

(2010) 10 MAD CK 0414

In the Madras High Court

Case No : Criminal O.P. No's. 4385 of 2002 and 23963 of 2003

R. Rajagopala Thondaiman and Others

APPELLANT

Vs

A. Ashok
Karthik V.R. Thondaiman, V.R. Thirumalai
Dorairaja, V.R. Ramachandra Dorairaja and S. Thanuskodi Vs
State

RESPONDENT

Date of Decision : 06-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144, 145, 156(3), 173, 190

Explosives Act, 1884 — Section 9

Penal Code, 1860 (IPC) — Section 109, 114, 120B, 143, 147

Citation : (2010) 10 MAD CK 0414

Hon'ble Judges : R. Mala, J

Bench : Single Bench

Advocate : R. Shanmugasundaram for A. Ahamath Bathusha, in Criminal O.P. No. 4385/2002 and Ramani Natarajan, in Criminal O.P. No. 23963/2003, for the Appellant; R. Venkateswaran in Crl. O.P. No. 4385/2002 and R.M. Anbunithi, Government Advocate (Crl. Side) in Crl. O.P. No. 23963/2003, for the Respondent

Final Decision : Allowed

Judgement

R. Mala, J.—The Petitioners in Crl.O.P. No. 4385 of 2002 have approached this Court with a prayer to call for the records in C.C. No. 265 of 2001 on the file of the Judicial Magistrate No. II, Trichy and to quash the proceedings.

2. The Petitioners in Crl.O.P. No. 23963 of 2003 have approached this Court with a prayer to direct the learned Judicial Magistrate No. II, Trichy, to try C.C. No. 640 of 2000 and C.C. No. 265 of 2001, pending on his file, in quick succession and render judgment on the same day.

3. Since the dispute involved in both the Crl.O.Ps., are inter-connected, they are decided together and disposed of by this common order.

4. The case of the Respondent-complainant-Ashok (in Crl.O.P. No. 4385 of 2002), is as follows:

(a) The complainant (Ashok) in C.C. No. 265 of 2001 on the file of the learned Judicial Magistrate No. II, Trichy, is working under one Karthick V.R. Thondaiman, S/o Vijayaraghava Thondaiman. A.1 Rajagopala Thondaiman is the adopted son of Late "Raja" Rajagopala Thondaiman, the Ex-Ruler of the then Pudukkottai State; the said Karthick V.R. Thondaiman and his family were residing in the Guest House within the Pudukkottai Palace Compound, within the limits of Cantonment Police Station, Trichy and since A.1 Rajagopala Thondaiman himself vacated the premises with the garden land, hoardings and gave the possession voluntarily, because the said Karthick Thondaiman was in peaceful possession of the property with access through the main gate on the road, which leads from the main gate of the Palace; it is further alleged that the family members and inmates of Chinna Bungalow (Guest House) were using the main gate on the main road in the Palace to go to the house without any interruption from time immemorial, particularly, during the life-time of "Raja" of Pudukkottai and also after his death; it is further alleged that the said Karthick V.R. Thondaiman was enjoying the entire stretch of the land peacefully and was collecting rents for the hoardings put up abetting the compound wall.

(b) On 23.2.2000 at about 9.00 a.m., when the complainant-Ashok was in the house, A.1 to A.5, i.e. the Petitioners 1 to 5 in CrI.O.P. No. 4385 of 2002 and A.8 trespassed into the land and surveyed the entire space and discussed about occupying the said area and so the complainant-Ashok questioned the fourth Petitioner/A.4/K.Sathyanathan, for which he told that they intended to sell the properties to A.8 and when the complainant-Ashok asked that how they could sell, when the property belonged to Karthick V.R. Thondaiman and they were in possession and enjoyment, Sathyanathan/A4 replied that they had already planned to take possession by force and Karthick V.R. Thondaiman could do nothing, since the Government and all functionaries are on their side and A.8 said that he could do wonders by using his position as a Member of Parliament and A.1 and A.2, i.e. the Petitioners 1 and 2 in CrI.O.P. No. 4385 of 2002 also told that they had already decided and nobody could stop them. A.3 to A.5, i.e. the Petitioners 3 to 5 in CrI.O.P. No. 4385 of 2002 threatened and told the complainant-Ashok (Respondent in CrI.O.P. No. 4385 of 2002) to mind his own business.

(c) It is further alleged that on 24.2.2000 at about 10.00 a.m., A.2 to A.5 trespassed into Karthick Thondaiman's property along with some ten persons with deadly weapons in a Truck bearing Registration No. TN-45-F-1766 and Karthick V.R. Thondaiman, along with the complainant-Ashok, questioned them as to why they were trespassing into his property, A.3 and A.4 replied that they intended to sell the property to A.8 and hence, they have come to take possession and when Karthick V.R. Thondaiman and the complainant-Ashok objected, they threatened to kill Karthick V.R. Thondaiman and so, he rushed out, escaped and went to the Police Station and therefore, all the persons immediately vacated the premises. The said Karthick V.R. Thondaiman gave complaint and the receipt also having been furnished, the Police did not take any

action, and hence, on 26.2.2000, he moved the Revenue Divisional Officer through his Power of Attorney for proceeding against Sarubala R. Thondaiman/ A.2, the second Petitioner in CrI.O.P. No. 4385 of 2002, u/s 145 Code of Criminal Procedure, for which the Revenue Divisional Officer and the Deputy Commissioner with Inspector of Police, Contonment visited the spot and asked to maintain status-quo.

(d) It is further alleged in the said complaint that on 27.2.2000 at about 3.30 p.m., A.2 to A.5, the Petitioners 2 to 5 in CrI.O.P. No. 4385 of 2002 and A.6 to A.8 along with about 10 more Goondas and henchmen, armed with deadly weapons viz., aruval, spade, crow-bar, etc., came in vehicles and started destroying the garden; A.2, namely the Petitioner No. 2 in CrI.O.P. No. 4385 of 2002, i.e. Sarubala R. Thondaiman, gave directions to cut the grass and plants and all the goondas cut off and uprooted the plants and A.3 to A.5, i.e. the Petitioners 3 to 5 in CrI.O.P. No. 4385 of 2002, gave directions to remove the land-marks; A6 and A7 destroyed the existing land-marks; immediately, one Renganathan, who is the Personal Assistant to Karthick Thondaiman informed the Police officials, who came and just asked them to go away and in a few minutes, the Inspector of Police came and took away the said Renganathan and others for the alleged enquiry; after sometime, all the accused with the entire henchmen, came again and indiscriminately cut and removed the remaining trees and plants and removed all the land-marks and also cleared the entire garden; A.2 Sarubala R. Thondaiman and A.3 K.R. Govinda Raja directed and A.4 K. Sathyanathan, A.5 Duraikannan, A.6 to A.9 helped others to fence the main gate with barbed wires, obstructing the access to the house of Karthik V.R. Thondaiman through the main gate and thereby wrongfully restrained all the people who intended to go to the house of Karthick V.R. Thondaiman through the main gate and the complainant could do nothing as a single man; but it was witnessed by the witnesses. It is the case of the complainant-Ashok (Respondent in CrI.O.P. No. 4385 of 2002) in C.C. No. 265 of 2001 that the Police did not take any action on the complaint given by Mr. Karthick V.R. Thondaiman and refused to register any case for the continuing offences on 27.2.2000.

(e) It is further submitted by the complainant-Ashok that on 27.2.2000, the above accused persons gave a false complaint against the complainant-Ashok and others and detained them in the Police Station on that night and the said complaint was given by A.2 Sarubala R. Thondaiman, i.e. the second Petitioner in CrI.O.P. No. 4385 of 2002 and A.8 used all his influence and with the help of A.8, on that night, all the accused further trespassed into the land and constructed a well around the vacant garden area, restraining them, their men, Karthik V.R. Thondaiman, for which the complainant-Ashok and his master, have been taking action separately.

(f) It is further stated by the complainant-Ashok in C.C. No. 265 of 2001 that all the accused have conspired and in furtherance of the said conspiracy, they trespassed into the property of the complainant's master, wrongfully restrained

the complainant and others and caused damage to the garden, as stated above, worth about Rs. 1 lakh and permanently restrained the people using the gate by laying barbed wire fencing obstructing the main gate and thereby committed the offences under Sections 120-B, 143, 147, 148, 342, 434, 447, 448 and 506 (Part -2) read with Section 109 IPC.

(g) Since the Inspector of Police, Cantonment Police Station, Trichy, did not register a case in respect of the complaint given by Karthick V.R. Thondaiman for the alleged occurrence said to have taken place on 24.2.2000, the said Karthick V.R. Thondaiman preferred CrI.O.P. No. 6601 of 2000 before this Court for a direction and accordingly, based on the direction of this Court, the Inspector of Police registered a case and issued a referred notice on him on 18.2.2001. It is further alleged by the complainant-Ashok that the Police did not investigate all the continuing offences properly and the counter case filed by the Inspector of Cantonment Police Station on the complaint of the said K. Sathyanathan/A.4, the fourth Petitioner in CrI.O.P. No. 4385 of 2002, against the complainant-Ashok and 33 others, is pending before Court and numbered as C.C. No. 640 of 2000.

5. The case of the Petitioners/accused in CrI.O.P. No. 4385 of 2002, is as follows:

(a) Originally Karthick V.R. Thondaiman, filed a petition before this Court in CrI.O.P. No. 6601 of 2000 for directing the Inspector of Police, Cantonment Police Station, Trichy to register a case in respect of his complaint relating to the alleged occurrence said to have taken place on 24.2.2000, as the police originally chose not to register a case and this Court directed the Inspector of Police to register the case and accordingly, the case was registered in Crime No. 842 of 2000 and during the investigation, Karthik V.R. Thondaiman again approached this Court in CrI.O.P. No. 18156 of 2000 for transfer of investigation and this Court directed the Commissioner of Police, Trichy to transfer the investigation to some other police officer, instead of Inspector of Police, Contonment Police Station and accordingly, the case in Crime No. 842 of 2000 was transferred to the Inspector of Police, Ponmalai Police Station, who completed the investigation and filed the final report stating that the complaint is one of "mistake of fact" and the Referred Charge Sheet Notice, i.e. RCS Notice was also served to that effect on 22.4.2000 and thereafter, the present private complaint had been filed by the Respondent-complainant-Ashok (in CrI.O.P. No. 4385 of 2002).

(b) It is the further case of the Petitioners/accused in CrI.O.P. No. 4385 of 2002 that on 9.10.2001, the learned Judicial Magistrate directed the Inspector of Police, Contonment Police to conduct an enquiry and to report to the Court regarding the complaint filed by the complainant-Ashok and reminders were issued to the Enquiry Officer on 12.11.2001 and 13.12.2001 and hence, on 17.01.2002, the Inspector of Police, Contonment Police Station filed his report stating that the alleged occurrence has not taken place and the complainant had exaggerated the issue; on 6.2.2002, the learned Judicial Magistrate No. 2, Trichy, rejected the report of the Inspector of Police, Contonment Police Station, Trichy, and took the case in C.C. No. 265 of 2001 on file as against A.1 to A.7 and A.9

alone for the offences under Sections 120-B, 143, 147, 148, 342, 434, 447, 448 and 506 (Part 2) read with 109 IPC and observed that there is no direct evidence regarding the involvement of A.8 in criminal trespass or any other criminal acts, and that the documents filed will not connect A.8 with any criminal acts and his involvement in any criminal act is not materially corroborated and no prima-facie is made out against A.8 and hence, the complaint was dismissed as against A.8 alone u/s 203 Code of Criminal Procedure Therefore, the learned Judicial Magistrate-2, Trichy, issued summons to A.1 to A.7 and A.9 and directed them to appear on 8.3.2002; aggrieved by the order of issuing processes and taking cognizance of the private complaint, the Petitioners/accused have approached this Court for quashing the complaint in C.C. No. 265 of 2001.

6. The learned Counsel appearing for the Petitioners/accused submitted that the cognizance taken by the learned Judicial Magistrate and the issuance of the summons to them, is illegal; based on extraneous materials and absolutely, there is no sufficient ground to proceed further in the case and the learned Judicial Magistrate ought not to have taken cognizance of the complaint based on the RDO report, dated 17.10.2001, since it does not form part of the same transactions; the allegations that the accused conspired with respect to the occurrence took place on 23.2.2000, 24.2.2000 and 27.2.2000 are independent and cannot be clubbed together; the offences under Sections 342, 447 and 448 IPC, cannot be illegally sustained, in view of the pendency of the civil case in O.S. No. 646 of 1999 pending before the Subordinate Judge's Court, Trichy; the petition filed by the complainant-Karthick V.R. Thondaiman and another therein, to pass an order of interim injunction, pending suit, restraining the first Petitioner herein, namely Rajagopala Thondaiman and his relatives, from obstructing him from using the passage, which is the subject matter of this case, had been dismissed by the Sub-Court on 12.12.2001 in I.A. No. 437 of 1999 in O.S. No. 646 of 1999 and therefore, the order of the Magistrate in taking cognizance in the present C.C. No. 265 of 2001 and rejecting the negative final report (referred charge sheet) on the same day will be in violation of Section 300 Code of Criminal Procedure and amounts to double jeopardy.

7. It is further submitted by the learned Counsel for the Petitioners/accused that neither the Respondent/complainant, nor the said Karthick V.R. Thondaiman, had filed any application protesting the earlier recording of RCS as "mistake of fact"/ closing the FIR as a "mistake of fact", but the present Respondent-complainant, namely Ashok, who is the Manager of the said Karthick V.R. Thondaiman, preferred the said private complaint with false allegations. When once the earlier complaint had been referred to as a "mistake of fact", instead of filing protest application, the present Respondent-Manager Ashok has preferred a private complaint and so, it is against law and not maintainable. To substantiate his arguments, learned Counsel for the Petitioners/accused, relied upon a decision of this Court reported in A. Krishna Rao Vs. L. S. Kumar, .

8. Learned Counsel for the Petitioners/accused in CrI.O.P. No. 4385 of 2002

further contended that the property in question was originally owned by "Raja" Rajagopala Thondaiman, the Ex-Ruler of Pudukkottai State (as it was formerly called). He bequeathed the piece and parcel of immovable property comprised in and forming part of his residence called as "Pudukkottai Palace", situated in Cantonment, Tiruchirapalli, usually referred to as "Guest House" together with portion--vacant site as demarcated in the sketch, attached to the Will and marked red in the said Will, dated 10.8.1990 and that portion has been subdivided as T.S. Nos. 1/1.A, 1/1.B and 1/1.C with 17.90 cents, 1.29 cents and 0.87 cents respectively in Trichy Town Ward K, Block No. 5, Pudukkottai Palace, of the sketch/plan bequeathing to respective relatives of "Raja" Rajagopala Thondaiman, namely Kamalambal Rajayae, Karthik V.R. Thondaiman and others. Because of the dispute, Karthick V.R. Thondaiman and another filed the suit in O.S. No. 646 of 1999 on the file of the Sub-Court, Trichy, for partition of their respective share and also for separate possession and also for permanent injunction restraining the Defendants and their men from in any way interfering with the Plaintiff's (Karthick V.R. Thondaiman's) peaceful possession of the property and along with the said suit, the said Karthick V.R. Thondaiman and another, also filed an interim injunction application in I.A. No. 437 of 1999 in O.S. No. 646 of 1999 and the said I.A. was dismissed on 12.12.2001. It is further stated that by the learned Counsel for the Petitioners/accused that since a civil dispute is pending, the complaint of trespass and mischief filed against the owner of the neighbouring property, is a ground for quashing the criminal proceedings. In support of this contention, learned Counsel for the Petitioners/accused relied upon the decision of this Court reported in 1981 L.W. 251 (Subramanian, M.N. v. S. Pasupathy), stating that because of the previous enmity, a false private complaint had been filed and the learned Judicial Magistrate-2, Trichy, has not considered this aspect in proper perspective and hence, he prayed for quashing the criminal proceedings in C.C. No. 265 of 2001 and allowing CrI.O.P. No. 4385 of 2002.

9. The learned Counsel appearing for the Respondent-complainant-Ashok, in quash petition in CrI.O.P. No. 4385 of 2002 and also the learned Counsel for the Petitioners-accused in CrI.O.P. No. 23963 of 2003, submitted that the civil suit in O.S. No. 78 of 2004, filed by Karthick Thondaiman and another against Rajagopala Thondaiman (first Petitioner herein) and others, had been dismissed on 13.9.2005, and as against the said dismissal, it is stated by the counsel that an appeal has been filed in A.S. No. 12 of 2006, which is pending before this Court. It is further stated by the counsel that the complaint filed by the Petitioners/accused is a case in counter; the Respondent-Ashok had filed a private complaint, since he is also one of the injured persons; the master of the complainant-Ashok, namely Karthick V.R. Thondaiman, i.e. the 1st Petitioner in CrI.O.P. No. 23963 of 2003 also had filed a private complaint dated 23.6.2001 and subsequently, he did not press the same; the fourth Petitioner in CrI.O.P. No. 4385 of 2002, namely K. Sathyanathan, has also given a complaint and the proceedings u/s 144 Code of Criminal Procedure have also been initiated.

10. Learned Counsel for the Respondent-complainant-Ashok in Crl.O.P. No. 4385 of 2002 and learned Counsel for the Petitioners-accused in Crl.O.P. No. 23693 of 2003, further submitted that since the Petitioners in Crl.O.P. No. 4385 of 2002 have removed the survey markings and cut the trees and assaulted the people, and the Respondent-complainant-Ashok was also injured, he is also a competent person to give a private complaint. He further submitted that after receipt of the Referred Charge Sheet (RCS) notice, the said Karthick V.R. Thondaiman also filed a private complaint, in which he was also examined as a witness and another Sathyanathan (fourth Petitioner in Crl.O.P. No. 4385 of 2002) was also examined on the basis of the statement recorded from the witnesses and the said complaint has been taken on file and hence, there is no reason for quashing the proceedings.

11. Learned Counsel for the Respondent-complainant in Crl.O.P. No. 4385 of 2002 and the learned Counsel for Petitioners-accused in Crl.O.P. No. 23693 of 2003, further submitted that on the basis of the complaint given by the fourth Petitioner in Crl.O.P. No. 4385 of 2002, namely Sathyanathan, the case has been registered in Cr. No. 237 of 2000, in respect of the incident alleged to have taken place on 27.2.2000 at 11.45 p.m., for the offences under Sections 147, 148, 427, 506 (Part 2), 451 read with 114 IPC and Section 9(b)(1)(b)(g) of the Explosives Act. After investigation, the charge sheet has also been filed, which was taken on file in C.C. No. 640 of 2000 on the file of the learned Judicial Magistrate-II, Trichy. It is a case in counter. So, the Petitioners-accused in Crl.O.P. No. 23693 of 2003 have sought for joint trial, since the incident has taken place as early as on 27.2.2000 and hence, learned Counsel prayed for dismissal of the other Crl.O.P. No. 4385 of 2002 and requested for ordering joint trial of both C.C. Nos. 265 of 2001 and 640 of 2000 and allowing Crl.O.P. No. 23693 of 2003.

12. Considering the rival submissions made by learned Counsel on either side as also on the side of the Respondent-Police in Crl.O.P. No. 23963 of 2003 and the materials available on record, it is admitted that the property in dispute was originally owned by one Ex-Ruler of Pudukkottai State (formerly so called as State). Furthermore, "Raja" Rajagopala Thondaiman has executed a Will, dated 10.8.1990, as stated above and bequeathed his properties in favour of his sister, niece and nephew and since he was a Bachelor, he adopted the first Petitioner in Crl.O.P. No. 4385 of 2002, namely Rajagopala Thondaiman, as his adopted son. "Raja" Rajagopala Thondaiman bequeathed his properties to his near relatives and as per the plan/sketch annexed to the said Will, dated 10.8.1990, it is shown that the testator bequeathed T.S.1/1.B, i.e. 0.52 ares=1.29 acres to Karthick V.R. Thondaiman (first Petitioner in Crl.O.P. No. 23693 of 2003), the nephew of the testator-"Raja" Rajagopala Thondaiman; likewise, the testator also bequeathed the property in T.S.1/1.C in 0.35.0 ares=0.87 acres in favour of his another nephew, i.e. Thirumalai Dorairaja i.e., the testator's another sister Kamalambal Rajayee's elder son, and after he made so many bequest, in page 4 of the said Will, the said testator--"Raja" Rajagopala Thondaiman observed that his adopted

Yuvaraj Rajagopala Thondaiman shall take the rest of the properties, subject to the payment and disbursement of the various legacies mentioned above form and put up is estate after his lifetime. In respect of the remaining portion, the first Petitioner is entitled to get in T.S. No. 1/1.A, 7.25.31 Sq. Meters=17.91 acres, and all these bequeathment in the Will shows that Karthick V.R. Thondaiman and the first Petitioner-Rajagopala Thondaiman, are cousin brothers.

13. There was a civil dispute pending between both the parties, i.e. Karthick V.R. Thondaiman and his mother filed a suit in O.S. No. 646 of 1999 on the file of Sub-Court, Trichy, against A.1 Rajagopala Thondaiman and others. Along with the said suit for partition of their 1/3 share, against the said Rajagopala Thondaiman, Ramadevi, Vijayakumar Thondaiman and Janaki Manokari Jaganmohan Seshadri, claiming 1/3 share in the property, they have also filed interim injunction application, which was also dismissed on 12.12.2001 in I.A. No. 437 of 1999 in O.S. No. 646 of 1999. The counter affidavit filed by the first Petitioner-Rajagopala Thondaiman in the said I.A. No. 437 of 1999 shows that even in the year 1999, there was a property dispute between the first Petitioner-Rajagopala Thondaiman and the said Karthick V.R. Thondaiman and their family members. While perusing the description of the property in the petition filed in I.A. No. 437 of 1999 in O.S. No. 646 of 1999, it shows that it is the subject matter of the complaint filed by the Respondent-complainant-Ashok in C.C. No. 265 of 2001. Thus, it is clearly proved that there has been a civil dispute in respect of the property, subject to the alleged trespass by the Petitioners/accused in Crl.O.P. No. 4385 of 2002, which has resulted in preferring the private complaint by the complainant-Ashok. The said Karthick V.R. Thondaiman and his mother Rajkumari Meenambal Rajayee initially filed O.S. No. 646 of 1999 before the Sub-Court, Trichy and it was transferred to District Court, Trichy and re-numbered as O.S. No. 78 of 2004 before I Additional District Court, Trichy, which was admittedly dismissed on 13.9.2005, after the filing of the private complaint by the complainant-Ashok in C.C. No. 265 of 2001.

14. At this juncture, it is appropriate to consider the decision of this Court reported in 1981 L.W. . 251 (Subramanian, M.N. v. S. Pasupathy), in which, it was held as follows:

In this case the complaint itself had been filed in the lower Court after a long delay of 10 days and there is no explanation offered for this delay. There can be no doubt there is a bona-fide dispute with regard to the passage in question. The inherent jurisdiction of the High Court to pass orders necessary to prevent abuse of the process of any Court cannot be questioned, and indeed it has been clearly expressed in Section 482, Code of Criminal Procedure Though the High Court ought not to interfere ordinarily by way of quashing criminal proceedings, yet, as the materials available in the instant case show a bona-fide claim of civil right and as the matter is pending in a civil Court, it is an obvious duty to interfere in these proceedings, without causing unnecessary harassment of subjecting to face a criminal proceeding, since prevention is better than cure. To allow the present

proceedings in this case to continue will not in any way advance the course of justice. Proceedings quashed.

15. In the present case, the alleged occurrence took place as early as on 23.2.2000 at 9 a.m.; on 24.2.2000 at 10 a.m. and also on 27.2.2000 at 3.30 p.m. In the complaint, it is stated that on 23.2.2000 at 9 a.m., when the complainant-Ashok was in the house, the Petitioners 1 to 5 in CrI.O.P. No. 4385 of 2002, i.e. A.1 to A.5 and A.8 trespassed into the land and surveyed the entire space and discussed about the occupying the said area. Admittedly, on 23.2.2000, no complaint had been preferred.

16. It is also alleged that on 24.2.2000 at 10 a.m., A.2 to A.5 trespassed into the property of Mr. Karthick Thondaiman along with some ten persons, whom the complainant-Ashok stated in the complaint that he could identify. Admittedly, on 24.2.2000 also, no complaint had been immediately given. On a perusal of the private complaint filed by the complainant-Ashok, it has revealed that only at a later point of time after 24.2.2000, the said Karthick Thondaiman has given the complaint to Police, in which, it is stated that he has given the said complaint and receipt was also furnished. But the Police did not take any action and hence, on 26.2.2000, Karthik Thondaiman's Power of Attorney moved the Revenue Divisional Officer for proceeding u/s 145 Code of Criminal Procedure.

17. On 27.2.2000 at 3.30 p.m., A.2 to A.8, along with ten or more goondas/henchmen, armed with aruvals, spade, crow-bar, etc., came in vehicles and started destroying the garden. It is pertinent to note that in respect of this incident, Sathyanathan, the fourth Petitioner/A.4 has given a complaint before the Cantonment Police Station in respect of the alleged occurrence which took place on 27.2.2000 at 11.45 p.m. A.1 Rajagopala Thondaiman, along with his associates A.2 to A.39 formed themselves into an unlawful assembly with the common object of trespass and entered into exclusive possession of Karthick V.R. Thondaiman to commit mischief and caused damages to the Wall of the Palace and committed other offences. On that basis, case has been registered in Cr. No. 237 of 2009 and after investigation, the charge sheet has been filed, which was taken on file in C.C. No. 640 of 2000 by the learned Judicial Magistrate-II, Trichy, for the offences under Sections 147, 148, 427, 506 (Part 2), 451 read with 114 IPC and Section 9(b)(1)(b)(g) of the Explosives Act.

18. As stated supra, there was a Will executed by "Raja" Rajagopala Thondaiman, who bequeathed some portion of his property to Karthick V.R. Thondaiman. Admittedly, he was in possession of the said "Guest House".

19. At this juncture, it is appropriate to consider the argument advanced by learned Counsel for the Petitioners/accused that earlier, on the basis of the complaint given by Karthick Thondaiman on 24.2.2000, no case had been registered and hence, he filed CrI.O.P. No. 6601 of 2000, for direction to the Respondent(s) therein to register a case, in pursuance of which, Crime No. 842 of 2000 was registered. On a perusal of pages 1 and 2 of the typed set of papers

filed along with CrI.O.P. No. 4385 of 2002, it is evidenced that only on the basis of the direction given by this Court in CrI.O.P. No. 6601 of 2000 on 18.8.2000, a case has been registered under the provisions of Sections 147, 148, 448 and 506 (Part 2) IPC in Cr. No. 842 of 2000, in which, it is stated that the date of occurrence of the crime in question was 24.2.2000, and in the said FIR/complaint, it is fairly conceded that Karthick Thondaiman has given a complaint on 24.2.2000 at 14.15 hours and receipt has been given in C.S.R. No. 51 of 2000 and in the said complaint itself, he has categorically stated that, "I am the owner of the above noted Guest House in Pudukkottai, Palace Campus. There is dispute in property and I have filed a case in Trichy Sub-Court (O.S. No. 646/99) and the case is pending in the Court. My cousin Rajagopalan Thondaiman is residing in the main Palace along with his wife Saru Bala. Both of them are attempting to trespass into my property with the help of some hired more than 10 goondas with deadly weapons at about 10.00 a.m."

20. It is also to be noted that in respect of the alleged incident that had taken place on 24.2.2000, after transfer of investigation as noted below, admittedly, referred charge sheet has been filed and that has been evidenced by the RCS notice indicating the same as "mistake of fact". It is stated by the counsel for the Petitioners/accused that during investigation, Karthick Thondaiman has filed CrI.O.P. No. 18156 of 2004 for transfer of investigation, which was ordered by this Court and investigation was transferred from Trichy Cantonment Police Station to Ponmalai Police Station. The investigating officer investigated the case and filed the charge sheet, stating that it is referred to as "mistake of fact" on 22.4.2001 and this was not questioned by the complainant Karthick V.R. Thondaiman.

21. The present Respondent-complainant Ashok filed the present private complaint on 23.5.2001 u/s 200 Code of Criminal Procedure and he has narrated the incidents alleged to have taken place on 23.2.2000, 24.2.2000 and 27.2.2000 and the learned Judicial Magistrate-2, Trichy, has taken the sworn statement of the Respondent-complainant Ashok on 30.5.2001. The learned Magistrate also examined the Private Secretary of Karthick Thondaiman, on 19.7.2001 and Mr. Karthick Thondaiman on 21.9.2001 and the learned Magistrate thereafter referred the case to the concerned Police Station to investigate the case on the facts alleged in the said private complaint and directed him to send a report within two weeks, as evidenced from page 28 of the typed set of papers filed in support of CrI.O.P. No. 4385 of 2002, which is the order of the learned Magistrate, dated 9.10.2001 in the Memo. The Court reminders were issued on 12.11.2001 and 13.12.2001 respectively. Only after those reminders, after investigation, the concerned Police filed a report, stating that no such occurrence took place and the Police report is found in pages 32 to 38 of the typed set of papers filed along with CrI.O.P. No. 4385 of 2002. On considering the report, the learned Magistrate has passed an order on 6.2.2002, rejecting the final report and the private complaint filed by the complainant-Ashok u/s 200 Code of Criminal Procedure was taken on file as against A-1 to

A-7 and A-9, by taking cognizance of the offences under Sections 120-B, 143, 147, 148, 342, 434, 447, 448 and 506 (Part-2) IPC read with 109 IPC in C.C. No. 265 of 2001.

22. At this juncture, it is appropriate to consider the decision of this Court, relied upon by the learned Counsel for the Petitioners-accused, reported in A. Krishna Rao Vs. L. S. Kumar, , which shows that when once the second complaint has been taken cognizance of, after the previous complaint was referred to as "mistake of fact", and when no steps have been taken for setting aside the earlier order passed by the learned Magistrate in the referred charge sheet as "mistake of fact", the subsequent complaint in respect of the very same occurrence is not maintainable without setting aside the earlier order passed by the learned Magistrate.

23. There is no quarrel over the said proposition of law laid down in the said judgment of this Court reported in 1998 (1) CTC 329 (cited supra). In the present case, the earlier complaint given by the said Karthick Thondaiman was only in respect of the incident alleged to have taken place on 24.2.2000, whereas the private complaint which was now filed by the Respondent-Ashok related to all the three days, namely 23.2.2000, 24.2.2000 and 27.2.2000. In such circumstances, the said citation in 1998 (1) CTC 329, is not applicable to the facts of the present case, as the subsequent complaint was filed by another person.

24. It is appropriate to consider the decision of the Delhi High Court reported in Harpal Singh Arora and Others Vs. State and Another, , in which, the Delhi High Court relied on the decision of the Supreme Court reported in H.S. Bains, Director, Small Saving-Cum-Deputy Secretary Finance, Punjab, Chandigarh Vs. State (Union Territory of Chandigarh), in which it was held by the Apex Court that it was open to the learned Magistrate to reject the closure report and proceed with the complaint in terms of Section 200 Code of Criminal Procedure i.e. by recording the statement of complainant and taking further steps thereafter in accordance with law. In the said decision, the Delhi High Court, while advertng to the facts and relying on various other decisions of the Supreme Court, further held that the learned Magistrate is not bound by conclusions drawn by the Police and he may decide to issue process even if the Police recommend that there is no sufficient ground for proceeding further; the mere fact that he had earlier ordered an investigation u/s 156(3) Code of Criminal Procedure and received a report u/s 173 Code of Criminal Procedure, will not have the effect of total effacement of the complaint and therefore, the Magistrate will not be barred from proceeding under Sections 200, 203 and 204 Code of Criminal Procedure; the learned Magistrate may decide that there is no sufficient ground for proceeding further and drop action; he may take cognizance of the offence u/s 190(1)(b) of Code of Criminal Procedure on the basis of the Police report and issue process; he may take cognizance of the offence u/s 190(1) (a) of Code of Criminal Procedure on the basis of the original complaint and

proceed to examine upon oath the complaint and his witnesses u/s 200 Code of Criminal Procedure.

25. So, the above decision of the Delhi High Court which was decided based on the decision of the Apex Court, would go to show that, even in the present case, even though the investigating officer has given a closure report, the learned Magistrate has every right to proceed in accordance with law, as per Section 190 Code of Criminal Procedure.

26. Another limb of argument is that no material is available to show that the offence under Sections 342, 447 and 448 IPC are made out. Furthermore, the Respondent-Ashok-complainant, only on 23.5.2001, belatedly stated the three different causes of actions that the alleged occurrences are said to have taken places, i.e. on 23.2.2000, 24.2.2000 and 27.2.2000 and so, the single private complaint for all the three alleged incidents, is not maintainable, and that too, at a belated stage. Admittedly, Karthick V.R. Thondaiman has also not filed any protest application and he also has not filed any private complaint, after the RCS notice indicating the "mistake of fact" of the earlier complaint was served.

27. At this juncture, it is appropriate to consider the argument advanced by learned Counsel for the Respondent-complainant-Ashok that the complainant-Ashok also has sustained injuries. But he has not filed any document to show that he has sustained injuries. Furthermore, he has not assigned any reason as to why he has not given a complaint as soon as the incident took place. He kept quiet all along till Crime No. 842 of 2000 was referred as "mistake of fact" and then only he has come forward with the present private complaint. Under such circumstances, I am of the opinion that the present private complaint in C.C. No. 265 of 2001 has been given at the instigation of the said Karthick V.R. Thondaiman with the enmity due to the property dispute between the first Petitioner-Rajagopala Thondaiman and Karthick Thondaiman, which is evidenced by the civil dispute in O.S. No. 646 of 1999 and that too, he filed an injunction application and that no interim order had been granted and the interim injunction application was dismissed on 12.12.2001.

28. It is appropriate to consider as to whether the proposed second complaint is maintainable. Even though it was not filed by the said Karthick V.R. Thondaiman, but the present private complaint has also been referred to as incident alleged to have been taken place on 24.2.2000.

29. Considering the facts and in the circumstances of the case that the bringing the fresh complaint, after a lapse of long delay of one year with a fresh case, was a gross abuse of the process of the Court and was not with the object of furthering the interest of justice.

30. The second complaint can be laid only on new facts or even on previous facts, only if a special case is made out. As already stated, even though Karthick Thondaiman has given a complaint, the same had been referred to as "mistake of fact" and subsequently his Manager, Ashok, who is alleged to be the injured,

has given the present private complaint in C.C. No. 265 of 2001, only at the belated stage. In such circumstances, I infer that due to the civil dispute between the first Petitioner-Rajagopala Thondaiman and Karthick Thondaiman, the Manager-Ashok (Respondent-complainant) was directed to file a private complaint after Crime No. 842 of 2000, dated 30.8.2000 has been referred to as "mistake of fact".

31. It is further stated by learned Counsel for the Petitioners/accused in CrI.O.P. No. 4385 of 2002 that after forwarding the private complaint to the learned Magistrate, as per the directions of the learned Magistrate, the concerned Police also have filed a report, stating that it is a mistake of fact, but the learned Magistrate has rejected the report by taking cognizance of the private complaint for the offences alleged and in such circumstances, taking cognizance of the offence and proceeding further would prejudice the accused u/s 300 Code of Criminal Procedure, and it also a double jeopardy. This contention is not applicable to the facts of the present case, since neither the accused are earlier acquitted, nor convicted in respect of the alleged incident mentioned in the private complaint.

32. In the above facts and circumstances, on a perusal of the private complaint filed by the said Ashok-complainant, and the order passed by the learned Judicial Magistrate-2, Trichy, and considering the civil dispute, and the delay in preferring the complaint by the Respondent-complainant-Ashok on 23.5.2001, the criminal proceedings in C.C. No. 265 of 2001, are liable to be quashed against the Petitioners-accused in CrI.O.P. No. 4385 of 2002 alone. Accordingly, they are quashed. CrI.O.P. No. 4385 of 2002 is allowed.

33. In respect of CrI.O.P. No. 23963 of 2003 filed on the basis of the complaint given by the fourth Petitioner in CrI.O.P. No. 4385 of 2002, namely Sathyanathan, the case has been registered and charge sheet has also been filed, which was taken on file as C.C. No. 640 of 2000, the trial Court is directed to dispose of the same, as expeditiously as possible, in accordance with law and the direction sought for by the Petitioners in CrI.O.P. No. 23693 of 2003, for joint trial, has become infructuous, as the criminal proceedings in C.C. No. 265 of 2001 are quashed as indicated above, in CrI.O.P. No. 4385 of 2002 and therefore, CrI.O.P. No. 23963 of 2003 is dismissed as having become infructuous with the above direction.

34. In fine:

(a) CrI.O.P. No. 4385 of 2002 is allowed and the criminal proceedings in C.C. No. 265 of 2001 are quashed;

(b) CrI.O.P. No. 23963 of 2003 is dismissed as having become infructuous, with a direction to the trial Court to dispose of C.C. No. 640 of 2000 as expeditiously as possible, in accordance with law.