this Hon"ble Court in an interim application directed the key to be handed over to the said Santhosh Agarwal. Therefore, it is clearly a case of restoration of possession to a person who was in lawful possession. The said order by this Court was a final order. Thereafter, the sub-tenant who was recognised as a direct tenant by the landlords surrendered possession to the landlords. Where a sub-tenant surrenders possession to the paramount landlord, as in the present case, the chief tenant ipso facto goes out of the picture. The remedy of the chief tenant is only, if any, by way of damages. Since the chief tenants, namely, Dalichand and another were not in actual physical possession, they have no right to invoke the jurisdiction of criminal Court on the allegation that they were dispossessed. Therefore, the interim order passed on 11.7.1997 must be declared to be a final order and the chief tenants shall be directed to invoke civil jurisdiction to get their grievances, if any, redressed.

80. From these factors mentioned in these affidavits filed by the landlords, it is clear that the landlords admitted that Dalichand and another were the chief tenants under them. It is also mentioned that the chief tenants without the permission of the landlords, sub-let the premises to Santhosh Agarwal.

81. However, there are no details in these affidavits filed by the landlords as to when he was recognised as a direct tenant under the landlords and whether the same was intimated to the chief tenants. At any rate, as stated earlier, Santhosh Agarwal has not stated anything about the sub tenancy either in the earlier complaint given to the police on 8.7.1997 or in the affidavit filed before this Court in the main petition on 9.7.1997.

82. It is not the case of Santhosh Agarwal even in the civil suit filed against the landlord that he was a sub-tenant under Dalichand originally and thereafter, he

was recognised as a direct tenant by the landlords. As a matter of fact, in the complaint given to the police, in the affidavit filed before this Court in the main petition and the plaint and the affidavit filed before the civil Court he stated that he has been residing and carrying on the catering business in the premises in question from 1.5.1997 onwards, in pursuance of a rental agreement between Santhosh Agarwal and the landlords entered into between them on 29.4.1997. Moreover, there is no material produced along with this affidavit to show that Santhosh Agarwal was a sub-tenant under Dalichand and another who were the tenants under the landlords without any authorisation by the landlords.

83. These things have also not been stated in the agreement entered into between Santhosh Agarwal and the landlords on 29.4.1997. On the other hand, it is mentioned in the plaint that the possession of the premises was delivered by the landlords, the defendants on 29.4.1997 to the said Santhosh Agarwal.

84. In such circumstances, it is not understandable as to how the possession was handed over by the landlords to Santhosh Agarwal as stated in the plaint and agreement, in the absence of any material to show that the possession by Dalichand was handed over to the landlords.

85. At any rate, it is the specific stand of the landlords that once the landlords took possession from the sub-tenant, the chief tenant cannot be in the picture and he has to go to civil Court only for damages and he cannot ask for the possession of the premises from the landlords.

86. In this context, it is to be remembered that Santhosh Agarwal has never said in any of the application either before the police or before this Court or before the Civil Court that he was a sub-tenant under the Chief tenant. Curiously, the said Santhosh Agarwal for the first time has come forward with the said plea only on 7.8.1998, the date of his surrender before this Court with an application for recalling the warrant by engaging some other counsel.

87. In this situation, it is very difficult to hold that Santhosh Agarwal as a sub-tenant handed over the possession to the landlords subsequent to the interim orders passed by this Court on 11.7.1997, more so, when there is no material to show that Santhosh Agarwal took possession from Dalichand as sub-tenant and also to show that the said Santhosh Agarwal was recognised thereafter as a direct tenant by the landlords. Furthermore according to Santhosh Agarwal, he delivered possession on 10.9.1997 after getting back the deposit amount from the landlords.

88. In the suit as stated earlier, he mentioned that he was disturbed by the landlords after getting the deposit of Rs.25,000/- for the lease period upto 31.3.1998 by demanding the enhanced amount of rent. The endorsement made in the suit records on 17.8.1998 shows that he got the security deposit back from the landlords. On the other hand, in the written statement filed by the landlords on 3.4.1998 it is stated that Santhosh Agarwal vacated the premises and handed over the possession to the landlords on receipt of Rs.25,000/- from

the landlords as compensation. This also would show that both Santhosh Agarwal and the landlords are not taking consistent stand which makes this Court to feel the claims of both these persons are genuine.

89. In order to appreciate further on this fact, it would be more appropriate to refer to the particulars, culled out by the police during the course of investigation. The respondent-police filed three counters on 9.12.1997, 16.12.1997 and 12.8.1998. The contents of the statements made by the police are these:-

Santhosh Agarwal gave a complaint on 8.7.1997 against Dalichand and others, as if they trespassed into his rental premises and threatened him to evict the premises. After receipt of the said complaint, it was found that the key of the premises was in possession of one Ramesh. As per the interim order of this Court dated 11.7.1997, the police opened the lock of the premises and handed over the possession to Santhosh Agarwal after inventory. The complaint given by the said Santhosh Agarwal was investigated into and the said investigation revealed that Santhosh Agarwal was not the tenant and he was not doing any catering business. He was in collusion with the landlords and he was a tool at the hands of the landlords and the contents of the complaint were found to be false in the investigation.

90. Not only that. Having obtained the interim order to have the interim custody of the premises with key pending disposal of the main petition, the petitioner absented himself from this Court, thereby preventing this Court from deciding the main issue in the main petition, after handing over the possession of the premises to the landlords without getting any permission whatsoever from the Court.

91. Thus, the materials, as referred to earlier, would make it clear that the petitioner Santhosh Agarwal has given a false statement before the Civil Court and obtained interim injunction and also made a false affidavit before this Court and obtained interim order probably to help the landlords.

92. The landlords having obtained the possession from Santhosh Agarwal by getting the key, at least, would have impleaded themselves as main parties immediately after 10.9.1997 requesting this Court to pass a final order.

93. On the other hand, the landlords thought it fit to file the impleading petition only on 28.11.1997, long after the application by Dalichand and another was filed for impleading as respondents on 20.7.1997. Furthermore, the counsel for the landlords insisted this Court to pass an order to decide the preliminary issue by declaring that the earlier interim order was a final order and as such, the said order cannot be reviewed in the main petition.

94. As indicated above, there was no claim initially by any of the parties that Santhosh Agarwal was originally a sub-tenant under

Dalichand and thereafter he became a direct tenant under the landlords. Only on

28.11.1997, the landlords in their impleading petition before this Court would state that Santhosh Agarwal was a sub-tenant under Dalichand and thereafter, he was recognised as a direct tenant, as the sub-tenancy was an unauthorised one. Therefore, the submission of the respondents 2 and 3 that the theory of sub-tenancy is a new theory belatedly introduced by the landlords to suit their convenience cannot be rejected.

95. Now, let me deal with the claim of the original tenants Dalichand and Jayanthilal, the respondents 2 and 3 herein.

96. As per the affidavits in Crl.M.P. Nos.6105 and 6106 of 1997, the plaint and affidavits in O.S.No.4705 of 1997 and the counter affidavits in Crl.M.P.Nos.2457 to 2459 of 1998 filed by them, the case of the original tenants, namely, Dalichand and Jayanthilal could be summarised as follows:

(a) In the year 1978 Dalichand became the tenant of the premises in question under one Sakunthala for residential purpose on a rental agreement. On a fresh agreement entered into between them in the year 1987 the premises was used by Dalichand for non-residential purpose also. On 17.10.1996, the landlords T.Vilas and Deepak sent a letter to Dalichand stating that they purchased the premises from the said Sakunthala, the original owner on 16.10.1996 and requesting Dalichand to remit the monthly rent to them for the future months. Dalichand received a letter giving the said intimation from the said Sakunthala also. Therefore, from November, 1996, Dalichand began to pay the rent to the new landlords. Though they received the rent, they did not issue the receipts. When Dalichand insisted for the receipts, the landlords not only refused to give receipts, but also threatened to evict him by force.

(b) On 5.7.1997, after business hour was over, Dalichand locked the premises and went away. 6.7.1997 and 7.7.1997 were holidays. When he came to the business premises on 8.7.1997, to his shock and surprise, he found that the locked premises was broken open and the articles like medicines worth about Rs. 1,75,000/- were stolen. Immediately, he gave a complaint to police against landlords. There was no action. So, on 11.7.1997 he filed a suit in O.S.No.4705 of 1997 before the City Civil Court against the landlords for permanent injunction. He also filed an application for temporary injunction on the basis of various documents giving the materials to show that the landlords received the rent from Dalichand through cheque till June, 1997. In the meantime, one Santhosh Agarwal entered the caveat. Therefore, notice was ordered. At that time, they did not know who is Santhosh Agarwal.

(c) Only thereafter they came to know that the landlords having failed in their attempt to evict Dalichand, set up Santhosh Agarwal, as if he was a sub-tenant under Dalichand and thereafter, he was made to give a false complaint to the police against Dalichand and others and obtained the key through the interim order passed by this Court. Relating to me trespass and theft of the articles belonged to Dalichand from his business premises, he gave a complaint on

14.7.1997 to the Commissioner of Police against the landlords. He also gave another complaint on 30.7.1997 to the Joint Commissioner of Police. But, there was no action. Therefore, they filed an impleading petition on 20.10.1997 and asked for the direction that the key to be handed over to them.

(d) There are records to show that Dalichand was recognised as a tenant by the present landlords, the respondents 4 and 5, whereas there is no material to show that Dalichand, at any time, sub-let the premises to Santhosh Agarwal without the consent of the landlords.

(e) Therefore, Dalichand and Jayanthilal alone are the real tenants, who are entitled to get the key so as to have the lawful possession of the premises till they are evicted under due process of law.

97. To substantiate his claim, Dalichand filed several documents to show that he is the tenant under the landlords and there was exchange of notices between the said Dalichand and the landlords.

98. It is the consistent stand taken by Dalichand in all the petitions, counter, plaint and affidavit filed by him that he is only the tenant and on 5.7.1997, he closed his business premises and came back on 8.7.1997 to open the shop premises and found that the lock of the shop was broken open and the articles belonged to him have been taken away.

99. However, according to him, he filed a complaint to the Commissioner of Police only on 14.7.1997 and to the Joint Commissioner of Police on 30.7.1997. It is true that the Civil Court records summoned by this Court reveal that the tenant Dalichand filed a suit against the landlords on 11.7.1997 in O.S.No.4705 of 1997 for permanent injunction. As stated earlier, there is no interim injunction ordered, as there was a caveat by Santhosh Agarwal. However, it is seen from the Civil Court records that Dalichand obtained an ex parte interim injunction on 1.10.1997, but, subsequently, on the application filed on 21.10.1997 by the landlords, the ex parte injunction was vacated on 8.12.1997.

100. It is an admitted fact that on 8.7.1997, i.e., the date of occurrence, neither the suit was pending nor Dalichand obtained any interim injunction in his favour. It is also to be noticed that when Dalichand found that there was a forcible eviction by the landlords, there is no material to show that Dalichand gave any complaint to the police. Though it is stated in the affidavit by Dalichand that he gave a complaint on 8.9.1997 and the police refused to receive it, there is no material for the same. There is also no explanation as to why he did not approach the higher authorities to seek for action against the forcible eviction forthwith.

101. Furthermore, as per the police case diary, after the alleged occurrence on 8.7.1997, SJanthosh Agarwal gave a complaint against Dalichand and others and the same was treated as a petition and on the same day, since there was a quarrel between Ramesh, the nephew of Dalichand and Santhosh Agarwal, a

case was registered u/s 75 of the City Police Act. As it is, there is no record to show that on that date itself Ramesh or Dalichand had given any complaint regarding the forcible eviction and theft to the local police or to the Commissioner of Police.

102. Moreover, there are also no materials available on record as on date to show that Dalichand gave a complaint on 14.7.1997 to the Commissioner of Police and on 30.7.1997 to the Joint Commissioner of Police. The first respondent-police did not refer about the alleged complaints in their counter. The perusal of case diary also would not reveal any such thing. In this situation, this Court is not able to see any reason as to why Dalichand claiming to be a tenant did not take immediate action at least by filing petition before this Court for direction to the police to receive the complaint and take action, immediately after the occurrence.

103. As pointed out by the learned counsel for the landlords, Dalichand filed an impleading petition before this Court to hand over the key of the premises only on 20.10.1997, nearly after three months. As stated earlier, the interim order was passed on 11.7.1997. In pursuance of the said interim order, the police opened the premises and took inventory and handed over the possession of the premises to Santhosh Agarwal.

104. It is relevant to note that it was represented by the police through the Public Prosecutor before this Court that on that day the key of the premises was with Ramesh, the nephew of Dalichand. If Dalichand wanted to take immediate action against the alleged forcible eviction through Santhosh Agarwal, he could have immediately approached this Court to modify the order passed on 11.7.1997 claiming possession stating that the key was with him. Till now, no explanation has been offered as to why Dalichand belatedly filed the impleading application nearly after three months, i.e. on 20.10.1997.

105. Therefore, even though there are materials to show that he is the original tenant under the landlords and there are no materials to establish that Santhosh Agarwal was sup-tenant under Dalichand, this Court is not able to come to the conclusion that the said Dalichand was in legal possession of the premises on 8.7.1997. If this

Court is not able to find out the same, then the question of handing over the possession of the premises to Dalichand would not arise. Furthermore, this Court feels that the question as to whether he was in legal possession of the premises in question on the said day has to be necessarily decided by the civil Court, particularly when Dalichand has filed a suit in O.S.No.4705 of 1997 before the City Civil Court, Madras claiming legal and actual possession as a tenant.

106. But, one aspect is very clear. As stated above, Santhosh Agarwal, the petitioner herein claiming as a tenant under the landlords filed a suit in O.S. No.4699 of 1997 for permanent injunction without adding Dalichand as one of the defendants. The sub-tenancy also has not been referred to in the said plaint.

In the same way, in the suit filed by Dalichand in O.S.No.4705 of 1997 against the landlords, there is neither reference about the sub-tenancy nor any mention about Santhosh Agarwal. Then, why should there be a caveat filed by Santhosh Agarwal against Dalichand in a suit filed by him? No answer for this.

107. But, merely because the petitioner is not able to establish that he was the sub-tenant and the landlords T. Vilas and Deepak are not able to prove that they validly recognised the sub-tenant as a direct tenant, this Court is not inclined to straightaway hand over the key of the premises to Dalichand, who also came to the Court belatedly.

108. The above facts would reveal that no parties in this petition has come before this Court with clean hands. Every party wanted to get some orders or the other in their favour, in order to get the possession of the premises.

109. In view of the above discussion, the contention urged by Sekar in the impleading petition in Crl. M.P.No.6893 of 1997 that the portion of the premises was handed over by the landlords, in pursuance of the subsequent rental agreement, cannot hold good, more particularly when this Court has arrived at a conclusion that Santhosh Agarwal, the petitioner herein could not validly surrender the possession to the landlords pending disposal of the main petition without getting any permission from this Court. Therefore, it is not possible for directing the key to be handed over to the said Sekar.

110. Yet another disturbing feature is that after the issue of warrant by this Court dated 26.2.1998 and prior to the filing of the application to recall the warrant by the petitioner on 3.8.1998, this Court received several letters threatening this Court against the issue of the said warrant in some names. However, the petitioner has filed an affidavit before this Court on 9.8.1998 expressing unconditional apology for what happened earlier. He would state in the said affidavit as follows:

It appears that there were certain communications addressed to this Hon'ble Court and other Authorities about which the petitioner has no knowledge and the said letters were not written by the petitioner and the petitioner expresses his deep anguish and regret for the unpleasant events which has happened behind the back of the petitioner.

So in view of this, I do not propose to give any importance to the said threatening letters addressed to this Court.

111. As indicated earlier, the plea of the petitioner before the civil Court as against the landlord in the suit in O.S.No.4699 of 1997 filed on 11.7.1997 is that he was threatened and disturbed by the landlord. Though the landlord, the defendant in the said suit, filed the written statement, he did not choose to deny the said averments. On the other hand, the landlord would simply state that already the plaintiff, the petitioner herein vacated the premises and surrendered the possession to the landlord/defendant after obtaining compensation.

112. But, it is the case of the petitioner before this Court that he became the tenant of landlord and surrendered possession to him after obtaining the interim order from this Court and got back his advance deposit from the landlord. Therefore, the submission made by Dalichand that Santhosh Agarwal has been set up by the landlord to file a complaint and to file a suit, in order to get the interim orders from this Court as well as from the civil Court to get possession of the premises in an illegal manner, cannot be ruled out.

113. It is to be noted in this context that the police also in the investigation concluded that both Santhosh Agarwal and Sekar are the tools at the hands of the landlords.

114. In a similar circumstance, this Court in *Ammuga Selvi v. The Assistant Superintendent of Police* (1989 L.W. (Cri.) 58) would hold that in a case of glaring injustice brought to the notice of the Court, shocking its conscience, the court cannot be rendered helpless, especially when there has been a clear misuse of the judicial proceedings by filing an application with false particulars before this Court to obtain interim order and also by filing a civil suit by giving out a different statement, in a case which ought to have been properly dealt with by the civil Court.

115. With regard to the powers u/s 482 Cr. P.C., the counsel for all the parties have placed several authorities. However, u/s 482 Cr.P.C, nothing can affect the exercise of the inherent powers by this Court to make such orders to secure the ends of justice, though the powers may have to be exercised sparingly and to prevent miscarriage of justice.

116. Though this Court u/s 482 Cr.P.C. can direct the key to be handed over to the original tenant, viz., Dalichand, since the powers of the Court are wide as held by the Supreme Court in *State of Haryana and others Vs. Ch. Bhajan Lal and others*, this Court is not inclined to pass such orders, since the case of the landlords is that Santhosh Agarwal was made as a sub-tenant by Dalichand without consent of the land-lords and thereafter, sub-tenant was recognised as direct tenant under him and fresh rental agreement was entered into between Santhosh Agarwal and the landlords, whereas the case of Dalichand is that Santhosh Agarwal was never a sub-tenant under him and Santhosh Agarwal was set up by landlords to get some

interim orders from the Courts, in order to get the possession in a bid to evict Dalichand without following the due process of law.

117. The case diary would reveal that there was a fight between Ramesh, the nephew of Dalichand and Santhosh Agarwal causing breach of public peace and the case was registered u/s 75 of the City Police Act. If there was such a fight between two parties with reference to the possession of the property, the police ought to have found out who is in lawful possession and given protection to them. If the police officer is not able to find out the same, he has to refer the matter to the Executive Magistrate to initiate proceedings u/s 145 of Cr.P.C.

Without doing this, the police officer simply registered the case u/s 75 of the City Police Act.

118. In view of the above situation, this Court is not able to accept the contention of either side. It may be that Dalichand would have vacated the premises and put sub-tenant Santhosh Agarwal in the said premises without the consent of the landlords and that subsequently, after some period Santhosh Agarwal would have shifted his loyalty to the landlords and entered into rental agreement with them or it may be that the landlords would have set up Santhosh Agarwal as a tenant in the premises, in order to show that he obtained possession from him without going to the court to evict the original tenant by following due process of law. However, on the materials available on record, this Court is not able to decide as to whose contention is true.

119. In view of the peculiar situation, as held by this Court (Hon'ble Arunachalam, J. (as he then was) in *Hindu Munnani v. Commissioner of Police, Madras* (1994 (1) L.W. (Cri.) 352, the powers under Article 227 of the Constitution can also be invoked to pass suitable orders in order to secure the ends of justice. Moreover, when an illegality so patent is brought to the notice of this Court, this Court will have to act to prevent the failure of justice by giving directions to the civil Court as well as to the parties, while exercising the powers of superintendence over all courts.

120. As I already stated, in view of the further development, the only authority which could decide about the lawful possession by granting the required relief is the civil Court where, admittedly both the suits, viz., O.S.No.4699 of 1997 on the file of VII Assistant Judge and O.S.No.4705 of 1997 on the file of XVII Assistant Judge, are pending. In fact, though the plaintiff and the defendant made endorsement in the suit in O.S.No.4699 of 1997 filed by Santhosh Agarwal stating that the suit may be dismissed as settled out of Court, there is no final order passed yet by the civil Court on the basis of the said endorsement.

121. Therefore, I deem it appropriate to direct the Principal Sessions Judge, Chennai to have both the suits ,viz., O.S.No.4699 of 1997 on the file of VII Assistant Judge and O.S.No.4705 of 1997 on the file of XVII Assistant Judge to be taken for enquiry and disposal by any one of the above said Courts to enable it to pass appropriate orders after allowing the parties to let in evidence and by deciding the various issues to be framed by the said civil Court.

122. It is also open to the parties before this Court, who were not the parties in the civil suits, to approach the said Court to implead themselves as parties, in order to make their respective claims and seek the appropriate reliefs.

123. I also deem it fit to direct Mr. S.C.Shah, the counsel who is keeping the key of the premises on behalf of the Court to continue to keep the key with him till the alternative arrangement is made by the said Civil Court as interim measure or till the final order is passed in uiese suits. If Mr. Shah feels embarrassed to keep the key on behalf of the Court, since he is appearing for the landlords, it

may be reported to the said Civil Court, which in turn, would pass orders making alternative arrangement pending the suits.

124. In view of the conduct of the petitioner, as shown above, I think it fit to impose costs on the petitioner Santhosh Agarwal. It is noticed that while gating bail, this Court directed the petitioner to deposit the cash security of Rs. 10,000/- in this Court So, in view of my above

conclusion, the cash already deposited as security by the petitioner can be treated as costs and the same to be given to the erstwhile counsel for the petitioner Mr. A. Thiagarajan, as counsel fee. Therefore, the said cash shall be immediately handed over to the erstwhile counsel Mr. A. Thiagarajan. This Court places on record the services rendered by Mr. A. Thiagarajan.

125. The observations above made would only confine to the disposal of this matter. Therefore, the Civil Court is directed to have the disposal of both the suits on the basis of the materials placed before the said Court.

126. With these observations, this petition is disposed of. In view of this order passed in the main petition, no orders are necessary in the connected Crl. M.Ps.

127. After the pronouncement of the order, the counsel for parties requested that the Civil Court may be directed to consider the applications for amendment of the pleadings. Accordingly, the Civil Court shall consider me applications, if any, for amendment of the pleadings of the respective parties.