

(2003) 01 MAD CK 0116

In the Madras High Court

Case No : Criminal Revision Petition No. 485 of 2000

D. Stalin

APPELLANT

Vs

M. Selvamani and S. Seethalakshmi

RESPONDENT

Date of Decision : 31-01-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 17(3), 33

Citation : (2005) 2 RCR(Criminal) 697 : (2005) 1 RCR(Rent) 610

Hon'ble Judges : A. Packiaraj, J

Bench : Single Bench

Advocate : S. Krishnamurthy, for the Appellant; K. Asokan, for N. Nirmal Kumar, for the Respondent

Judgement

A. Packiaraj, J.—This revision has been filed against the orders passed by the XV Metropolitan Magistrate, George Town, Madras in

unnumbered CC /2000, by making an endorsement ""This court has got no power to try cases under Tamil Nadu Buildings Lease & Rent Control

Act"" and returning the complaint.

2. The brief facts of the case is as follows:-

a)The petitioner was a tenant under the respondents and it appears that there was some misunderstanding between the two, as a result of which,

the respondents had severed electricity connection and water supply. A police complaint was filed and subsequently, the power and water supply

were restored.

b)The respondents filed a petition to evict the petitioner herein. On an application filed by the petitioner herein, the VI Assistant City Civil Court

granted interim injunction on 30.03.2000 in I.A. No.3916 of 2000, restraining the

respondents/accused from interfering with the petitioner's

peaceful possession and enjoyment of the schedule property, except under due process of law.

c) In the meantime, the respondents filed RCOP No.470 of 2000 to evict the complainant petitioner from the premises and obtained an interim

direction under 17(3) of the Tamil Nadu Buildings, (Lease and Rent Control) Act, 1960. The petitioner preferred Crl.M.P. No.440 of 2000 to

restore the water and electricity supply and the same was duly served by process server and by courier service to the respondents herein. But in

spite of the same, the respondents/accused had not complied with the order and therefore, they were liable to be punished u/s 33 of the Tamil

Nadu Buildings, (Lease and Rent Control) Act, 1960.

d) Accordingly, a complaint was filed before the XV Metropolitan Magistrate, in which the present impugned order stating that the court has no

power to entertain such a complaint has been passed by the Magistrate and he had returned the petition.

3. Section 33 of the Tamil Nadu Buildings, (Lease and Rent Control) Act, 1960 reads as follows:-

If any persons contravenes any of the (Sub-sections (1), (1-A), (2), (4) and (5) of section 3) sub-section (4) of Section 3-A, subsections (1)(a)

and (2)(a) of Section 7, subsection (1) of Section 8, subsection(1) of Section 17, Section 21, subsection(2) of Section 22 or Section 32, or any

order under subsection(3) or subsection (3-A) of Section 10 or subsection (3) of Section 17, or any of the conditions in the notification issued u/s

29, he shall be punished with fine which may extend to two thousand rupees.

4. This section imposes punishment with fine to be levied on the person, who commits the offence. However the concerned Act is silent about the

court being empowered to take cognizance of the offence. In other words, there is no provision under the Act for the rent control court to take a

complaint on file.

5. According to the learned counsel, it is only section 190 Cr.P.C which authorizes the Magistrate to take cognizance. There are certain other

enactments where powers for certain courts have been vested to take cognizance, as in the case of special courts constituted to try offences

committed under the corruption Act, wherein the Special Judge is authorized to

take cognizance of the offence and in the case of offence under narcotic substances, the special court constituted under the NDPS Act is empowered to take cognizance of the offence. Therefore, in the absence of any specific provision in the Tamil Nadu Buildings (Lease and Rent) Control Act, enactment, it has to be construed that Cr.P.C alone applies in the absence of any non obstante clause. Hence a complaint could be filed only under the provisions of the Cr.P.C and accordingly, the present complaint has been filed.

6. I see considerable force in the argument of the learned counsel that such complaint is maintainable before the Magistrate. Though such particular point had not been decided by any court, it is seen that there are a number of cases that have been disposed of by this court wherein prosecutions have been filed against the accused under 33(1) of the Tamil Nadu Buildings, (Lease and Rent Control) Act, 1960 before the Magistrates. One such cases is the decision made in L. Vedagiri Vs. M.S. Devaraja Mudaliar reported in 1971 MLJ R 433 and another is a decision arrived at V. Jayalakshmi Vs. Mohammed Jaffer reported in 1977 TLNJ 373. Though there are number of such cases I do not wish to cite them. But the fact remains that cases have been filed on earlier occasions before the Metropolitan Magistrates and the High Court having occasion to deal with them has not stated that any such prosecution is not maintainable. Hence, I have to necessarily hold that such prosecutions are valid in law and consequently I hold that the magistrate is absolutely wrong in returning the complaint with such an endorsement.

7. In the result, I set aside the order of the learned Magistrate. However it has been brought to my notice that the petitioner does not wish to prosecute the case now as the accused has fallen ill. In addition, the petitioner has also vacated the premises and is not staying there. He has been agitating the matter solely for the purpose of settling the law regarding maintainability of such complaint before the magistrate, since according to the learned counsel, the magistrates are hesitant to entertain such a complaint. With the above observations, the revision is ordered accordingly.