

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.08.2017

Coram

The Honourable Mr.Justice M.SUNDAR

Crl.OP.No.287 of 2014
and
M.P.No.1 of 2014

K.Venkatesan

...Petitioner

-vs-

State,
rep. by The Inspector of Police,
D-6, Maraimalai Nagar Police Station,
Kancheepuram District.

...Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. calling for the records and quash the FIR in Crime No.607 of 2013 on the file of the respondent Police Station.

For Petitioner : No Appearance

For Respondent : Mr.R.Rajarathinam
Public Prosecutor

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This quash petition, has been been filed under Section 482 of the Code of Criminal Procedure, 1973 (Act 2 of 1974) (hereinafter referred to as “Cr.P.C.” for the sake of brevity) with a prayer to quash a First Information

Report (hereinafter referred to as “*impugned FIR*” for the sake of brevity, clarity and convenience) in Crime No.607 of 2013 on the file of the Inspector of Police, D-6, Maraimalai Nagar Police Station, Kancheepuram District.

2. The petitioner before me is one K.S.Venkatesan, who is accused No.3 in the impugned FIR.

3. State, represented by the Inspector of Police, D-6, Maraimalai Nagar Police Station, Kancheepuram District is the sole respondent before me and State is represented by Mr.R.Rajarithnam, learned State Public Prosecutor. There is no representation for the petitioner before me today.

4. However, considering the nature of the matter as also the fact that this Crl.O.P. is of the year 2014 and the impugned FIR is dated 08.09.2013, I am of the considered view that this is a fit case to be disposed of on merits on the basis of available records.

5. A perusal of the impugned FIR reveals that informant is the jurisdictional Tahsildar.

6. A perusal of the impugned FIR further reveals that the complaint of

(3)

the informant i.e., the jurisdictional Tahsildar is that three individuals viz., (1) Appadurai, son of Velu; (2) Kanniappan, son of Seenuvasan; (3) Venkatesa Mudaliar, son of Singaravel Mudaliar have entered upon land classified as forest poramboke (hereinafter referred to as “said land” for the sake of brevity, clarity and convenience) comprised in Survey No.1 in Kadambur village, Chengalpet Taluk, Kancheepuram District.

7. A further perusal of the impugned FIR reveals that the informant states that the aforesaid three persons had entered upon the said land which vests in the Government, but most importantly, the informant i.e., the jurisdictional Tahsildar clearly states that the aforesaid three persons have entered upon the said land and have done agricultural activity therein. For the purpose of absolute clarity, it is to be stated that it is mentioned in tamil as “CHt[g;gzp bra;Js;sdh; “.

8. Therefore even according to the uncontroverted complaint of the informant as extracted in the impugned FIR, the aforesaid three persons have entered upon the said land and have only carried on agricultural activity therein.

9. In the typed set of papers in this CrI.O.P. before me filed by accused

No.3/K.S.Venkatesan, son of K.Singaravelu, photocopies of land tax receipts for the period from 1993-2012 qua the said land have been enclosed and this *prima facie* buttresses the above version.

10. A further perusal of the impugned FIR shows that it has been registered for the alleged offences under Section 447 of Indian Penal Code, 1860 (Act 45 of 1860) (hereinafter referred to as “IPC” for the sake of brevity) and Section 3 (1) of the Tami Nadu Property (Prevention of Damage & Loss) Act, 1992 (hereinafter referred to as “TNPPDL Act” for brevity).

11. Section 447 of IPC deals with punishment for criminal trespass. Criminal trespass is defined in Section 441 of IPC. I deem it appropriate to extract Section 441 of IPC, which reads as under:

"441. Criminal Trespass:-- Whoever enters into or upon property in 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 therewith intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence."

12. Therefore, it is clear that to attract the offence of criminal trespass as defined in Section 441 of IPC, most essential ingredients are that a person who enters upon the property in possession of another should do so with the intention of committing an offence or with the intention to intimidate, insult or annoy the person in possession of such property. There is an alternate limb of the offence of criminal trespass which says that post such entry, the person should unlawfully remain there with intention to intimidate, insult or annoy such person or with an intent to commit an offence.

13. The uncontroverted complaint of the informant as stated supra clearly reveals that even according to the complainant i.e., the jurisdictional Tahsildar, three persons have only done agricultural activity therein i.e., in the said land. To reiterate "cHt[g;gzp bra;Js;sdh; ". Further more, with regard to Section 3(1) of TNPPDL Act, the same deals with punishment for committing mischief in respect of public property.

14. In the light of Section 441 of IPC not being attracted, it cannot be said that the aforesaid three persons have entered upon the said land for the purpose of committing any mischief. It is not even the case of the informant that they have committed any mischief therein. They are alleged to have only

carried on agricultural activity in the said land. Therefore, the ingredients/determinants of criminal trespass under Section 441 punishable under Section 447 of IPC are completely absent.

15. Resultantly, no offence is made out.

16. As a sequiter, it follows that Section 3(1) of TNPPDL Act is also not attracted.

17. Applying the guidelines set out by the Hon'ble Supreme Court in *State of Haryana and others v. Bhajan Lal and others*, reported in 1992 SCC (Cri) 426 = 1992 Supp. (1) SCC 335, particularly guideline No.1 in paragraph 102, none of the ingredients are present and no offence under Section 441 of IPC punishable under Section 447 of IPC and Section 3(1) of TNPPDL Act is made out. Guideline No.1 in this celebrated judgment reads as follows:-

"102. (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case

against the accused.”

18. I have no hesitation in holding that the impugned FIR deserves to be quashed.

19. In cases of this nature, particularly when the complaint against the petitioner before me i.e., K.S.Venkatesan, son of K.Singaravelu and other two persons is no different, the benefit of quashing of the impugned FIR is extended to the other two accused viz., accused Nos.1 & 2 being Appadurai, son of Velu and Kanniappan, son of Seenuvasan also.

20. Before parting with the case, as it is the case of the jurisdictional Tahsildar that the said land is classified as forest poramboke and according to him it vests in the Government, it is made clear that if there is any encroachment by the petitioner herein or the other two accused against whom the impugned FIR has been quashed by this order, it is open to the said authority, particularly, the Revenue Department to take action for removal of the encroachment under appropriate Statute/s in accordance with law. In other words, it is made clear that quashing of the impugned FIR in this matter will not preclude the revenue and/or other authorities from initiating and proceeding with any action for removal of encroachment in accordance with law against the petitioner and two others if it is necessary as it is alleged that

the said land is public land which vests in the Government.

21. With the above observations, the impugned FIR is quashed and this Crl.O.P. is allowed. Consequently, M.P.No.1 of 2014 is closed.

22. As the counsel for the petitioner has not appeared, Registry is directed to send a copy of this order to the petitioner.

03.08.2017

Index : Yes/No

Internet : Yes/No

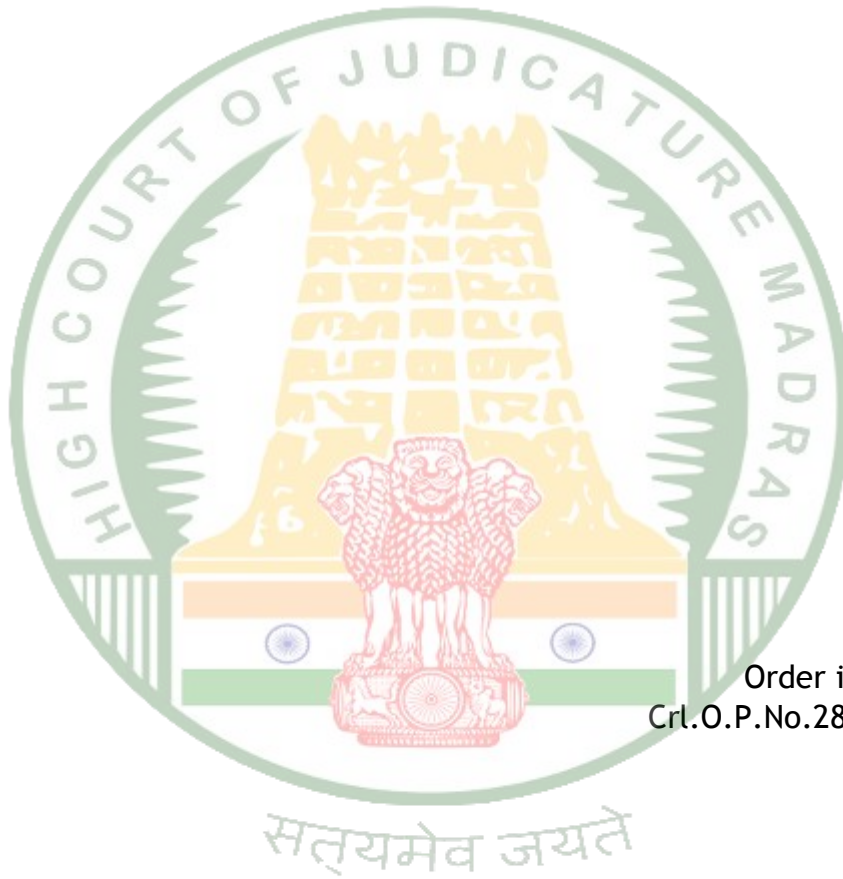
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M.SUNDAR, J.

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Order in
Crl.O.P.No.287 of 2014

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