

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2017

C O R A M

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.753 of 2007

The Commissioner,
Tambaram Municipality,
Tambaram.

...Appellant/ Complainant

-VS-

1.Yasodha
W/o.Balu Reddy.

2.The Manager,
Indian Oil Corporation,
500, Anna Salai,
Tenampet,
Chennai-600 018.

... Respondent/Accused

Criminal Appeal filed under Section 378(2) of the Code of Criminal Procedure against the judgment of learned Judicial Magistrate, Tambaram, passed in S.T.C.No.27 of 2005 on 26.04.2007.

For Appellant : Mr.P.Srinivas

For Respondents : Mr.A.Abdul Hameed (for R2)

J U D G M E N T

This appeal arises against judgment of learned Judicial Magistrate, Tambaram, passed in S.T.C.No.27 of 2005 on 26.04.2007, acquitting respondent/accused.

2.The appellant preferred a complaint in S.T.C.No.27 of 2005 on the file of the Judicial Magistrate, Tambaram, alleging commission of offences under Sections 199 and 216(1)(2)(3) and 317 of the Tamil Nadu District Municipalities Act 1920, on the allegation that the petrol bunk put up by the first respondent was an unauthorized one. Case was tried in S.T.C.No.27 of 2005 on the file of the Judicial Magistrate, Tambaram, who was pleased to dismiss the complaint under judgment dated 27.04.2007. There against complainant has preferred this appeal.

3.Heard Mr.P.Srinivas, learned counsel for appellant and Mr.A.Abdul Hameed, learned counsel for the second respondent and also perused the records.

4. In dismissing the complaint, the Trial Court has observed that the complaint ought to have preferred by an executive authority under the Tamil Nadu District Municipalities Act 1920 and no proof of the complainant

holding such capacity had been produced before it. The Court below also found that the complaint suffered bar of limitation.

5. Learned counsel for the petitioner submitted that the nature of offence in the complaint was a continuous one and hence the trial Court has erred in holding that the complaint itself is barred by limitation.

6. We find it unnecessary to go into such question since we concur with the finding of the trial court that the complainant is not an authority empowered to prefer complaint in keeping with the act. Though learned counsel for appellant has contended that the Chairman, Municipality Development Authority has empowered local bodies to take actions and prefer complaints in keeping with the Tamil Nadu Municipalities Act, and the previous Commissioner of Municipality was empowered to prefer complaint, it is the duty of the complainant to establish before the trial Court that he held the capacity of an executive authority under the Tamil Nadu District Municipality Act and is empowered to prefer the complaint. Such position having not been established before the trial Court, there is no error in the finding of acquittal recorded by the Trial Court.

C.T.SELVAM, J

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7.For the aforesaid reason, the Criminal Appeal shall stand dismissed. The present order will have no bearing on civil proceedings between the parties.

14.09.2017

Index: Yes / No

Internet: Yes

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To

1.The Judicial Magistrate,
Tambaram.

2.The Public Prosecutor,
High Court, Madras .

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