



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 16.08.2018

ORDERS PRONOUNCED ON : 21.08.2018

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD)Nos.9083 and 8686 of 2017

and

Crl.MP(MD)Nos.6166, 6167, 7341, 5878, 5879, 7340 and
7342 of of 2017

Crl.O.P.(MD)Nos.9083 of 2017

S.Ramesh

... Petitioner

Vs.

1.State Through the Inspector of Police,
K.Pudur Police Station, Madurai.
(In Crime No.573 of 2016)

...1st Respondent/Complainant

Vinoth John Prakash (Died)

2.Dr.S.Gurushankar

...2nd Respondent

(Interposed the petitioner as
second respondent in the place of
Vinod of John Prakash (died) as per
order of this Court made in CrlMP
(MD)No.6807 of 2017 dated
02.08.2017)

PRAYER:- Petition filed under Section 482 of Criminal Procedure Code, to quash the charge sheet in C.C.No.338 of 2016 on the file of the learned Judicial Magistrate No.VI, Madurai, which pertains to the Crime No.573 of 2016, on the file of the 1st respondent and as against this petitioner.

For Petitioner

: Mr.Mr.Ajmal Khan,
Senior Counsel,
for P.Suresh Kumar,

For respondent No.1

: Mr.K.Suyambulinga Bharathi

For respondent No.2

:Mr.K.Subramaniam,
Senior Counsel,

for Mr.S.Ramesh



Crl.O.P. (MD) Nos.8686 of 2017

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Arun

... Petitioner

Vs.

1.State Through the Inspector of Police,
K.Pudur Police Station,
Madurai.

(In Crime No.573 of 2016)

..1st Respondent/Complainant

Vinoth John Prakash (Died)

2.Dr.S.Gurushankar

...2nd Respondent

(Interposed the petitioner as second respondent in the place of Vinoth of John Prakash (died) as per order of this Court made in CrlMP(MD)No.6808 of 2017 dated 02.08.2017)

PRAYER:- Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the charge sheet in C.C.No.338 of 2016 pending before the learned Judicial Magistrate No.VI, Madurai, in Crime No.573 of 2016, on the file of the 1st respondent and quash the same as illegal as against this petitioner.

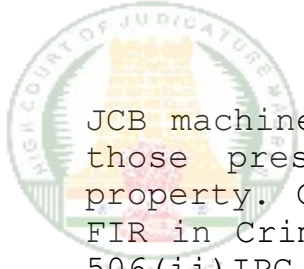
For Petitioner	:	Mr.T.Lajapathy Roy
For respondent No.1	:	Mr.K.Suyambulinga Bharathi
		Government Advocate
For respondent No.2	:	Mr.K.Subramaniam,
		Senior Counsel,
		Mr.S.Ramesh

COMMON ORDER

These petitions have been filed by A1 and A2 in CC No.338 of 2016, on the file of the learned Judicial Magistrate No.VI, Madurai, seeking to quash the final report filed by the first respondent.

2.The complaint was originally given by one Vinoth John Prakash, who was the Manager of Dr.S.Guru Sankar. He died during the pendency of these petitions and in his place Dr.S.Guru Sankar substituted himself as a party. The said Dr.S.Guru Sankar and S. Ramesh, who is A1 in the above CC, are brothers and they are the sons of Dr.N.Sethuraman.

3.The complaint was lodged by the Manager of Dr.S.Guru Sankar on 16.04.2016 to the first respondent Police to the effect that on 16.04.2016, at about 9.00 am A1 along with 3 other persons came to the property belonging to Dr.S.Gurushankar along with a Tractor and



JCB machine and committed trespass into the property and threatened those present in the property and also caused damages to the property. On the said complaint, the first respondent registered an FIR in Crime No.573 of 2016 for the offences under Sections 447 and 506(ii) IPC. Subsequently, the case was taken for investigation and 11 witnesses were examined by the 1st respondent and a final report came to be filed on 04.08.2016 against 4 persons for the offences under Section 447, 427 and 506 (ii) r/w Section 34 IPC. The said final report is the subject matter of challenge in these petitions.

4.The learned Senior Counsel Mr.Ajmal Khan, appearing for the petitioner in Crl.OP(MD)No.9083 of 2017 made the following submissions:

The 2nd respondent, who is the brother of the petitioner had an ill will against him and there are 4 civil suits in OS Nos.224 of 2010, 14 of 2011, 320 of 2011 and 60 of 2015 that are pending between the parties with regard to the trusteeship in SR Trust and therefore the 2nd respondent had motive to foist a false case against the petitioner, who is his brother and the entire complaint is the result of mala fide, on the part of the 2nd respondent, who has maliciously instituted the proceedings with an ulterior motive for wreaking vengeance on the petitioner and with a view to spite him due to private and personal grudge.

The complaint was initially given through an employee of Dr.S.Gurushankar and after his death Dr.S.Gurushankar himself has come into the picture in order to persecute the petitioner.

A reading of the final report would clearly show that no offence has been made out as against the petitioner.

No offence has been made out under Section 447 IPC, since the land question is situated right in front of the petitioner's house and he only cleaned the bushes including Seemai Karuvelam (Prosopis Juli Flora), garbage, medical waste and rubbish in the said land with an impression that the land belongs to Maha Seemam Trust, wherein his father is the President and with the knowledge of his father. Therefore, the learned Senior Counsel submits that to attract the provision of Section 441, an entry into the property must be with an intention to commit an offence or to intimidate, annoy any person in possession of the property. Since the petitioner did not enter into the property with any of these intentions, the ingredients of the criminal trespass is not attracted in this case and therefore no offence is made out under Section 447 of IPC.

The learned Senior Counsel further contended that the offence under Section 427 is also not made out in this case, since the petitioner did not commit any mischief in the property and did not cause any loss or damage to the property and he had merely cleared the Seemai Karuvelam trees, garbage, medical waste and rubbish in the property, which according to the petitioner



belongs to the Trust run by this father.

The learned Senior Counsel submitted that an offence under Section 506 (ii) IPC has also not been committed in this case, since to constitute an offence in the said provision, a mere threat is not enough and there must be an act in pursuance to the said threat, without which an offence of criminal intimidation is not attracted. In order to substantiate the said contention, the learned Senior Counsel relied upon the judgment of this Court in G.Paramasivam and Another V. Dy. Commissioner of Police and Others, reported in 2016 (1) TNLR 489 (MAD).

The learned Senior Counsel also brought to the notice of this Court Section 95 of the Indian Penal Code, which provides that nothing is an offence, if the offence is so trivial in nature, which no person of ordinary sense and temper would complain of any harm. The learned Senior Counsel would contend that the offence that has been attempted to be projected in this case is so trivial in nature and that it absolutely did not cause any harm to the second respondent and therefore, the accused persons need not undergo a fullfledged trial for such trivial act.

The learned Senior Counsel also brought to the notice of this Court the judgment of the Hon'ble Supreme Court in State of Haryana and others Vs. Bhajan Lal and others reported in 1992 Supp (1) SCC (335). In the said judgment, the learned Senior Counsel relied upon the clause 5 and 7 in paragraph 102, wherein, the Supreme Court had given certain guidelines that can be taken into consideration in order to quash the proceedings.

Finally, the learned Senior Counsel would contend that the entire proceedings is a clear abuse of process of law and in order to render substantial justice, the final report has to be quashed.

5. Mr. T. Lajapathy Roy, learned Counsel appearing for the petitioner in CrIOP(MD)No.8686 of 2017, apart from adopting of arguments made in CrIOP(MD)No.9083 of 2017 by Mr. A. Ajmal Khan, learned Senior Counsel, also added the following submissions:

The parties were not aware of the exchange deed dated 26.10.2015, which is relied upon by Dr. S. Guru Sankar to claim ownership over the property and the very deed of exchange is a void document, which goes against the very interest of the public Trust and therefore, when the very ownership of the property by Dr. S. Gurushankar is under question, there is no question of offence of criminal trespass being committed by the petitioners.

The learned Counsel also made it very clear that none of the parties are claiming any ownership over the said property.

The learned Counsel also brought to the notice of this Court that Seemai Karuvelam trees were sought to be removed from the



properties including the private properties, pursuant to the judgment of a Division Bench of this Court, since it was considered dangerous and therefore, the removal of these trees cannot constitute an offence of mischief.

In order to develop his arguments on the said point, the learned Counsel also brought to the notice of this Court Section 81 IPC, which provides that an act, which would otherwise be a crime may in some cases be excused, if the person accused can show that it was done not only in order to avoid consequences, which cannot be otherwise be avoided and on good faith, necessary in order to prevent or avoid more harm to the person or the property.

The learned Counsel relied upon illustration (b) of Section 81 IPC in order to substantiate his arguments. Therefore, the learned Counsel would submit that removal of Semmai Karuvelam trees, was done with an intention to prevent more harm to the property in which, it was standing and also adjacent properties.

6. The Government Advocate K.Suyambulinga Bharathi representing the first respondent police would submit that 11 witnesses were examined in this case and the witnesses have spoken about the incident. That apart, LW7, who is the Village Administrative Officer, has specifically stated that the property belongs to Dr.S.Gurushankar. Likewise, LW11, who is the Sub Registrar has also stated that the property belongs to Dr.S.Gurushankar. Therefore, there is no dispute with regard to the ownership of the property. The learned Government Advocate would further state that the police have investigated the case thoroughly and have laid charge sheet before the Court for the offences under Sections 447, 427 and 506(ii) r/w 34 IPC and a prima facie case has been made out, in order to frame charges against the petitioners and there is absolutely no ground to quash the proceedings.

7. The learned Senior Counsel Mr.K.Subraminam, representing the learned Counsel for the 2nd respondent Dr.S.Gurushankar made the following submissions.

- No one is allowed to take law into his own hands and admittedly Mr.S.Ramesh is not the owner of the property and he has no right to enter into other person's property with Tractor and JCB machine and cause damage to the property.
- The petitioners are not entitled to challenge the title of Dr.S.Gurushankar, in this proceeding and they have not chosen to challenge the title before the appropriate Court of Law till date.

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- The statements taken by the Police from the witnesses clearly reveals prima facie case against the petitioners and other 2



accused persons and the factual disputes with regard to whether any mischief was done or criminal intimidation took place are matters for trial and the same cannot be adjudicated in 482 Proceedings.

- Admittedly, there is previous enmity between A-1 and respondent No.2 and keeping this previous enmity in mind, A-1 along with 3 other persons had trespassed into the property and caused damage to the property.
- The learned Senior Counsel relied upon the following judgments in order to substantiate his arguments that disputed questions of facts cannot be gone into in a petition under Section 482 CrPC.

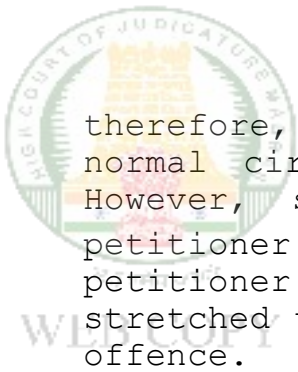
HMT Watches Limited Vs. M.A.Abida and Another, reported in (2015) 11 SCC 776; Taramani Parakh Vs. State of Madhya Pradesh and others, reported in (2015) 11 SCC 260; and Homi Rajvansh Vs. State of Maharashtra and others, reported in (2014) 12 SCC 556.

8. This Court has carefully considered the arguments made on either side and had also taken into consideration the materials that have been placed on record.

9. Admittedly, there are pending civil proceedings between the petitioner in CrIOP(MD)No.9083 of 2017 and the 2nd respondent Dr.S.Gurushankar, in which other family members are also parties, concerning the trusteeship over SR Trust. Therefore, there is already a strained relationship between the petitioner in CrIOP(MD) No.9083 of 2017 and the second respondent. The petitioner in CrIOP (MD)No.9083 of 2017 is none other than the elder brother of the 2nd respondent and both of them are sons of Dr.N.Sethuraman, who is the founder of the public charitable trust namely SR Trust, which runs the Multi Speciality Hospital named Meenakshi Mission Hospital and Research Centre at Madurai. Originally both the petitioner and the 2nd respondent were trustees in the said SR Trust. It is also an admitted case that the property, which is now claimed by the 2nd respondent, originally belonged to a Trust called as Maha Semam Trust, in which, Dr.N.Sethuraman is the founder and by virtue the deed of exchange dated 26.10.2015, the said Maha Semam Trust exchanged the property in question with Dr.S.Gurushankar and thereby Dr.S.Gurushankar is claiming ownership over the property in question.

10. This Court at the outset wants to make it very clear that title over the property cannot be gone into in these proceedings and this Court will not deal with any of the arguments relating to the title over the property and the same is relegated to be adjudicated before the appropriate forum by the parties concerned.

11. It is also an admitted case that the house of the petitioner in CrI OP(MD)No.9083 of 2017 is situated right in front of the property in dispute. This property does not belong to any 3rd party, but it used to belong to the trust run by the father and



therefore, the proximity to the property and entry into it under normal circumstances would not be considered to be a trespass. However, since there is a deep rooted animosity between the petitioner and the 2nd respondent, the single act done by the petitioner is now attempted to be blown out of proportion and is stretched to such an extent to make it look like a serious criminal offence.

12. In this case, the petitioner in CrI.OP(MD)No.9083 of 2017 is not claiming any ownership over the private property in dispute. His case is that the property belongs to Maha Semam Trust run by his father and he was not aware of the fact that by virtue of the deed of exchange, his brother Dr. S.Gurushankar became owner of the property. Therefore, it is clear that the petitioner Mr.S.Ramesh had no intention of grabbing the property, whether it belongs to the Trust or to Dr. S.Gurushankar.

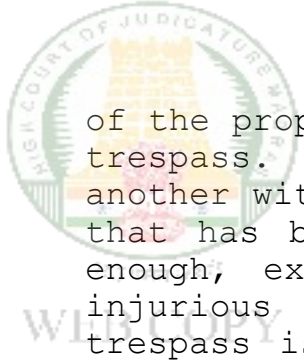
13. In the disputed property, which is situated in the front portion of the residence of Mr.S.Ramesh, there was growth of Seemai Karuvelam trees, bushes, garbage and medical waste. This was sought to be cleared by Mr.S.Ramesh with the help of A2 to A4, since it involved clearing of trees and bushes. After clearing the trees and bushes, the said Mr.S.Ramesh, has not claimed any right over the property and has only ensured that front portion of his residence is kept clean and more particularly Seemai Karuvelam trees was considered to be dangerous, since, it had a character of draining the ground water level.

14. If this case is looked from this background, under normal circumstances, this could not have resulted in a criminal prosecution. But, however, a strong animosity that prevails between the petitioner and the 2nd respondent, who is his younger brother, has given this incident a criminal colour and the 1st respondent Police have proceeded to investigate and even file a final report in this case.

15. It is beyond cavil that this Court in exercise of its jurisdiction under Section 482 CrPC will not go into and give its opinion on disputed questions of facts. The same has been made very clear by the Hon'ble Supreme Court in the judgments cited by Learned Senior Counsel Mr.K.Subramaniam.

16. This Court is not going to get into the process of deciding the disputed facts. This Court is only going to take materials as it is and see if really any offence has been made out in the final report filed by the first respondent.

17. In order to constitute an offence of criminal trespass, the ingredients of Section 441 IPC will have to be satisfied. A reading of Section 441 IPC, it can be found that the intent to commit an offence or to intimidate, insult or annoy any person in possession



of the property is a necessary ingredient of the offence of criminal trespass. The Trespasser is a person, entering the premises of another with knowledge that his entrance is excess of the permission that has been given to him. A mere entry into a property is not enough, except where such a entry is done to commit an offence injurious to some persons interested in the property, on which, trespass is committed, or for the purpose of causing annoyance to such a person. Therefore, such aggravated circumstances only make a trespass into a criminal trespass.

18. In this case, two factors will have to be taken into consideration to see, if the petitioners have really committed an offence of the trespass. The 1st factor is that the property, in which the offence is said to have taken place is a vacant property, which originally belonged to the Trust named Maha Semam Trust, which was run by the father of the petitioner and the 1st respondent and this property is right in front of the residence of the petitioner. Admittedly, the petitioner has entered into the property and cleared the Seemai Karuvelam trees, bushes, garbage and medical waste and the petitioner is not claiming any right over the property or has made any attempt to grab the property. Considering the relationship between the parties, it will be too difficult to portray the act of the petitioner as a trespass. The witnesses have only spoken about the incident and there is no material to show that the petitioner intended to commit a criminal trespass as provided under Section 441 of IPC.

19. Going to the next offence of mischief, mischief has been defined in Section 425 IPC to mean an act done with an intention to cause or knowing that is likely to cause wrongful loss or damages to the public or any person, causes destruction to any property, etc., and must involve the mental act with the destructive animus. The destruction with an object to a wrongful loss or damage is obligatory to be established. In this case, what was removed from the property was the Seemai Karuvelam trees, bushes, garbage and medical waste, which was lying in front of residence of the petitioner. Therefore by no stretch, the act of the petitioner will constitute an offence of mischief.

20. Going to the third offence of criminal intimidation under Section 506(ii) IPC. The only allegation that has been made against the petitioner is an oral threat and nothing more. Section 503 IPC defines the criminal intimidation. The intention must be to cause alarm to the victim and materials have to be brought on record to show that the intention was to cause alarm to the person. A mere threat is not sufficient to attract the charge of criminal intimidation. In other words, the threat should be a real one and not just a mere word.

21. In the judgment in G.Paramasivam and Another V. Dy. Commissioner of Police and Others, reported in 2016 (1) TNLR 489 (MAD), It is has been held as follows:



"9. Coming to the alleged offence under Section 506 (ii) I.P.C., is concerned, as rightly submitted by the learned Senior Counsel, a mere threat per se would not attract the said provision. The allegation is that the petitioners went to the house of the fourth respondent and threatened orally by showing their hands. A mere outburst would not attract Section 506(ii) IPC."

22.A careful reading of the facts of the case as projected in the final report and applying the requisites under Section 503 IPC and also the dictum in the above said judgment, it is clear that no offence of criminal intimidation has been made out in this case to attract the punishment under Section 506(ii) IPC

23.The learned Senior Counsel Mr. Ajmal Khan appearing for the petitioner in CrIOP(MD)No.9083 of 2017 and the learned Counsel Mr.T.Lajapathy Roy, appearing for the petitioner in CrIOP(MD)No.8686 of 2017 have rightly brought to the notice of this Court Sections 95 IPC and 81 illustration (b) of IPC.

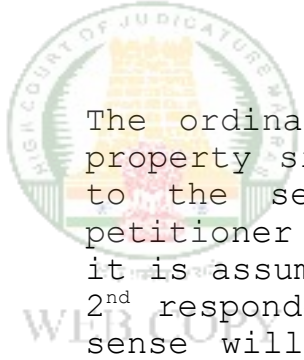
24.Sections 81 and 95 IPC fall within chapter IV of IPC, which deals with the general exceptions. The general exceptions contained in Section 76 to 106 make an offence a non-offence. The general exceptions are a part of definition of every offence contained in IPC. These general exceptions will apply even at the stage of investigation and filing of the final report, where, if on the basis of the allegation made in the complaint or the final report, the case is falling in general exceptions, it can be said that the action cannot be termed as an offence. It should be made clear that if in order to make out a case under general exceptions, evidence will have to be let in, then Chapter IV cannot be brought into operation at the stage of final report.

25.With this background, let me see, if this Court can apply general exceptions in the facts of the present case as projected in the final report.

26.Section 95 IPC has its itself foundation on the maxim de minimis non curat lex (The Law takes no account of trifles). This Section is intended to prevent the penalization of negligible wrongs or of an offence of trivial character. Whether the act, which amounts to an offence, is trivial would undoubtedly depend upon the nature of the injury, the position of the parties, the knowledge or intention, with which an offending act is done and other related circumstances. Under this provision, those cases even though fall within the letter of the penal law are yet not within its spirit, and or all over the world considered by the public, as innocent. In other words, a harm that results out of an offence, if is so slight and trivial that no person of ordinary sense and temper would complain of such a harm.

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27.The present case is one, which falls under this category.



The ordinary act of removing the bushes and unwanted trees in a property situated right opposite to the residence, which according to the second respondent belongs to him, and over which the petitioner is not claiming any right or intention to grab, even if it is assumed to be an offence, the harm that has been caused to the 2nd respondent is slight and so trivial that no person of ordinary sense will complain of such harm, more particularly, due to the close relationship of the parties in this case. In the considered view of this court, the facts taken as it is from the final report, will fall within the general exceptions provided under Section 95 of IPC.

28. Similarly Section 81 IPC is another general exceptions, having its foundation on the maxim *Quod necessitas non hebet leegem*, which means, necessity knows no law, where the act, which would otherwise be a crime, may in some cases be excused, if the person accused can show that it was done only in order to avoid the consequences, which could otherwise be avoided, and which, if they had followed, would have inflicted upon him inevitable and irreparable evil, that no more was done, than was reasonably necessary for that purpose, and that the evil inflicted by it, was not disproportionate to the evil avoided. Here the choice is between the two evils and the accused chose the lesser one. Illustration (b) of this provision demonstrates such proposition of law enunciated herein above.

29. In the present case, what was removed was predominantly Seemai Karuvelam trees, which is considered to be dangerous and which is capable of depleting the ground water level. By virtue of an order of Division Bench of this Court, virtually a big movement was undertaken on war footing to remove the Seemai Karuvelam Trees.

30. It is at this point of time that the petitioner with the help of 3 other persons had removed the Seemai Karuvelam trees, in order to protect the ground water level near his property and particularly from the property, which belongs to the Trust, which according to the petitioner is run by his father.

31. The removal of the Seemai Karuvelam Trees from the property belonging to the 2nd respondent will cause lesser evil than the greater evil that the Seemai Karuvelam Trees is capable of with regard to depletion of ground water level. Therefore, the 2nd respondent by no stretch can complain of greater evil by the removal of Seemai Karuvelam trees, since it has only protected his property and also the property belonging to the petitioner. Therefore, in the considered view of this Court, this general exception under Section 81 will also apply to the facts of the present case.

32. Therefore, apart from holding that no offence under Section 447, 427 and 506 (ii) IPC has been made out on the facts of the case, even if it is assumed an offence is made out, the facts of the case as projected in the final report brings this case within the general exceptions under Section 95 and 81 of IPC.



33. Looking at the case from this angle also, the final report cannot be sustained. On the facts and circumstances of the cases, this Court is able to clearly see that the criminal proceedings is manifestly attended with mala fide and with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to the private and personal grudge. The facts of this case will clearly fall under clause 5 and 7 of paragraph 102 in State of Haryana and others Vs. Bhajan Lal and others reported in 1992 Supp (1) SCC (335).

34. Permitting the continuation of the criminal proceedings will clearly amount abuse of process of criminal proceedings, more particularly where it is being used as instrument of harassment by a vindictive litigant. To secure the ends of justice, this criminal proceedings will have to be quashed.

35. This Court is of the considered view in the given facts and circumstances of the case and for the reasons stated herein above, that its jurisdiction under Section 482 CrPC will have to be exercised to stare down the frivolous criminal proceedings. Accordingly, the proceedings in CC No. 338 of 2016, pending on the file of the Judicial Magistrate No. VI, Madurai is hereby quashed. The CrIOP (MD) Nos. 9083 of 2017 and 8686 of 2017 are allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1. Judicial Magistrate No. VI,
Madurai,

2. The Inspector of Police,
K. Pudur Police Station,
Madurai.

3. The Additional Public Prosecutor,
Madurai Bench Of Madras High Court, Madurai.

+2CCs to Mr. R. Karunanithi Advocate in SR.No. 79312.
+1CC to Mr. T. Lajapathi Roy Advocate in SR.No. 79083.
+2CCs to Mr. P. Saravanan Advocate in SR.No. 79317, 79318.

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DS SKN SAR-4 ; 31.08.2018; 11P/9C

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and 8686 of 2017
21 .08.2018