

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.6267 of 2019
and Crl.MP.Nos. 3475 & 3477 of 2019

Ravivarman

... Petitioner

Vs.

1. The Station House Officer,
Forest Range Officer Police Station,
Tindivanam Forest Range,
Marakkanam Division,
Villupuram District.

2. A. Muralikrishnan,
Forest Ranger,
Tindivanam Forest Range,
Marakkanam Division,
Villupuram District.

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to quash the criminal proceedings initiated against the petitioner/accused in C.C.No.24 of 2019 on the file of the learned Judicial Magistrate No.II, Tindivanam.

For Petitioner : Mr.S. Prabakaran
Senior Counsel
For Mr.K.Balakrishnan

For Respondents
For R1 : Mr.Mohammed Riyaz
Additional Public Prosecutor.

O R D E R

This petition has been filed to quash the proceedings in C.C.No.24 of 2019 pending on the file of the learned Judicial Magistrate No.II, Tindivanam.

2. The learned counsel appearing for the petitioner submitted that the petitioner is the license holder issued by the authorized signatory coastal aquaculture authority, Government of India to culture SPF Litopenaeus vannamei (prawn) in Nadukuppam Village comprised in Survey No.662/1A, 1B, 2, 671, 402/1, 405/3. Thereafter, the petitioner entered into lease agreement with one Sankar S/o. Elumalai, on 22.03.2018 and the

lessee is carrying on the shrimp farm activity in the above said place from the month of March, 2018. The lessee, viz., the said Sankar is strictly followed the guidelines of the Coastal Aquaculture Authority. He further submitted that on 24.01.2019, the Forest Official came to his farm and by spade cut the shrimp farm cannels and thereby caused damage to the shrimp ponds and the water were flown from the farm. It is clear encroachment on the private land and caused mischief damaging the shrimp farm cannels. Therefore, the petitioner's lessee viz., Sankar lodged a complaint before the Marakkanam Police Station and the case has been registered in Crime No. 40 of 2019 as against the forest officials, for the offences under Sections 447, 427 and 430 of IPC. The petitioner's lessee lodged complaint on 24.01.2019 at about 20.30 hours. On the same day, the forest officials lodged complaint alleging that the petitioner's shrimp farm emanating wastage water, which is flow in the forest land in Survey No.682. On the said complaint FIR has been registered in Crime No.5 of 2019 for the offences under Sections 26(f) of the Forest Act, 1882 r/w Section 28(A)2 2(16) (a) 9 Section 39(3) (c) and 51 of Wild Life Protection Act 1972 as against the petitioner. Thereafter, the second respondent filed charge sheet and the same has been taken cognizance for the offences under Sections 26(f) of the Forest Act, 1882 r/w Section 28(A)2 2(16) (a) 9 Section 39(3) (c) and 51 of Wild Life Protection Act 1972 in C.C.No.24 of 2019, on the file of the learned Judicial Magistrate No.II, Tindivanam.

2.1. He further submitted that the offences are not at all made out as against the petitioner, since the petitioner leased out the said shrimp farm and he is no way connected with the shrimp farm. Further he submitted that no offence has been made out as against the petitioner under Section 29(f) of Forest Act 1882, since there is no allegation of hunting, shooting, fishing or poisoning of water has taken place in this case. Further he submitted that the offence under Section 28(A)2 2(16) (a) 9 Section 39(3) (c) of Wild Life Protection Act are also not at all made out. There is no killing or poisoning of wild animal and destroy or damage the government property. Without considering the above facts and circumstances, the learned Magistrate mechanically taken cognizance for the above said offences and issued summons to the petitioner. Therefore, he sought for quashment of the entire proceedings.

3. The learned Additional Public Prosecutor submitted that the license has been issued in the name of the petitioner and the petitioner only running the shrimp farm and only for business purpose, the lease deed executed in favour of one Sankar, as such the petitioner is liable to be prosecuted for the offences charged against him. He further submitted that all the points raised by the petitioner are liable to be tested before the trial Court during trial. Therefore, he prayed for

dismissal of the quash petition.

4. Heard Mr.Prabakaran, learned Senior Counsel appearing for the petitioner and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the first respondent.

5. The petitioner is the sole accused. The crime has been registered by the second respondent in OR.No.05 of 2019 for the offence under Section 26(f) of the Forest Act, 1882 r/w Section 28(A)2 2(16)(a) 9 Section 39(3)(c) and 51 of Wild Life Protection Act 1972. After completion of enquiry, they filed final report and the same has been taken cognizance for the offences under Section 26(f) of the Forest Act, 1882 r/w Section 28(A)2 2(16)(a) 9 Section 39(3)(c) and 51 of Wild Life Protection Act 1972 by the learned Judicial Magistrate No.II, Tindivanam in C.C.No.24 of 2019. Admittedly, the petitioner was issued license by the Coastal Aquaculture Authority to culture prawn in Nadukuppam Village in Survey No.662/1A, 1B, 2, 671, 402/1, 405/3. The wastage water emanating from the shrimp farm of the petitioner is flown to the forest land in survey No.682. Thereby, the poisoning of water has been taken place and also damages caused to the government property comprised in Survey No. 682 of the same village, hence charged against the petitioner. Though, the petitioner shrimp farm was leased out to one Shankar, it is only for the business purpose of the shrimp farm situated in the Nadukuppam village and the license also stands in the name of the petitioner.

6. It is also seen that the compliant lodged by the second respondent registered at about 3.30 p.m., on 24.01.2019, for the above said offences. Whereas, the lessee of the petitioner lodged a complaint at 20.30 hours on the same day and the case has been registered in Crime No.40 of 2019 as against the forest officials. Therefore it is nothing to do with the present charges as against the petitioner. On perusal of the case diary and the photographs produced by the second respondent, it clearly shows that the poisoning water emanated from the shrimp farm owned by the petitioner herein. It leads to the government property and completely destroy the land.

7. Further the Division Bench of this Court in W.P.No.12034 of 2018 in the case of R.Gunasekar Vs. The Government of India and others by an order dated 23.11.2018 has held that the emanating of poisoning water to the government wet land amounts to violation of terms and conditions of Certificate of Registration, and dismissed the writ petition and also observed as follows :

"22. As adverted to supra, as admitted by respondents 5 and 6, water is drawn from Kazhuveli and also water is discharged from the shrimp farm in Kazhuveli. This activity will clearly

affect the mangroves and the wetlands. Any aquaculture activity, including intensive and semi-intensive, which has the effect of causing salinity of soil, drinking water or wells, and the use of chemical feeds increases shrimp or prawn production with consequent increase in sedimentation, which, on putrefaction, is a potential health hazard, apart from causing silication, turbidity of water courses and estuaries with detrimental implication on local fauna and flora, which shall not be allowed by the authority at any cost. In other words, due to the feeding of fishes in shrimp farms, chemicals and other dissolvents will develop in the water and discharge of such water will, of course, cause environmental hazards, thereby affecting the very living of the humanbeings and the other habitats as well.

23. As for the petitioner's submission of similar farm being allowed and run in Thailand, it is to be stated that it is a natural and traditional formation of shrimp farm, which is not comparable to the case on hand, as this is an artificial farm.

24. Above all, the only water source available to the petitioner is Kazhuveli wetland area notified under Section 26 of the Tamil Nadu Forest Act, 1882. If at all the petitioner wants to start shrimp business, he has to encroach into Kazhuveli wetland and lay a pipeline for taking brackish water from the wetland, which is in violation of the orders of the Supreme Court and the High Courts and also the National Green Tribunal. In addition, the District Level Committee has granted permission to the petitioner to operate the shrimp farm in para 6 of the Minutes of the Meeting, dated 04.05.2017, as per which, the petitioner should not lay any pipeline in the forest land. Since the petitioner has encroached into Kazhuveli wetland and laid pipeline therein, violating terms and conditions of Certificate of Registration issued based

on the recommendation of the District Level Committee, the Tindivanam Forest Range Officer booked an offence against the petitioner for laying pipeline vide offence No.7/2017, dated 21.09.2017, and the sluice valve of shrimp farm was removed on 05.06.2018, after inspection of AGP, Forests, which has become final. It is impermissible to draw water from Kazhuveli and discharge waste water in Kazhuveli. Therefore, in our considered opinion, there is no illegality on the part of fourth respondent to issue the impugned notice, dated 20.09.2017. As such, we do not find any merit in this Writ Petition, which is, accordingly, dismissed. No costs. Consequently, the connected W.M.P.No.14937 of 2018 also stands dismissed."

8. It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in Crl.A.No.255 of 2019 dated 12.02.2019 - Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors., as follows:-

"4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.

5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary

that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.

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9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."

Therefore, there is averment to attract the charges as against the petitioner and it cannot be quashed at this stage. The grounds raised by the petitioner have to be tested before the trial Court during trial. Therefore, this Court is not inclined to quash the present proceedings. However, considering the facts and circumstances of the case, the personal appearance of the petitioner is dispensed with and he shall be represented by a counsel after filing appropriate application. The petitioner shall be present before the trial Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment. The trial Court viz., the Judicial Magistrate Court No.II, Tindivanam is directed to complete the trial proceedings within a period of six months from the date of the receipt of a copy of this Order.

9. In the result, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

rts

To

1. The Judicial Magistrate Court No.II,
Tindivanam
 2. Do Thro The Chief Judicial Magistrate
Villupuram.
 3. The Station House Officer,
Forest Range Officer Police Station,
Tindivanam Forest Range,
Marakkanam Division,
Villupuram District.
 4. The Public Prosecutor,
High Court of Madras,
- +1 CC to Mr.K.Balakrishnan, Advocste sr 29283.

CRL.O.P.No.6267 of 2019
and Crl.MP.Nos. 3475 & 3477 of 2019

सत्यमेव जयते

KK (CO)
SP (25/04/2019)

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