

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2017

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Cr1.O.P.No.17141 of 2010

and

M.P.No.1 of 2010

1.Mageshwaran

2.P.Dhanapal

3.Muthukrishnan

4.Shanmugam

5.Kaliyan

... Petitioners

vs.

Nayathan

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in respect of the complaint filed by the respondent herein in C.C.No.1 of 2010 pending on the file of Chief Judicial Magistrate, Perambalur and quash the same.

For Petitioners :Mr.R.Nalliyappan

For Respondent:M/s.Usha Raman (No Appearance)

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JUDGMENT

The petitioners herein are the Accused Nos.4 to 8 respectively in C.C.No.1 of 2010 on the file of the learned Chief Judicial Magistrate Perambalur. They have come up with this present Criminal Original Petition seeking to quash the above private complaint filed by the respondent herein namely Nayathan under Section 200 of Cr.P.C.

2.The sum and substance of the petition as follows:

The petitioners 1 and 2 are Special Tahsildhars, Aadhi Dravidar Welfare in Ariyalur District and the 3<sup>rd</sup> petitioner is the Revenue Inspector and 4<sup>th</sup> and 5<sup>th</sup> petitioners are Village Administrative Officers and the then Village Assistant respectively.

3.According to the petitioners, the respondent herein committed nuisance by planting bamboo trees in residential area such that causing hindrance to others right and usage, more so it was also an encroachment.

4.It is their case that a complaint was received in that regard and the District Collector, Ariyalur vide proceeding dated 18.04.2008 directed the petitioners herein being his Subordinate Authorized Officers to remove the above encroachment and nuisance and instructed to report the same.

5.Pursuant to the above direction the respondent/complainant was issued with Notice of 5 days time calling upon him to remove the bamboo trees and encroachment made by him on own motion. However, as the respondent failed to remove the encroachment, the petitioners with the aid and assistance of the police personnel had removed the encroachment on 26.04.2008. Consequently a report was submitted before the District Collector, Ariyalur.

6.In the said factual background aggrieved over removal of encroachment and as a tool of harassment, the above private complaint came to be filed as though the removal of bamboo trees was illegal and the removal of encroachment also resulted damages as against the petitioners /Revenue Authorities and also the Police personnel.

7.I heard Mr.R.Nalliyappan, learned counsel for the petitioner and there is no representation for the respondent / complainant.

8.The learned counsel for the Petitioners/accused 4 to 8 would submit that the complaint ought not to have been entertained by the learned Judicial Magistrate for want of sanction under Section 197(b) of Cr.P.C.

9.He would further add that only as per the direction of District Collector the encroachment / Nuisance were removed and the respondent being an encroacher can have no say over the Lawful action of the petitioners.

10.It is also his contention that the complaint on hand is liable to be quashed on account of delay that though the alleged offence is said to have been taken place on 12.02.2008, the complaint is made after two years on 23.02.2010. On the said grounds petitioners seeks this court to invoke its Inherent Power to quash the complaint against them.

11.On perusal of the Additional Typed set of papers dated 25.07.2010 filed by the petitioners it is found that on 17.03.2008 two representations came to be made such that one on behalf of the villagers (Sillupanoor Village) and the other by one Mr.Ilayaraja praying for an action to remove the bamboo trees/ complainant's bamboo cluster alleged to be serving as habitat for deadly snakes and also remains as encroachment paving way to several illegalities at the rear of cluster. Therefore both the representations were found to be made demanding for an action for the removal of the bamboo trees.

12.It unveil that in furtherance to the above representations, the Special Tahsildhar, Ariyalur had spot inspected on 19.03.2008 and found the allegations made in the representations were true and Justifiable. Accordingly, a report was submitted on 19.03.2008 before the District Collector. In turn the District Collector vide his proceedings dated 08.04.2008 in O.MU/4650/08/002 directed the Special Tahsildhar to remove the encroachment and report the same to him.

13.Whereupon a notice was given to the complainant calling upon him to remove the encroachment on his own motion, failing which the encroachment will be removed. The records further disclose that even then as the complainant failed to remove the encroachment, it same was removed on 26.04.2008 with the aid and assistance of police personnel by the petitioners herein.

14.From the above particulars, this court is incapable of finding fault with the action of the petitioners. In fact their duty is appreciable and they had discharged their statutory duty to see that there is no nuisance or encroachments within their Jurisdiction.

15.However, at the same time the attitude as well as conduct of the complainant is highly disapproving and censorious for roping into the public authorities into an untenable claim for having duly discharged their duty.

16.In as much as the contention of the learned counsel that the complaint is liable to be quashed for want of sanction under Section 197(b) of Cr.P.C. besides in the light of laches that the alleged occurrence was taken place in 2008 and the complaint was made in 2010 after a lapse of two years, this court finds that both the contentions are valid and acceptable.

17.Therefore, for the foregoing reasons, this Criminal Original Petition stands allowed and the case in C.C.No.1 of 2010 pending on the file of the learned Chief Judicial Magistrate, Perambalur, is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-  
Deputy Registrar

//True Copy//

Sub Assistant Registrar

vs

To

The Chief Judicial Magistrate,  
Perambalur.

+1cc to Mr.R.Nalliappan, Advocate Sr.20434

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M.P.No.1 of 2010

srg 31/10/2018