



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.07.2017

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CORAM :

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

CRL OP(MD)No.9645 of 2017 and
CRL MP(MD)No.6581 of 2017

M.Petchipandian : Petitioner/Sole Accused

Vs.

1.The State represented by,
The Inspector of Police,
Tirunelveli Junction Police Station,
Tirunelveli City, Tirunelveli District.
(Crime No.323 of 2017) : Respondent/Complainant

2.Rajeshwari,
The Village Administrative Officer,
No.57, Sindhupoondurai Village,
Tirunelveli Vattam,
Tirunelveli District. : Respondent/
Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to pass an order to call for the entire records pertaining to the First Information Report in connection with Crime No.323 of 2017 on the file of the Inspector of Police, Tirunelveli Junction Police Station, Tirunelveli City, Tirunelveli District and quash the same.

For Petitioner : Mr.S.Krishnan

For R-1 : Mr.K.Anbarasan,
Government Advocate(Crl.Side).

O R D E R

This Criminal Original petition is filed for quashing the First Information Report in connection with Crime No.323 of 2017 on the file of the Inspector of Police, Tirunelveli Junction Police Station, Tirunelveli City, Tirunelveli District.



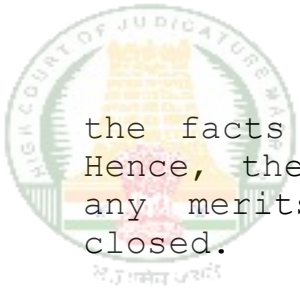
2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal side) appearing for the first respondent.

3. Based on the complaint of the second respondent, namely, the Village Administrative Officer, a case was registered against the petitioner in Crime No. 323 of 2017 for the offences under Section 447 of I.P.C. In the complaint received against the petitioner, it is clearly stated that an Eviction Notice was issued to the petitioner who did not turn up for the enquiry and that an order of Eviction was passed. The petitioner was also removed from the place where he had encroached earlier. After the Eviction proceedings were over, the petitioner once again constructed a Cement Slab and "Thaneer Pandhal" for the purpose of issuing water to pedestrians. The allegation against the petitioner was that he had encroached into the Government "Odai Poramboke" land.

4. The case of the petitioner is that the allegation against the petitioner does not attract the provisions of Section 452 of I.P.C. and there was no trespass committed in respect of the building. It is the further case of the petitioner that the allegation against the petitioner is that he had only constructed a cement slab and "Thaneer Pandhal". They do not attract under Section 452 of I.P.C.

5. The submission of the learned counsel for the petitioner is not acceptable. From the reading of the complaint, it is made clear that the petitioner had committed the act of encroachment. It is a clear case of the trespass in respect of Government "Odai Poramboke" as seen from the complaint. Though the petitioner was earlier in encroachment, there was an order of Eviction passed in the manner known to law by initiating action under Section 6 of the Land Encroachment Act. Even thereafter the petitioner appears to have encroached the land and that therefore, the criminal complaint was given against the petitioner under Section 452 of I.P.C. Though Section 452 of I.P.C., is in relation to the house trespass, the allegation against the petitioner certainly attracts the provisions of Section 447 of I.P.C., which is the charging provision for the offence alleged to have been committed by the petitioner by trespassing the Government land.

6. In that view of the matter, the further submission of the petitioner that the offence alleged to have been committed by the petitioner does not attract any of the provisions of Indian Penal Code, has no merits and that the "Thaneer Pandhal" constructed by others cannot be considered at this moment, as it is a matter of evidence. For considering whether the petitioner has committed the offence or not, this is not a right forum in which the petitioner can get relief on the basis of the statement disputing



the facts in relation to the complaint registered against him. Hence, the Criminal Original petition is dismissed as devoid of any merits. Consequently, connected Miscellaneous petition is closed.

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Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

- 1.The State represented by,
The Inspector of Police,
Tirunelveli Junction Police Station,
Tirunelveli City, Tirunelveli District.
- 2.Rajeshwari,
The Village Administrative Officer,
No.57, Sindhupoondurai Village,
Tirunelveli Vattam,
Tirunelveli District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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pmu

JM/SKN RSK/SAR 1/11.08.2017/3P/4C