



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.09.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE **N.ANAND VENKATESH**

Crl.O.P. [MD].No.777 of 2018
and Crl.M.P. [MD].No.335 of 2018

N.Chandrasekara Vellaiyan

: Petitioner

Vs.

1.State Represented by

The Additional Director General of Police,
CBCID, Chennai.

2.The Commissioner of Police,
Thiruchirappalli-620 020.

3.The Superintendent of Police,
CBCID, Thiruchirappalli.

4.The Inspector of Police,
Woraiyur Police Station,
Thiruchirappalli-620 003.

: Respondents 1 to 4

5.T.Nagappan

: Accused

[5th respondent is amended vide order dated
05.09.2018 in Crl.M.P.(MD).No.767 of 2018]

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C. to direct the first respondent to instruct a responsible police officer under his control to make further investigation of the above case in C.C.No.84 of 2012 on the file of the learned Judicial Magistrate No.IV, Trichy pertaining to Crime No.674 of 2011 of the fourth respondent.

For Petitioner : Mr.M.Saravanan

For R-1 to R-4 : Mr.K.Suyambulinga Bharathi
Government Advocate(criminal side)

For R-5 : Mr.S.Rahim Sikkandhar
for Mr.A.Shajahan

**ORDER**

The criminal original petition has been filed for a direction to the respondent police to conduct a further investigation in a case, which is pending in C.C.No.84 of 2012, on the file of the learned Judicial Magistrate No.IV, Trichy.

2. It is the case of the petitioner that he is the owner of the property and the adjacent owner taking advantage of his absence, had removed the stones, which were placed by the surveyor, and had encroached the property of the petitioner. The petitioner gave a complaint to the respondent police and the same was registered in Crime No.670 of 2011 by the respondent police for the offences under Sections 448 and 506(i) of IPC. After investigation, the respondent police have filed the final report for the offences under Sections 434, 448 and 506(i) of IPC. The charges have been framed in this case and the case is at the stage of trial.

3. The learned counsel for the petitioner raised two grounds in order to persuade this Court for further investigation. The first ground that was raised by the learned counsel, is that the prime accused in this case has been left out in the final report. When a protest petition was filed by the petitioner in this regard, the Court below was not able to order for further investigation, since by then the Court below had taken cognizance of the final report. The second ground that has been raised by the learned counsel for the petitioner, is that the surveyor, who had fixed boundaries, has not been examined by the respondent police.

4. Insofar as the first ground is concerned, the matter is at the stage of trial. The petitioner, as a witness in this case, can state the entire facts before the Court including the names of the persons, who were involved in the offence. The Court has sufficient powers under Section 319 of Cr.P.C to add any person as an accused in the course of enquiry of trial. Therefore, the non-addition of the name of accused in the final report, does not totally takeaway the right of the petitioner. There is always an occasion for the Court below to exercise its power under Section 319 of Cr.P.C., and add any person as an accused, in the course of enquiry or trial, if the Court below finds that such a person was also involved in the offence.

5. Insofar as the second ground that has been raised by the learned counsel for the petitioner is concerned, the trespass has happened into the property belonging to the petitioner. The extent and the boundaries of the property will have to be established only with the title documents of the property. The surveyor would have fixed the boundaries stones only in accordance with the title



documents of the petitioner. Therefore, the non-examination of the surveyor by the police, will not any takeaway the right of the prosecution in establishing the offence of criminal trespass, if the documents are clear with regard to the extent and boundaries.

6. This Court does not find any ground to order further investigation and the criminal original petition is dismissed. Since the Calendar Case is of the year 2012, the learned Judicial Magistrate No.IV, Trichy, is directed to complete the proceedings, within a period of four months from the date of receipt of copy of this order and report the same before this Court. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS-IV)

To

- 1.The Judicial Magistrate No.IV, Trichy.
- 2.The Additional Director General of Police,
CBCID, Chennai.
- 3.The Commissioner of Police,
Thiruchirappalli-620 020.
- 4.The Superintendent of Police,
CBCID, Thiruchirappalli.
- 5.The Inspector of Police,
Woraiyur Police Station,
Thiruchirappalli-620 003.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC To MR.M.SARAVANAN, Advocate SR. NO. 82316

+1 CC To MR.A.SHAJAHAN, Advocate SR. NO. 82343

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05.09.2018

SJI

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