



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE N. SESHASAYEE

Crl.O.P. [MD] No.2328 of 2019

and

Crl.M.P (MD) .No.1244 of 2019

Shanmugaraja

: Petitioner

Vs.

1.State rep., by its
Inspector of Police,
Kayatharu Police Station,
Tuticorin District.
Crime No.432/2016

2.The Village Administrative Officer,
North Illanthaikulam,
Kovilpatti Taluk,
Tuticorin District.

: Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records pertaining to the complaint in Crime No.432 of 2016 on the file of the first respondent police and quash the same against this petitioner.

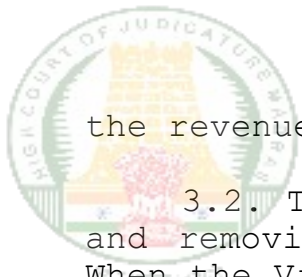
For Petitioner : Mr.G.Karuppasamy Pandian
For Respondents : Mr.A.P.G.Ohm Chairma Prabhu
Government Advocate (Crl.side)

ORDER

The petitioner is arrayed as A6 in Crime No.432 of 2016. The present petition is filed to quash the said FIR.

2.A FIR dated 23.10.2016 has been registered for the offence punishable under Sections 147, 148, 188, 353, 506(2) IPC and Section 3(1) of Tamil Nadu Public Property (Prevention of Damage of Loss) Act, 1992, FIR was registered on the basis of the complaint preferred by the Village Administrative Officer, Vellalangottai.

3.1. FIR names 12 individuals and twenty five others, of whom, the petitioner figures as sixth person. The nature of the allegation made in the complaint is that on 23.10.2016, the defacto complainant got some information that a statue of a political / religious leader was to be installed unauthorizedly at Vadaku Illanthaikulam, Kovilpatti Taluk, Tuticorin District, and therefore, he along with his assistant rushed to the place. It would further state that there was an earlier attempt to install a statute in the same place unauthorizedly and that came to be seized by the revenue authorities, and has been sealed and kept under the lock and key by



the revenue authorities.

3.2. The allegation goes to state that the said lock was broken and removing such statue another new statue was being installed. When the Village Administrative Officer objected to the installation of the said statue without due approval or authorisation, both the named and unnamed accused persons held out threats and obstructed him from discharging his official duty. On the basis of the complaint made, the case was registered in Crime No.432 of 2016.

4. The learned counsel for the petitioner submitted that since the charge for the offence under Section 188 IPC came to be registered, the Village Administrative Officer or his superior ought to have moved the Magistrate Court under Section 195 Cr.P.C.. Further, he submitted that once the offence under Section 188 IPC goes, the other offences as alleged in the FIR would fall like things.

5. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) for the respondents.

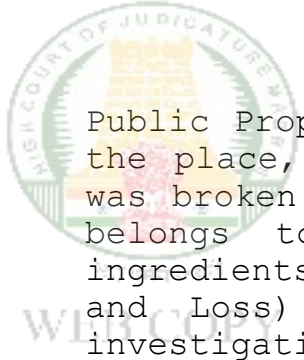
6. This Court has gone through the entire FIR carefully. Probably there is merit in the submission of the learned counsel for the petitioner that the registration of offence under Section 188 IPC cannot be sustained as the Investigating Agency cannot take cognizance of the allegations made, since the Code provides that it can be done only upon moving the Magistrate under Section 195 Cr.P.C..

7. Turning to other Sections, the learned counsel for the petitioner would submit that so far as Section 353 IPC is concerned, the victim either should have been assaulted or there must be use of criminal force in obstructing the public servant from discharging his official duty. He would submit that admittedly, the defacto complainant / Village Administrative Officer has not been assaulted and there is no use of criminal force. On this point, this Court is not in agreement with the submission of the learned counsel for the petitioner.

8. So far as the offence under Sections 353 and 506 IPC are concerned, the FIR makes a candid statement that there is a use of criminal force as well as intimidation. However, the veracity of these accusation will unfold only on investigation.

9. So far as the offence under Section 148 IPC is concerned, the FIR does not disclose that any of the accused persons possessed deadly weapons. Hence, this court is of the view that Section 147 IPC may be attracted, but definitely not 148 IPC. This is for the notice of the Investigating Officer.

10. Turning to the offence under Section 3(1) of the Tamil Nadu



Public Property (Damage and Loss) Act, 1992, the allegation is that the place, which was under lock and seal of the revenue official, was broken. The fact that whether the place is under lock and key belongs to any private individuals or not, and whether the ingredients of Section 3(1) of Tamil Nadu Public Property (Damage and Loss) Act, would be attracted can be known only during investigation.

11. For the present, this Court decides to quash the FIR only as concerning Section 188 IPC and with regard to others this Court directs the Investigating Agency to expedite the investigation and lay final report in this case within the period of three months from today (i.e., 26.02.2019)

12. With the above direction, this criminal original petition is disposed of. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The Inspector of Police,
Kayatharu Police Station,
Tuticorin District.
- 2.The Village Administrative Officer,
North Illanthaikulam,
Kovilpatti Taluk,
Tuticorin District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.G.Karuppasamy Pandian, Advocate, SR.No.50661

Crl.O.P.[MD]No.2328 of 2019

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KK/SAR-/18.03.2019/3P-5C