



Crl OP No. 18242 / 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON 14.03.2023

PRONOUNCED ON 17.03.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No. 18242 of 2019

N.Senthilkumar

... Petitioner

Versus

1. State Rep., by
The Inspector of Police,
Nallur Police Station,
Namakkal District.
Crime No. 225 of 2017.

2. Ponnusamy

3. Sasikala @ S.P. Elammalar Mangai

(R3 impleaded as per the order of the Court dated
22.12.2022 in Crl.O.P. No.18242 of 2019)

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records in C.C. No. 42 of 2019 pending trial on the file of the learned Judicial Magistrate, Paramathi, Namakkal District and quash the same.

For Petitioner : Mr. Johnson C.D.

For Respondents : Mr. A. Damodaran,
Additional Public Prosecutor for R1.



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Mr. N. Umapathi for R2.

R3 – Sasikala.

ORDER

This Criminal Original Petition has been filed to quash the C.C. No. 42 of 2019 pending on the file of the learned Judicial Magistrate, Paramathi, Namakkal District for the offence under Sections 406 and 420 of the Indian Penal Code.

2.It is alleged that the second respondent / defacto complainant is the former head of the Maniyanur Village Panchayat. He had taken action against one Sasikala who is the third respondent herein for removal of pigs in her farm stating that it was causing harm to the environment and was a health hazard. On 30.12.2015 at about 10.00 am, the first accused viz., Rajalingam who was the President of the All India Pig and Dog Catchers Association along with the petitioner herein, had taken the said pigs in four different lorries and promised to return it as and when the third respondent demands the return of the pigs. The petitioner and the said Rajalingam did not return the pigs and hence, they were liable for the offence under Sections 406 and 420 of the Indian Penal Code.



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3. The learned counsel for the petitioner/A2 submitted that it is true that the second respondent / defacto complainant who is the head of the Maniyanur Village Panchayat had taken action to remove the pigs of the third respondent. Pursuant to the order of removal, the Block Development Officer sought police protection on 30.12.2015 for removing the pigs from the pigsty. The first accused claiming to be the member of All India Pig and Dog Catchers Association took the pigs in three different lorries. He had also given a letter to the Block Development Officer stating that he had taken 296 pigs and the same are in his custody. Hence, the complaint that the petitioner took the pigs is false. The learned counsel for the petitioner further submitted that the third respondent filed a Writ Petition in W.P. No. 40960 of 2015 challenging the order passed by the second respondent / defacto complainant. In the said Writ Petition, this Court had passed an order criticizing the act of the second respondent / defacto complainant in handing over the pigs to third parties and transporting the same to another district. Hence, without examining the correctness of the order passed by the second respondent / defacto complainant, this Court directed the second respondent / defacto complainant and the first



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accused to return the pigs to the third respondent herein, as she undertook to sell the pigs.

4.The learned counsel for the petitioner further submitted that the second respondent / defacto complainant had filed a Writ Appeal in W.A. No.905 of 2016 challenging the order passed by this Court dated 30.03.2016 in W.P. No. 40960 of 2015. The said Writ Appeal also came to be dismissed with a direction to the second respondent / defacto complainant to return the pigs by Judgment dated 27.07.2016. The learned counsel for the petitioner further submitted that the second respondent / defacto complainant on 30.08.2017 came up with a false complaint as if he had handed over the pigs to both the first accused and the petitioner herein; and that the petitioner claiming to have given loan to the third respondent herein took away the pigs promising to return it as and when demanded by the third respondent herein. This complaint is contrary to the affidavit filed by the second respondent / defacto complainant in the Writ proceedings wherein he had admitted that he had handed over the pigs only to the first accused herein. The petitioner had nothing to do with the second respondent / defacto complainant and this complaint is only an after thought and it is an excuse to circumvent the



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orders of this Court in the Writ proceedings.

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5.The learned Additional Public Prosecutor appearing for the first respondent submitted that there are materials to show that the petitioner had transported the pigs on 30.12.2015 in his lorries and the pigs are in the custody of the petitioner. Some pigs were taken by the first accused viz., Rajalingam. Since there are materials available to show that the pigs were transported in the lorries belonging to the petitioner, the matter has to be adjudicated only during the trial and prayed for dismissal of this petition.

6.The learned counsel for the second respondent / defacto complainant reiterated the submissions made by the learned Additional Public Prosecutor and submitted that both the accused had taken the pigs in four different lorries and subsequent enquiries by the second respondent / defacto complainant revealed that the petitioner is in custody of the said pigs. Therefore, the petitioner is guilty for the offences under Sections 406 and 420 of the Indian Penal Code.



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7. Though the owner of the pigs namely Sasikala was impleaded by this Court and the notice was served on her, none has entered appearance for her.

8. Heard the learned counsel for the petitioner, the learned Additional Public Prosecutor appearing for the first respondent and the learned counsel for the second respondent and perused the records.

9. It is the case of the second respondent / defacto complainant in the First Information Report that he had handed over the pigs to the first accused who was incharge of the All India Pig and Dog Catchers Association. Thereafter, the petitioner reported to him that he had given a loan of Rs.6,00,000/- to the third respondent herein and if the pigs are handed over to the first accused, he would not be able to recover his loan. According to the second respondent / defacto complainant, this was initially objected by the third respondent. A little later, the third respondent and the petitioner held discussions and the third respondent allowed this petitioner to take the pigs. The first accused in the meanwhile had taken all the 296 pigs. He had also given a letter to the



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Block Development Officer stating that he had taken 296 pigs in his lorries. However, at the instance of the petitioner, he had followed the lorries belonging to the first accused, and he and the petitioner herein, requested the first accused to hand over some pigs to the petitioner. Accordingly, the first accused handed over some pigs to the petitioner; and that both of them promised to return the pigs as and when demanded by the third respondent.

10.This version appears to be contrary to the version in the affidavit filed in support of the stay petition in W.A. No. 905 of 2016. The second respondent / defacto complainant has stated that he came to know only subsequently that some pigs were handed over to the petitioner. The following portion in the affidavit filed before this Court would substantiate the same;

“19.It is respectfully submitted that the petitioner herein on thorough scrutiny of the materials was able to see that the said Mr.Senthil was also present when the pigs were initially transported in the lorries of the 3rd respondent and the 1st respondent was also present. It was found that out of 6 lorries used for



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transportation of the pigs on 30/12/2015, 3 lorries were brought by the 3rd respondent and 3 lorries were said to be brought by Mr.Senthil. One of the lorry engaged by Senthil bears Reg.No. TN 54-9851. The said fact has been known to the petitioner only recently.”

The above version that he came to know that some pigs were taken by the petitioner only recently shows that he did not have any contact with the petitioner. Therefore, there is no question of entrustment made to the petitioner in order to attract the offence of Section 406 of the Indian Penal Code. Further, the petitioner could not have made any false representation to attract the offence of Section 420 of the Indian Penal Code.

11.Further, it is also an admitted fact that the first accused had written a letter to the Block Development Officer on 30.12.2015 stating that all the pigs are in his custody. This Court in the order passed in W.P. No. 40960 of 2015 dated 30.03.2016 had also taken note of the said letter and observed that a direction can be issued to the second respondent / defacto complainant and the said first accused viz.,



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Rajalingam to return the pigs to the third respondent herein. The observation is extracted hereunder for better understanding;

“...7.

...Thus the question of examining the correctness of the impugned order is not required and it would suffice directing the respondents, as well as the said C.Rajalingam, All India Pig and Dog Catchers to return the pigs to the petitioner as soon as she appears in the premises of Mr. C. Rajalingam along with a copy of this order.”

In view of the above, it is very clear that the petitioner had nothing to do with the defacto complainant.

12.Even according to the second respondent / defacto complainant, he came to know only subsequently that the petitioner was in custody of certain number of pigs. If for any reason, it is found that the petitioner is not entitled to be in custody of the pigs, it is for the defacto complainant to take appropriate proceedings in the manner known to law for recovery of the pigs from the possession of the first respondent. Since there is neither entrustment made to the petitioner nor was there any representation made to the second respondent / defacto complainant by



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the petitioner, which is evidenced by the affidavit of the second respondent / defacto complainant before this Court in the Writ proceedings and the orders passed by this Court, the offences under Sections 406 and 420 of the Indian Penal Code are not made out.

13. For the above reasons, the proceedings as against the petitioner who has been arrayed as A2 in C.C. No. 42 of 2019 pending trial on the file of the learned Judicial Magistrate, Paramathi, Namakkal District is quashed and accordingly, this Criminal Original Petition is allowed.

17.03.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Inspector of Police,
Nallur Police Station,
Namakkal District.

2. The Judicial Magistrate,
Paramathi,
Namakkal District.



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3. The Additional Public Prosecutor,
High Court of Madras,
Chennai.

SUNDER MOHAN, J

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Dated: 17.03.2023