

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.07.2015

Delivered on : 16.07.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.O.P.No.24371 of 2014
and M.P.Nos.1,2 of 2014

A.Balamurugan

... Petitioner

Versus

1.The Superintendent of Police,
Tiruppur District,
Tiruppur.

2.The Deputy Superintendent of Police,
Udumalaipet Range,
Tiruppur District.

3.The Inspector of Police,
Madathukulam Police Station,
Tiruppur District.

4.P.Suresh

.. Respondents

Criminal Original petition filed under Section 482 of the Criminal Procedure Code praying to call for the records and quash the proceedings/ charge sheet in CC.No.20 of 2014 on the file of the Judicial Magistrate No.II, Udumalaipet.

For Petitioner : Mr.D.Ashok Kumar

For Respondents : Mr.C.Emalias, APP [for R1 to R3]

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O R D E R

This petition has been filed to quash the proceedings in CC.No.20 of 2014 on the file of the learned Judicial Magistrate No.II, Udumalaipet.

2. Heard the learned counsel for the petitioner; the learned Additional Public Prosecutor appearing for respondents 1 to 3 and perused the materials placed on record.

3. On the complaint lodged by the Village Administrative Officer, this petitioner and other accused had formed an unlawful assembly on 12.08.2013 with the common object of taking illegal possession of Government poramboke land and in pursuance of the common object, they trespassed into the land and also committed other offences.

4. The respondent Police registered a case in Crime No.167 of 2013 under Section 147, 447, 341, 294b, 353, 434, 506[ii] and 188 IPC. After completing the investigation, a Final Report against five persons including the petitioner herein was filed in CC.No.20 of 2014 before the learned Judicial Magistrate II, Udumalaipet, challenging which, the petitioner who is a practicing Advocate is before this Court.

5. The learned counsel appearing for the petitioner submitted that the facts of the case falls within guideline No.7 of the judgment of the Supreme Court in State of Haryana Vs Bhajan Lal [AIR 1992 SC 604], which reads as follows:

"7.Where a criminal proceeding is manifestly attempted with malafie and or where the proceeding is maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge."

6. The learned counsel further submitted that this case has been foisted by the police on him, because he had appeared for the other accused in civil proceedings. In support of his contention, he also submitted that a valid decree has been given by the Civil Court in OS.No.428 of 2013.

7. This Court carefully perused the records. It is seen from the records that one Danaraj, Gnanakannu and Solaiammal have filed a suit in OS.No.236 of 2013 before the District Munsif, Udumalaipet against [1] District Collector, Tiruppur, [2] Revenue Divisional Officer, Udumalaipet, [3] President, Kadathur Panchayat and a private person by name [4] Rasu. In that suit, the counsel for the plaintiff is the present petitioner. The prayer in the suit is for a bare injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the property in Kadathur Village, Survey No.Ka.Sa.669/A1. During the pendency of this suit, the said Danaraj, Gnanakannu and Solaiammal have filed another suit in OS.No.428 of 2013 in which, one Ravi and Ganesan have been shown as defendants. That suit has also been filed by the petitioner herein as counsel for the plaintiff. In that suit also, the prayer is for a bare injunction restraining the defendants therein from interfering with possession of the same property described in earlier suit.

8. It is seen that none of the defendants in the earlier suit has been made as defendants in the second suit. The defendants in the earlier suit namely, Ravi and Ganesan have remained exparte and an exparte decree has been obtained on 01.04.2014 in respect of Government poramboke lands. Armed with which, this petitioner along with the others has tried to take forcible possession of Government property.

9. The Final Report and the statements recorded under 161 Cr.P.C of the witnesses clearly discloses the presence of the petitioner along with the co-accused on 12.08.2013 in the place of occurrence and his overt act. Therefore, this is not a case where the law laid down by the Hon'ble Supreme Court in State of Haryana Vs Bhajan Lal 's case [AIR 1992 SC 604] would apply. From the 161 statement of witnesses, it is seen that Gnanakannu [A2] and Danaraj illegally encroached upon Government lands which encroachments were removed on 08.08.2013 and thereafter, again on 12.08.2013, this petitioner and the co-accused had attempted to take forcible possession of the land, after intimidating the revenue officials who had come there for distribution of free lands for the poor.

10. Thus, in the light of overwhelming materials against the petitioner, this is not a fit case to be quashed. Accordingly, this petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

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s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1.The Judicial Magistrate No.II,
Udumalaipet.

2.-do- thro'The Chief Judicial Magistrate,
Tiruppur.

3.The Superintendent of Police,
Tiruppur District,
Tiruppur.

4.The Deputy Superintendent of Police,
Udumalaipet Range,
Tiruppur District.

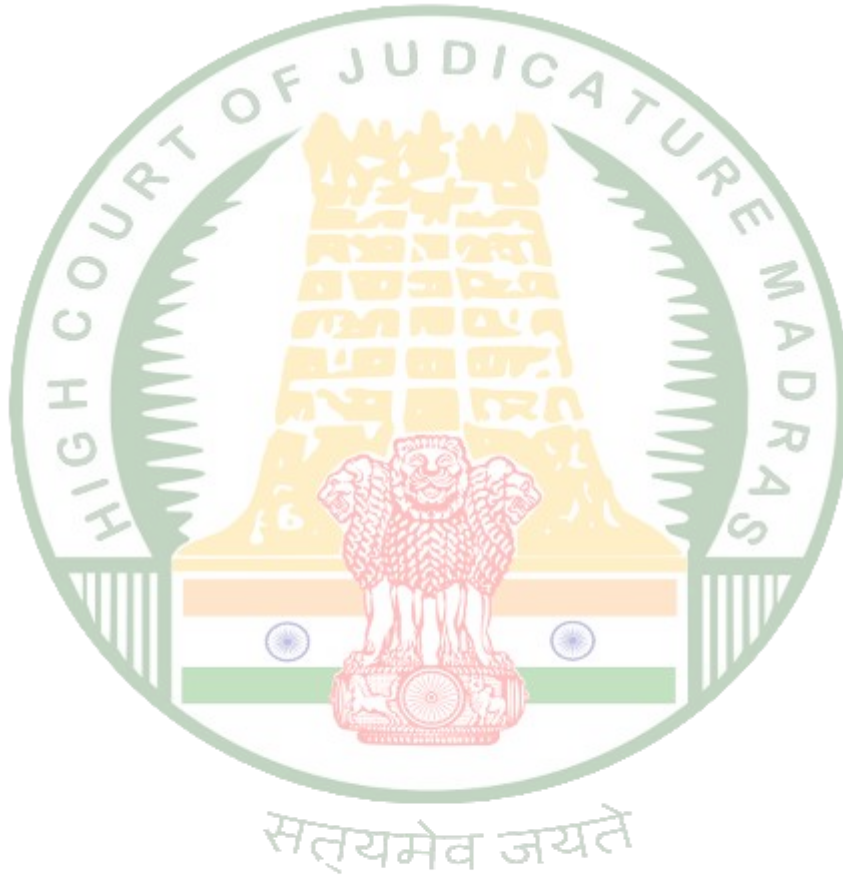
5.The Inspector of Police,
Madathukulam Police Station,
Tiruppur District.

6.The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr.D.Ashok Kumar, Advocate SR 36104

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