

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.11.2017

PRONOUNCED ON : 30.11.2017

CORAM :

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRIMINAL REVISION Nos.117, 118, 122, 128,
146 & 150 of 2017

and
Crl.M.P.Nos.1283, 1284,1321, 1322,1412,1422, 1613,1614,1684 &
1733 of 2017

Christraj ..sole Petitioner in Crl.R.Cs.117, 118 of 2017

1. Muthukrishnan

2. Antony Samy

3. Jayapal

4. Sankar

5. Balu .. Petitioners in Crl.R.C.122 of 2017

1. Shanmugam

2. Chandramohan

3. Packirisamy ..Petitioners in Crl.R.C.128 of 2017

G.Sivakumar .. sole Petitioner in Crl.R.C.146 of 2017

1. K.Mohandoss

2. P.Nathigan .. Petitioners in Crl.R.C.150 of 2017

Vs.

Thiagarajan .. sole Respondent in Crl Rc
117,118,122,128/17 &
1st Respondent in Crl Rc.,146 & 150/17

State rep. By
The Public Prosecutor,
Nagappattinam

.. 2nd respondent in
Crl.Rcs.146, 150 of 2017

Prayer in Crl.R.C.No.117,122, 128, 146 & 150 of 2017 :

Criminal Revision Petition filed under Section 397 r/w.401 Cr.P.C. to call for the records in Crl.A.No.56 of 2013 dated 19.01.2017 on the file of the Principal Sessions Court, Nagapattinam confirming the order of the learned Judicial Magistrate No.II, Nagapattinam, in C.C.No.97 of 2008 dated 16/12/2013 and set aside the same.

Prayer in Crl.R.C.No.118 of 2017 :

Criminal Revision Petition filed under Section 397 r/w.401 Cr.P.C. to call for the records in Crl.M.P.No.773 of 2016 in Crl.A.No.56 of 2013 dated 19.01.2017 on the file of the Principal Sessions Court, Nagapattinam and set aside the same.

For Petitioner in all
Crl.R.Cs.117 & 118 of 2017 : Mr.N.R.Elango,
Sr. counsel
for Mr.R.Vivekananthan

For Petitioner in all
Crl.R.C. 122 of 2017 : Mr.N.R.Elango,
Sr. counsel
for Mr. S.Saravanakumar

For petitioners in Crl.R.C.128/2017 : Mr.K.Sukumaran

For petitioners in Crl.R.C.146/2017 : Mr.P.G.Thiyagu

For petitioners in Crl.R.C.150/2017 : Mr.D.Veerasekaran

For sole Respondent in Crl Rc
117,118,122,128/17 1st respondent
in Crl Rc.146 & 150/17. : Mr. V.Ramamurthy

For second respondent in
Crl.R.Cs.146 &150 of 2017 : Mr.R.Sekar,
Gov. Advocate.

COMMON ORDER

The appellant in Crl.R.C.No.117 & 118 of 2017 is A1; the appellants in Crl.R.C.No.122 of 2017 are A2, A9 to A12 ; the appellants in Crl.R.C.No.128 of 2017 are A3 to A5; the appellant in Crl.R.C.No.146 of 2017 is A6; the appellants in

CrI.R.C.No.150 of 2017 are A7 & A8 in C.C.No.97 of 2008 on the file of the Judicial Magistrate No.II, Nagapattinam. A1 and A2 stood charged for the offences under Sections 148, 447, 427 and 506(ii) IPC and A3 to A12 stood charged for the offences under Sections 148, 447 and 427 IPC. By judgment dated 16.12.2013, the trial Court convicted and sentenced the appellants/accused as detailed below:-

Accused	Section of law	Sentence
A.1 to A.9	147 I.P.C.	Simple imprisonment for one year
A.1 to A.9	447 I.P.C.	Simple imprisonment for 3 months
A.1 to A.9	427 I.P.C.	Simple imprisonment for one year
A.10 to A.12	148 I.P.C.	Simple imprisonment for two years
A.10 to A.12	447 I.P.C.	Simple imprisonment for 3 months
A.10 to A.12	427 I.P.C.	Simple imprisonment for one year

The trial Court has ordered the above sentences to run concurrently and acquitted A1 and A2 from the charge under Section 506(ii) IPC and A1 to A9 from the charge under Section 148 IPC. Challenging the said conviction and sentence, the petitioners/accused filed an appeal in C.A.No.56 of 2013 on the file of the Sessions Court, Nagapattinam and the lower appellate Court, dismissed the appeal by judgment dated 19.01.2017 and confirmed the conviction and sentence imposed by the trial Court. Now, challenging the same, the petitioners/accused are before this Court with these revisions.

2.The case of the respondent/complainant, in brief, is as follows:

The respondent/complainant is an agriculturist residing at Raranthimangalam village in Nagapattinam Taluk and District. In the year 2001, the respondent/complainant entered into a sale agreement in respect of 27 cents of punja land in Survey No.59/2, and pursuant to the agreement, he was in possession, and enjoyment of the property, and doing cultivation and also fish culture. Thereafter, on 06.01.2004 and 11.03.2004, he purchased the said property by means of two registered sale deeds and became the absolute owner of the property. Subsequently, on the application filed by the complainant, the land was sub divided into Survey No.59/2B, a separate patta has also been issued in his favour and he has been regularly paying taxes and other charges to the Government. The second accused, in this case, having an enmity with the complainant, sent a false complaint against him, as if he has encroached the public property. Based on the above complaint, without conducting proper enquiry, patta granted in favour of the complainant has been cancelled by Tahsildar, Nagapattinam, and by a notice dated 17.09.2007, which was affixed in his door, he was directed to vacate the said land. Thereafter, the complainant sent a legal notice dated 08.10.2007, Tahsildar and others claiming right over the property and also disputing the alleged encroachment. Despite the same, on 26.10.2007, at about 9.00 p.m., all the accused came with dangerous weapons and formed an unlawful assembly, broke open the gate, trespassed into the property and damaged all the standing crops, 50 coconut trees, also stolen the oil engine, power sprayer, and agricultural implements. After hearing the news, the complainant went to the scene of occurrence and questioned A1 and A2. At that time, A1 and A2 criminally intimidated him and threatened him that they will finish off the complainant. Immediately, he lodged a complaint before the Nagapattinam police station, but no action has been taken on his complaint. Hence, he filed a petition before this Court in CrI.O.P.No.35496 of 2007 and this Court by an order dated 04.12.2007, directed the Nagapattinam Police to enquire into his complaint. Based on the order passed by this Court, a case has been registered in Crime No.31 of 2008, for the offences under Sections 147, 447 and 427 IPC and after investigation, Nagapattinam police closed the complaint as mistake of fact. In the above circumstances, the petitioner has filed a private complaint before the Judicial Magistrate No.II, Nagapattinam.

3. The trial Court after considering the complaint, as well as the sworn statement taken cognizance of the offence, issued summons to the accused and after considering all the materials, the trial Court framed charges as mentioned in paragraph 1 of the judgment and the accused denied the same. In order to prove

his case, the complainant examined himself as P.W.1, and examined 3 other witnesses, and marked as many as 25 documents.

4. Out of the witnesses examined , P.W.1 is the complainant in this case. According to him, on 06.01.2004 and 11.03.2004, he has purchased an extent of 27 cents of agricultural punja land in Survey No.59/2 by means of two registered sale deeds from the original owners, and he has been in possession and enjoyment of the same and doing cultivation in the land. In the year 2004, A9, who was the president of the village panchayath, claiming that the above said land is classified as a community burial ground, and instigated some villagers and filed a complaint before the Revenue Divisional Officer. After enquiry, the Revenue Divisional Officer found that there is no encroachment. Thereafter, the complainant filed an application for transfer the patta and the land purchased by him has been sub divided, and a separate patta has also been issued in his name. Subsequently, without any notice to the complainant, the patta granted in his favour has been cancelled, and the Tahsildar passed an order directing him to vacate the said land on the ground that his patta has been cancelled. Immediately, he has sent a legal notice disputing the alleged encroachment and stated that the land in dispute is a patta land belongs to the complainant. Subsequently, on 26.10.2007, all the accused came to his land, broke open the gate, illegally trespassed into his land and damaged the entire standing crops including coconut trees and also stolen the pumpset and other agricultural implements. Immediately, he has given a complaint and since no action has been taken, he filed a petition before this Court and thereafter, a case was registered and after enquiry it was closed as mistake of fact.

5. P.W.2, a villager has spoken about the possession and enjoyment of the disputed land by P.W.1 and also the eviction proceedings initiated by the accused and damaging the standing crops. P.W.3 is the former Vice President of the village panchayath, he has also spoken about the damage caused to the standing crops and the coconuts trees in P.W.1's land. P.W.4, is the photographer, who took photographs of the damaged crops.

6. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., the accused denied the same. However, they did not choose to examine any witness or mark any documents on their side.

7. Having considered all the above materials placed on record, the trial Court found the accused guilty under the charges framed against them and accordingly, convicted and sentenced them as detailed in the first paragraph of this judgment. Challenging the conviction and sentence, the

petitioners/accused preferred an appeal in Crl.A.No.56 of 2013 before the Sessions Court, Nagapattinam. Pending appeal, the petitioner filed an application under Section 391 Cr.P.C to make additional evidence and the lower appellate Court confirmed the conviction and sentence and dismissed the appeal and also dismissed the application filed by the petitioner. Aggrieved over the same, the petitioners/accused are before this Court with the present revision petitions.

8. I have heard the learned counsels appearing for the petitioners, the learned counsel appearing for the respondent/complainant and the learned Government Advocate (Crl.side) appearing for the State/R2 in Crl.R.C.Nos.146 & 150 of 2017 and also perused the records carefully.

9. Mr.N.R.Elango, the learned senior counsel appearing for the petitioners in Crl.R.C.Nos. 117, 118 and 122 of 2017 submitted that A1 in this case is the Revenue Divisional Officer of Nagapattinam Taluk. A3 to A8 are employees in revenue department. A2 & A9 are the former President of the village panchayath and A10 to A12 are all the villagers, residing in Raranthimangalam village. As per the revenue records, the land said to have purchased by the defacto complainant in Survey No.59/2B, is classified as a "community burial ground". The complainant without verifying the same has purchased the property. Hence, based on the complaint given by A9, and another person, to the District Collector, Nagapattinam, and the District Collector issued a direction to the sub-Collector, Nagapattinam in and by his proceedings No.31440/2004/f4/dated 01.10.2004 to consider the above complaint and to conduct an enquiry. Thereafter, the Sub-Collector issued a notice to the complainant for enquiry. The complainant also appeared for enquiry and raised his objection. After enquiry, in and by his proceedings in 14/2004/A4 dated 25.12.2004, the Sub-Collector, Nagapattinam, passed an order, that the land in dispute was originally classified as "Mayanam" in the revenue records, and cancelled the sub-division made in favour of the complainant and restored the revenue records to its original position as a village community burial ground, and also directed the concerned Tahsildar to carry out necessary changes in the revenue records. The above said order was not challenged by the complainant and it becomes final. Thereafter, by a proceedings dated MURC.No.2396/2005/A4, dated 09.05.2005, the Revenue Divisional Officer, Nagapattinam, directed the Tahsildar to carry out necessary changes in revenue records as per the order passed by the Sub-Collector, dated 25.12.2004, and further directed the Tahsildar, Nagapattinam, to take steps to evict the encroachment from the community burial ground.

10. Following the said directions, the Tahsildar,

Nagapattinam, in and by his proceedings in RC.No.3425/2005/C1 dated 11.05.2005 canceled the sub division and restored the revenue records to the original position as village community burial ground and the same was also duly informed to the District Collector, Nagapattinam. The District Collector, Nagapattinam in turn informed the same to the Government in and by his proceedings vide Na.Ka.No.31440/2004, dated 25.05.2005. Thereafter, by a proceedings in R.C.No.11177/2007/A3 dated 17.09.2007, the Tahsildar, Nagapattinam, sent a notice to the complainant, referring the cancellation of the patta and asked him to vacate the premises within 15 days from the date of receipt of the notice, in absence, necessary legal action will be initiated to evict him. That notice was also received by the complainant and he has also sent a reply, through a legal notice, dated 08.10.2007 to the District Collector, Revenue Divisional Officer and Tahsildar, stating that he is the owner of the property and he has not encroached the land. But he did not challenge the order passed by the Tahsildar. In the above circumstances, Al, Revenue Divisional Officer, along with Village Administrative Officers taken steps to evict the complainant from the community burial ground area, which was in possession of the complainant, and they have only carried out their official duty to evict the complainant, and absolutely there is no dishonest intention on the part of the officials/accused to trespass into the land of the complainant and to cause damages.

11. The learned senior counsel further submitted that due to inadvertence all the above said proceedings were not marked before the trial court, however, in the lower appellant court, Al, filed an application under Section 391 Cr.P.C to mark the above proceedings as additional evidences. But, the lower appellate court simply dismissed the application along with the appeal. The learned senior counsel further submitted that since the official accused only discharged their official duty and a sanction under Section 197 Cr.P.C. is necessarily to be obtained before initiating criminal proceedings against the officials accused. But, without obtaining prior sanction, the trial Court taken cognizance against the officials accused, and the failure to obtain prior sanction against the officials/accused is fatal to the prosecution. The act of the official accused are directly connected with their official duties to carry out the eviction proceedings pursuant to an eviction order passed by the revenue authorities. In the above circumstances, the sanction under Section 197 Cr.P.C is necessary for prosecuting the official accused for the above said offences. The learned senior counsel further submitted that, actually there is no unlawful assembly and since all the accused were executing the order of eviction issued by the competent authority, it cannot be considered as an unlawful assembly and after cancellation of

patta in his favour, which also become final, the possession in the land by the complainant can only be considered as an encroachment of the public land and in pursuant to the order of eviction passed by the Tahsildar, the eviction proceedings has been carried out and at any rate, it cannot be considered as a criminal trespass warranting conviction under Sections 447 and 427 IPC.

12. Apart from that the complainant himself produced the eviction notice issued by the Tahsildar as Ex.P.4 and reply sent by him under Ex.P.5 . On perusal of Ex.P.4 and Ex.P.5, it could be seen that the complainant was fully aware of the cancellation of patta stands in his name and also the cancellation of sub division, and the eviction notice issued by Tahsildar dated 17.09.2007. In the above circumstances, it would clearly established that the officials accused were only discharged their official duty in their official capacity and absolutely there is no evidence to show that they have acted with any dishonest intention to trespass into the complainant land and also to damage the crops standing therein. Eventhough the complainant alleged that crops including the coconut trees were standing in the land, except producing some photographs, no evidence has been let in by the complainant to prove the the same.

13. The learned senior counsel also submitted that after eviction, the respondent/complainant filed two suits before the Sub-court, Nagapattinam in O.S.No.10 of 2009 claiming compensation of Rs.1,10,000/- for damaging the standing crops in the land and another suit in O.S.No.98 of 2010 seeking permanent injunction restraining the Village Panchayat President of Raranthimangalam panchayath, from interfering with his peaceful possession and enjoyment of the above disputed property. The trial Court disposed both the suits by a common judgment dated 30.06.2011, dismissing the suit filed by the complainant seeking compensation in O.S.No.10 of 2009, and decreed the suit in O.S.No.98 of 2010, thereby restraining the defendant therein, namely, panchayath President of Raranthimangalam from interfering with the peaceful possession of the disputed property. Challenging the above said judgment and decree passed by the trial Court, the defendant in O.S.No.98 of 2010, namely, panchayathh president of Raranthimangalam village filed an appeal in A.S.No.30 of 2011 and against the dismissal of the suit in O.S.No.10 of 2009, the respondent/complainant filed another appeal, in A.S.No.35 of 2011 on the file of the District Court, Nagapattinam. The first appellate Court disposed both the appeals by a judgment and decree dated 21.12.2011, modified the judgment and decree passed in O.S.No.98 of 2010 and granted decree of permanent injunction in favour of the respondent/complainant until the title of the panchayath is

established by the appellant/village panchayath and also allowed the appeal in A.S.No.35 of 20011 and directed the defendants, namely, District Collector, Revenue Divisional Officer and others to pay the damage of Rs.10.000/-. Challenging the above said judgment and decree passed by the lower appellate court, two second appeals in S.A.No.808 of 2012 and 716 of 2012 were filed and the same are pending before this Court.

14. Mr. K.Sukumaran, the learned counsel appearing for A3 to A5 submitted that they are all Village Administrative Officers of the concerned village and they have only accompanied the A1, Revenue Divisional Officer to carry out the eviction proceedings in discharge of their official duty and they cannot be mulcted with any criminal liability, even assuming that there are some excess in evicting the complainant from the land in dispute. The learned counsel further submitted that various orders have been passed by the revenue authorities cancelling the complainant's patta and sub-division and also ordered eviction. But the complainant did not challenge the above said order before the competent forum and hence, the above orders become final. In pursuant to the above said orders, the eviction proceedings have been carried out by the revenue authorities, while discharging their official duty and in the absence of any evidence that they have acted with dishonest intention, the petitioners cannot be convicted. Taking cognizance of the offence against the above official accused and without getting any prior sanction under Section 197 Cr.P.C., is legally invalid, hence the conviction imposed on the official accused is liable to be set aside.

15. The learned counsel appearing for A7 and A8 has submitted that they have no personal enmity with the complainant and they have only discharged their official duty for evicting the complainant. The learned counsel appearing for the other accused has submitted that absolutely there is no evidence to show that they were also present in the scene of occurrence and they were also participated in the eviction proceedings. In such circumstances, in the absence of any such evidence, merely because some of the accused had given complaint against granting of patta in the name of the complainant, they have been falsely implicated in this case. The trial Court also without considering the evidence in proper perspective, erroneously convicted the accused.

16. Per contra Mr.V.Ramamurthy, learned counsel appearing for the respondent/complainant, has submitted that the disputed land is a patta land of the respondent/complainant and he has purchased the same for a valuable consideration from the original owners of the land. Subsequently, after enquiry, the revenue authorities, namely, Tahsildar has sub-divided the land

and also issued a separate patta in his favour. The respondent continuously paying kist to the Government and the revenue authorities also collecting the land taxes from the complainant treating the same as his patta land. The other accused, namely, village president and others, who had previous enmity against the respondent said to have made a false representation as if the lands are classified as community burial ground in the revenue records and based on that an enquiry was initiated and the complainant has also raised his objection before the authorities. Thereafter, without conducting any enquiry, an order said to have passed behind his back cancelling the sub division, and the above said order was not communicated to the complainant and he did not aware about the said order. The complainant came to know about the said proceedings only after the receipt of Ex.P.4 notice issued by the Tahsildar dated 17.09.2007, which was affixed in his house. Immediately, he sent a legal notice to the District Collector and the Revenue Divisional Officer/first petitioner herein, claiming that it is not a "mayanam poromboke" as claimed by the revenue authorities. But, it is his own patta land and he has been in possession and enjoyment of the same for a long period continuously and requested them not to initiate any eviction proceedings against the complainant, thereafter, no enquiry was conducted. In the meantime, the first petitioner/ Revenue Divisional Officer, without verifying the revenue records, with a dishonest intention and with the help of other accused, trespassed into the complainant land and damaged the entire standing crops including coconuts trees. The learned counsel further submitted that even assuming that the respondent has encroached the burial ground, the authorities should follow due process of law for evicting the complainant and without doing so, the petitioners with a malafide and dishonest intention have criminally trespassed into the respondent's land and caused damages to the crops and coconut trees.

17. From the materials available on record, absolutely, there is no evidence to show that the first petitioner/Revenue Divisional Officer checked all the revenue records before conducting the eviction proceedings. But the materials available would definitely shows that all the petitioners were acted with dishonest intention to evict the respondent from his lawful possession. It is also evident from the fact that admittedly there are 34 persons were in possession of the entire survey number, but the complainant alone was singled out and the complainant alone was forcibly evicted by the petitioners out of the 34 persons.

18. The learned counsel also referred to Section 24 IPC and contended that the act done by the petitioners is only with a dishonest intention to cause wrongful loss to the complainant.

The learned counsel further submitted that since the officials respondents did not discharge any official duty while evicting the complainant and they did the same with a dishonest intention to cause wrongful loss to the complainant, there is no necessity to get any sanction as contemplated under Section 197 Cr.P.C. It is the further contention of the learned counsel appearing for the respondent that, both the Courts below has concurrently held that no oral or documentary evidences, were produced before the Court below to show that the land in dispute was classified as Mayanam. Admittedly, all the alleged documents produced before the lower appellate court were available with the officials/accused during the trial. But, they have deliberately withhold it and failed to produce the same during the trial. But, only in the appeal they sought to produce the same without giving any valid reason for not producing the same before the trial Court and the lower appellate Court considered all those documents on merit and dismissed the application. Since, all the alleged documents produced by the petitioners were not marked as evidences, this Court in the revision cannot be looked into all those documents. The learned counsel further contended that both the Courts below had concurrently held that it is only these petitioners had committed offence and there is no illegality or perversity in the judgment of the concurrent findings of the Courts below and this Court sitting in revision under Section 397 Cr.P.C. cannot interfere with the concurrent findings of Courts below in the revisional jurisdiction.

19. I have considered the rival submissions made on either side and perused the materials available on record carefully.

20. A1 is the Revenue Divisional Officer , Nagapattinam. A2 is the President of the Village panchayath. A3 to A5 are the Village Administrative Officers. A6 is a Revenue Inspector. A7 and A8 are the Village Menials working under A3 to A5. A9 is the another village panchayath president. A10 to A12 are the villagers belongs to complainant village.

21. The allegation against the accused in the complaint is that the complainant is the absolute owner of an agricultural land to an extent of 27 cents, in Survey No.59/2B, and he purchased the property in the year 2004, from the original owners of the land. Subsequently, the Survey Number was subdivided and patta has also been issued in his favour. Even prior to that , by virtue of the sale agreement, he has been in possession and enjoyment of the property from the year 2001. The second accused, who was the president of the Village panchayath having some personal enmity with the complainant, and in order to evict him illegally, he has filed a complaint before the first accused alleging that the complainant has encroached the public property which was classified as a burial ground in

the revenue records, and the first respondent also without conducting any enquiry, cancelled the sub division and the patta issued in favour of the complainant. Thereafter, the Tahsildar vide notice dated 27.09.2007, directed the complainant to vacate the said premises, otherwise, action will be taken to evict him from the premises. For that, the complainant also sent a reply dated 08.10.2007. In the meanwhile, without conducting any enquiry, on 26.10.2007, all the official accused and others formed unlawful assembly with dangerous weapons for the purpose of evicting the complainant illegally, and they have broke open the gate, and trespassed into the property and caused damages to the standing crops and coconut trees and also damaged the fish pond and stolen agricultural implements. In the above circumstances, the complainant has filed a private complaint.

22. The main crux of the complaint is that the complainant is the owner of the property and the petitioners criminally trespassed into the property and caused damages to the standing crops and coconut trees. The trial Court, convicted A1 to A9 under Sections 147, 447 and 427 IPC and A10 to A12 under Sections 148, 448 and 427 IPC. The trial Court convicted the petitioners on the ground that all the accused without following the due process of law, formed an unlawful assembly, and criminally trespassed into the land and caused mischief. The trial Court also rendered a finding that, in a civil suit filed by the complainant, subsequent to the eviction proceedings, the civil Court decreed the suit in his favour. since the official accused were not discharging their official duty while evicting the respondent, hence, the sanction is not required to prosecute them. The lower appellate Court has held that under Section 132 of the Tamilnadu Panchayath Act, the property cannot be converted into community property and only the Government has a power to declare the same, and there is no material to show that the disputed land has been declared as a community property by the Government, further the lower appellate Court has recorded that the complainant is the owner of the disputed property. Hence, the panchayath can only acquire the land under Section 137 of the panchayath Act. If at all, the panchayath wants to evict the complainant, he can be evicted only under Section 131(2) of the Tamil Nadu panchayath Act. But, the accused without resorting either under land Acquisition Act or Tamilnadu Land Encroachment Act, trespassed into the complainant's property and caused damages, and it has no nexus with their official duty, holding so, the lower appellate Court confirmed the conviction and sentence imposed by the trial Court.

23. Ex.P.4 is the notice issued by the Tahsildar, Nagapattinam to the complainant dated 17.09.2007, which said to have been an eviction notice. The notice contains the details of the earlier proceedings, namely, the patta granted in favour

of the complainant dated 23.03.2004 by the Tahsildar, Nagapattinam has been cancelled by the Sub-Collector, Nagapattinam in and by his proceedings dated PM/14/2004/A4 dated 25.12.2004. Thereafter, the classification of the land has been changed to its original classification as "community burial ground". In such circumstances, as the land has been classified as community land, the complainant was directed to vacate the land within a period of 15 days, in absence, necessary legal action will be taken for eviction. From Ex.P.4, Notice, it is clear that earlier the land has been used as a burial ground by the villagers. Subsequently, patta has been granted to the petitioner by the Tahsildar on 23.03.2004. Thereafter, the above patta has been cancelled by the Sub-Collector/appellate authority, and the land has been restored to its original classification as community land and burial ground, necessary mutation has also been effected in the revenue records. Only thereafter, the complainant was directed to vacate the premises within 15 days. But, he has not vacated the said premises.

24. It is submitted by the learned senior counsel appearing for the revision petitioners that, before the cancellation of patta by the Sub-Collector, a notice has been issued to the complainant and he has also filed an objection for the same and after due enquiry only the Sub-Collector cancelled the patta. Subsequently, various communications have been sent by the District Collector and Revenue Divisional Officer to carry out necessary mutation in the revenue records and pursuant to the same, the Tahsildar carried out the mutation in the revenue records. Thereafter, an eviction notice has been issued under Ex.P.4. Since the complainant refused to vacate the premises, the Revenue officials, namely, the Revenue Divisional Officer, Village Administrative Officers, Revenue Inspector and Village Menials evicted the complainant pursuant to Ex.P.4, notice and they have only discharged their official duty.

25. The learned senior counsel further submitted that due to inadvertence, during the trial, the eviction proceedings were not marked before the trial Court. Whereas, before the lower appellate Court, the petitioners have filed a petition under Section 391 Cr.P.C to mark all the documents. The lower appellate Court, dismissed the application without assigning any valid reasons. Even though, the earlier proceedings of the revenue authorities were not marked as evidence before the trial Court, Ex.P.4, Eviction Notice issued to the complainant referred to all the earlier proceedings initiated by the authorities.

26. From the perusal of Ex.P.5, legal notice sent by the complainant to the District Collector, Revenue Divisional Officer and the Tahsildar, it is seen that the complainant has stated that even if the land is classified as community land,

the Government cannot initiate any eviction proceedings and the authorities can only evict him only through civil court.

27. It is settled proposition of law, that any order passed by the Executive authorities, even if it is a illegal order, unless the order is set aside by the Appellate or Revisional authority, the order is deemed to be a valid order. Admittedly, the complainant has not chosen to challenge the orders, viz, cancellation of the patta granted in favour of the respondent or Ex.P.4/Notice. In the above circumstances, on the date of eviction, the patta granted in favour of the complainant stand cancelled and an eviction notice has also been issued by the Tahsildar under Ex.P.4.

28. With the above background, now it has to be considered, whether the accused has committed any offences under Sections 447 or 427 IPC.

29. Section 447 IPC deals with punishment for criminal trespass. Section 441 IPC defines criminal trespass as follows:

" Section 441- Criminal trespass - Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass".

To prove the offence under Section 441 IPC, the complainant should prove the criminal intention of the accused to commit the offence, and the complainant should also prove that the dominant intention of the accused was to annoy, intimidate, or insult, and the intention is most essential ingredient in the offence of criminal trespass.

30. The Hon'ble Supreme Court in a case reported in AIR 1964 SCC 986 (Mathiri and others /vs/ State of Punjab) has held as follows:

" (18) We think, with respect, that this statement of law as also the similar statements in Laxaman Ranghunath's case, ILR 26 Bom 558 and in Sellamudhu Servaigaran's case, ILR 35 Mad 186 are not quite accurate. The correct position in law may, in our opinion, be stated thus: In order to establish that the entry on the property was with the

intent to annoy, intimidate or insult, it is necessary for the Court to be satisfied that causing such annoyance, intimidation or insult was the aim of the entry; that it is not sufficient for that purpose to show merely that the natural consequence of the entry was likely to be annoyance, intimidation or insult, and that this likely consequence was known to the persons entering; that in deciding whether the aim of the entry was the causing of such annoyance, intimidation or insult, the Court has to consider all the relevant circumstances including the presence of knowledge that its natural consequences would be such annoyance, intimidation or insult and including also the probability of something else than the causing of such intimidation, insult or annoyance, being the dominant intention which prompted the entry."

31. Keeping the above principle in mind, if we consider the facts of the present case, the dominant intention of the accused is not to annoy, intimidate or insult the complainant. But the accused had entered into the property only with an intention to carry out the order of eviction passed by the competent revenue authorities and the accused entered into the disputed land with a bonafide intention to evict the complainant, armed with the order of eviction, and there is no intention to intimidate, insult or annoy the complainant. Even assuming the accused had no right over the land, they cannot be convicted for criminal trespass as their entry was not with any intention to commit the offence. In the said circumstances, the conviction under Section 447 IPC is not maintainable.

32. In so far as, the conviction under Section 427 IPC for committing mischief and thereby causing damages to the tune of Rupees 50/- or upwards. Section 425 IPC defines mischief as follows:

" Section 425-Mischief - Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits " mischief ".

33. The gravamen of the offence of mischief is that, there must be an intention or knowledge to cause wrongful loss or damage to any person, causing destruction of property and

mensrea is one of the essential ingredients for the offence of mischief and if the accused honestly believed in good faith that he had the right to do what he did even if he did not in law have that right, he cannot be said to have had the necessary intention or knowledge that he was likely to cause wrongful loss or damage. When the accused have acted with bonafide intention to evict the complainant by virtue of the order of eviction passed against him, it cannot be held that he has committed any mischief. In the above circumstances, the conviction under Section 427 IPC is also not maintainable.

34. The next question is whether all the accused have formed unlawful assembly with a common object and they have used force or violence, thereby punishable under Sections 147 and 148 IPC. Section 141 IPC deals with unlawful assembly and it reads as follows :

"Section 141 -Unlawful Assembly - An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is-

First - To overawe by criminal force, or show of criminal force, [the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or

Second- To resist the execution of any law, or of any legal process; or

Third - To commit any mischief or criminal trespass, or other offence; or

Fourth- By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth - By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

35. As already held, the accused did not commit any criminal trespass or commit any mischief, and do not have any common object to commit mischief, and their assembly cannot be

considered as an unlawful assembly, Hence, the accused cannot be convicted for the offences under Sections 147 and 148 IPC also.

36. The next contention of the learned senior counsel that the accused were only discharging their official duty as per the order of eviction passed by the Tahsildar. In the above circumstances, under Section 197 Cr.P.C, a valid sanction is necessary before taking cognizance of the offence. Admittedly, no sanction was obtained by the complainant for prosecuting against the official accused 1,3 to 8.

37. The purpose of obtaining sanction under Section 197 Cr.P.C. is to protect the public servants against institution of vexatious and false criminal prosecution for the offence alleged to have been committed by them while they are acting or purporting to act as public servant, and anything done by them in discharge of their official duty.

38. In the case on hand, as already held that the official accused have only discharged their official duty to carry out the eviction. In the above circumstances, they were protected under Section 197 Cr.P.C and a valid sanction is necessary before taking cognizance of the offence against them. In such circumstances, failure to get prior sanction to prosecute against the official accused viz, 1, 3 to 8 is also fatal to the complainant's case.

39. The Courts below mainly relied upon the finding of the civil Court in a suit filed by the complainant for bare injunction against the village panchayath President alone. The above suits have been filed subsequent to the eviction proceeding. It is also to be noted that challenging the above judgment and decree, the second appeals were filed and same are also pending before this court, and the findings of the Civil Court not attained finality. In the said circumstances, the Court below ought not to have relied upon the judgment of the civil Court and come to a conclusion that the complainant is the absolute owner of the property. Especially, when the two orders, viz, cancellation of the patta as well as the order of eviction were not challenged by the complainant.

40. Considering the facts and circumstances, I am of the considered view that the complainant failed to prove the charges levelled against the petitioners and hence, the conviction and sentence imposed on the petitioners by the courts below are liable to be set aside. So far as CrI.R.C.No.118 of 2017, challenging the order dismissing the petition filed under Section 391 Cr.P.C., is concerned, in view of the above finding no further order is necessary in that revision, hence the above revision is liable to be dismissed.

41. In the result, Criminal Revision Nos.117, 122, 128, 146 and 150 of 2017 are allowed and the conviction and sentence imposed on the petitioners/accused are set aside. The petitioners are acquitted from all the charges levelled against them. The bail bonds, if any executed by the accused, shall stand cancelled. The revision petition in CrI.R.C.No.118 of 2017 is dismissed. Consequently, connected Criminal Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

mrp

To

1. The Sessions Judge,
Nagapattinam.
2. The Judicial Magistrate No.II,
Nagapattinam.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.SARAVANAKUMAR Advocate, S.R.No. 85212
+1cc to Mr.D.VEERASEKARAN Advocate, S.R.No. 85200
+1cc to Mr.E.RAJ THILAK Advocate, S.R.No. 85138
+1cc to Mr.P.G.THIYAGU Advocate, S.R.No. 85286

judgment
in

CrI.R.C.Nos.117, 118, 122, 128,
146 & 150 of 2017

SK (CO)
TR(21/12/2017)

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