

**IN THE COURT OF THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE
COIMBATORE**

**Present : Mr.M.Christopher, B.A.B.L.,
I Additional District and Sessions Judge,
Coimbatore.**

Thursday the 17th day of November 2016

Criminal Revision Petition No.26 /2016

A.K.Nagarajan, 59 years
S/o. Krishnasamy

....Revision Petitioner/Complainant

-Vs-

1. M/s.Tamara Resorts LLP
Rep.By its Partners,
Deepak Kumar Shetty
Ms.Deepu Chitralaya Sathanandan
Sanjeev Kumar Puzhagal
2. Deepak Kumar Shetty, fully aged,
Partner, Tamara Resorts LLP
3. Ms.Deepu Chitralaya Santhanandan,
Partner, Tamara Resorts LLP
4. Sanjeev Kumar Puzhagal
Partner, Tamara Resorts LLP
5. M/s. M&M Enterprises India Ltd
965, Avinashi Road, Coimbatore
Rep.by its Directors Lakshmi Niranjana Mohan,
6. Lakshmi Niranjana Mohan, fully aged
7. Ranganathan Soundararajan Visalam, fully aged
8. Vikram Mohan, fully aged
9. Thangavel Gangalakshmi, fully aged
10. Thamizhanban, fully aged

11. Ananda Padmanabhan, fully aged
12. Gopalakrishnan, fully aged
13. Vanitha Mohan, fully aged .. Respondents/Accused
14. State represented by Public Prosecutor .. Respondent

This Criminal Revision Petition coming on 11.11.2016, for final hearing before me in the presence of Mr.K.Shanmugananthan, Advocate, for the Revision Petitioner/Complainant and upon hearing the arguments and upon perusing the documents on record and having stood over for consideration till this day, this court delivered the following.

ORDER

1) The above revision petition was preferred by the complainant before the trial court against the order passed in CMP No.3927/2016 dated 21.09.2016 by the Learned Judicial Magistrate No.V, Coimbatore.

2) The petitioner has stated that he has made private complaint before the trial court seeking direction to the police to registered case against the respondent for commission of various offences mentioned in the petition. The said complaint was taken on file in CMP No.3927 of 2016 by the Judicial Magistrate No.V Coimbatore. After hearing the complainant the trial court has refused to forward the complaint for registration of the case.

3) Aggrieved by the said order the present revision was filed on various grounds. The petitioner has stated that the trial court has erred in

law that no offence was made out in the complaint. The trial court has wrongly found that the resolution of the Coimbatore District Auto consultants and dealer welfare association was incorrect and the same is not a valid proof. The trial court has wrongly come to conclusion that the possession could not have handed over to the complainant without agreement. The trial court was wrong to come to the conclusion that no eyewitness for the occurrence. It is also not correct that the complainant failed to mention the name of the person through whom he came to the knowledge of the incident. The other findings of the trial court were not necessary for the purpose of forwarding the complaint u/s 156 of Crpc. The various reasons assigned by the trial court are not relevant and the trial court need not gone into the truthness of the averments made in the complaint. The revision petitioner has argued that originally the police complaint given by the petitioner on 31.7.2016 after immediately he came to know about the incident. It was also acknowledged by the police. Since the police has not taken action on the complaint, he was forced to file a private complaint u/s 156 (3) of Cr.P.C. The trial court has wrongly gone into the truthness of the complaint and without any material on presumption has held that the complainant has not proved the contentions in the complaint and further wrongly held that the petitioner was not possession and enjoyment of the property. The findings of the trial court is perverse and excess of jurisdiction.

4) This court considered the submission of the petitioner, the grounds of revision and the trial court records. A complaint was lodged with Alandurai Police station on 30.07.2016 stating that the complainant was

possession of 1.14 acres of agriculture land along with farm house in survey no. 10/1 of Alandurai village. The owners of the said land have agreed to sell the said land to the defacto complainant for sale consideration of 33,50,000/-and the possession was handed over to him. Thereafter when he and his labour were not in the farm house the respondents have unlawfully joint together, criminally trespassed into the said land and demolished to the farm house and also up routed several trees and cause damage of Rs.2.5 lakhs and also taken away the up routed trees illegally. But the said complaint was not registered by the police hence he filed private complaint before the Judicial Magistrate court No.V Coimbatore seeking direction to forward the complaint for registration by the police. The trial court after hearing the arguments of the complainant and considering the documents have dismissed the petition. The reason assigned by the trial court that there is no document to show that possession was handed over to the complainant with regard to the land where the occurrence took place and it disbelieved the documents filed to show the possession. The trial court also has stated that the complainant has not stated the persons who have witnessed the incident. Further, the trial court has held that the possession could not have given for meager sum of Rs.10,000/- as advance. Further the complainant has not examined any witness to prove the contents of the complaint. But this court, feels that such observation by the Magistrate are not needed for considering the petition u/s 156 (3) of crpc. The Learned Magistrate need not go into the merits of the complaint and he need not give finding with regard to possibility of occurrence in cases filed for direction to refer the complaint to the police for investigation. It is enough to go into the complaint that

whether the complaint discloses commission of any offences cognizable by the police. If the averments in the complaint prima facie discloses commission of any offence then it has to be forwarded to the jurisdictional police station for investigation. At the stage of filing of complaint and if the complainant sought an investigation into a complaint then the court has to see whether any cognizable offence was made out in the complaint. In this case whether the possession of the petitioner is legal or possible or the contention of the complainant was true are not relevant to consider at this stage. In this case the complainant has averred in the complaint that the accused formed an illegal assembly and criminally trespassed into the property of the complainant and demolished the building and also uprooted trees and looted valuables. Hence the complaint prima facie discloses the commission of offence by the accused. If it is so the court has no power to investigate the complaint and found whether the contents of complaint was proved for commission of criminal offence. A complaint which needs investigation by an agency under statute, it has to be done by them alone. On investigation if the investigation officer finds there is no evidence for the commission of offence as alleged in the complaint then only the complaint can be closed based on the investigation report. In this case the complaint discloses commission of cognizable offence and the same needs investigation to collect evidence for punishing the accused. In such situation the dismissal of said complaint will pave way for the accused go unpunished.

In the result, the revision petition is allowed. The order of trial court made in CMP no 3927 / 2016 dated 21.9.2016 is hereby set aside and the trial court is directed to forward the complaint to the Jurisdictional police

station for taking action on the complaint.

Dictated to the steno-typist, directly typed by her, corrected and pronounced by me in open court on this the 17th day of November 2016.

Sd/- M. Christopher
I Additional District & Sessions Judge
Coimbatore.

Copy to:
The Judicial Magistrate No.V
Coimbatore.

//True copy //

WEB COPY

WEB COPY

Copy of Order CRP.No.26/2016 Dt:17.11.2016 I ADJ Court, Cbe
--