

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.06.2018
Pronounced on : 04.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.13745 of 2010
and M.P.No.1 of 2010

Murali,
S/o. Nagarajan

... Petitioner/Accused No.3

Vs.

L.Arivazhagan,
S/o.Lakshmanan

... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.199 of 2009 pending on the file of the Judicial Magistrate Court No.2 in Karaikal and quash the same.

For Petitioner : Mr.K.M.Aasim Shehzad

For Respondent : Notice served

O R D E R

This Criminal Original Petition is filed to call for the records in C.C.No.199 of 2009 pending on the file of the Judicial Magistrate Court No.2 in Karaikal and quash the same.

2.The petitioner is the accused No.3 in C.C.No.199 of 2009 on the file of the Judicial Magistrate Court No.2, Karaikal has filed the above Criminal Original Petition. The respondent had filed a complaint against five persons of which the petitioner has been arrayed as A3 for the offences under Section 182, 420 r/w 34 of the Indian Penal Code. The complaint is that A1 to A5 owners cum proprietors of Aqua Culture Farms by the effect of Tsunami on 26.12.2004 were severely affected and the owners/proprietors of the Aqua Culture Farms had sustained great losses and damage in their Aqua Culture business. There were large number of Non-Governmental Organisations which voluntarily came forward and compensated and helped the people who were hit by Tsunami disaster. The Pondicherry Government with the help of Central Government, New Delhi had announced to Pondicherry and Karaikal that the Aqua Culture Farm's damage and losses

caused by the Tsunami disaster would be compensated to the owners of Aqua Culture Farm.

3. Taking this to their advantage, the Aqua Culture Farms which were without proper approval granted by the Ministry of Agriculture, Central Government, New Delhi made claim for the damages. This petitioner, who is the proprietor of M/s. Coastal Marine Farm, No.119, Maraimalai Nagar, Nagapattinam District, Tamil Nadu, without any approval/permission to establish/continue/initiate any type of Aqua Culture Farms business, applied for compensation for Tsunami disaster by filing vague and fake documents, despite no damage and loss. The Government had granted compensation to all the five accused. This petitioner/accused was granted Rs.3,42,500/- (Rupees Three Lakh forty two thousand five hundred only) by the Government for the loss and damages suffered by Tsunami disaster. Thus, all the five accused colludedly cheated the Government by filing the false and fake documents and fabricating false evidence had availed the compensation illegally from the Government.

4. Based on the complaint, a criminal case was initiated, against which the above quash petition has been filed by the petitioner/accused.

5. Notice was ordered to the respondent/complainant, the respondent has been served with the notice on 26.04.2018 and private notice was served on 25.04.2018. Despite, receipt of the notice both from the Court as well as privately, the respondent/complainant had failed to appear in the above case and the case was posted "For Orders" on 13.06.2018.

6. The counsel for the petitioner had advanced his arguments and had informed that A1 had filed a Criminal Original Petition No.15051 of 2010 and this Court on 12.04.2017 had quashed the proceedings as against A1. It is submitted that A5 is no more. On perusal of the complaint, it could be seen that no offence is made out against the accused.

7. Further, it would be seen that for the offence under Section 182 of the Indian Penal Code, there is a specific bar as per Chapter XIV of the Code of Criminal Procedure. Under Section 195 of the Code of Criminal Procedure no Court shall take cognizance, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. In this case, the complainant is not a public servant and no public servant had authorised the complainant to launch the prosecution.

8. Further, for the offence under Section 420 of the Indian Penal Code, namely the Government of Pondicherry, who had granted compensation have not preferred any complaint as it

could be seen from the documents annexed to the complaint. It could be seen that the Aqua Culture Farm has been started in the year 1993 and the license from the Aqua Culture Authority of India has been granted on 18.02.2002. On 01.08.2008, Fisheries Department of Pondicherry Government, Karaikal had written a communication and sought some clarification from A3, Aqua Culture Farm which would make it clear that the petitioner herein has been running a Aqua Culture Farm with the approval of the Government.

9.Further, it could be seen that the complaint is a motivated complaint wherein the complaint has been filed with considerable delay in the year, 2008. Further, it could be seen that the allegation in the complaint have not made out any prima facie case to satisfy the alleged offences committed by the petitioner. Coupled with the fact that there is a legal bar for the complainant in initiating and proceeding with the complaint, this Court has no hesitation in quashing the above complaint to secure the ends of Justice.

10.In view of the finding that the allegation in the complaint petition do not make out any offence against the accused in the complaint. Further in view of the legal bar, it would be futile to allow continuance of the criminal proceedings so far as the other accused concerned.

11.Further, on the above factual and legal matrix, continuation of the criminal complaint not only against the petitioner, who had approached this Court, the case against the other accused namely A2 Kannan, Proprietor of M/s. Vinayaga Aqua Farm and A4, Haja Mohinden, Proprietor of M/s. Nargis Aqua Farm are also quashed.

12.Hence, the Criminal Original Petition stands allowed. Consequently, the connected Miscellaneous Petition is closed.

-s/d-
सहायक न्यायिक
Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

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To
1.The Judicial Magistrate No.II,
Karaikal.

+1 CC to Mr.BFS Legal, Advocate sr 42955.

Cr1.O.P.No.13745 of 2010

SP(18/07/2018)