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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 29.03.2019

DELIVERED ON: 05.04.2019

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. (MD) No.5426 of 2015 & Crl.M.P. (MD) Nos.1 & 2 of 2015

A. Ganesan : Petitioner /Accused No.1

vs.

K. Nayeem : Respondent/Complainant

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for the records pertaining to the proceedings in S.C. No.270 of 2014 pending before the I Additional District Judge, Madurai and to quash the same in respect of this petitioner.

For petitioner : Mr.Babu Rajendran

For respondent : Mr.V.Kathirvelu, Senior Counsel
for Mr.S.M.A.Jinnah

ORDER

This criminal original petition has been filed seeking to call for the records pertaining to the proceedings in S.C. No.270 of 2014 on the file of the I Additional District Court, Madurai and to quash the same in respect of this petitioner.

2. For the sake of convenience, the parties are referred to by their name.

3. Nayeem, the respondent herein, a practising advocate, filed a private complaint before the Judicial Magistrate No.V, Madurai against two police officers and two Engineers of the Tamil Nadu Housing Board for the offences under Sections 294(b), 323,324,472,448 and 506(II) IPC and Sections 4 and 5 of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act (for brevity "the TNPPDL Act"), which was taken on file as P.R.C. No.1 of 2014 and committed to the Court of Session in S.C.No.270 of 2014 since a case arising from the offences under Sections 4 and 5 of the TNPPDL Act is not triable by a Magistrate. Challenging the said prosecution in S.C. No.270 of 2014, Ganesan (A1) is before this Court.



4. Heard Mr. Babu Rajendran, learned counsel for Ganesan and Mr. V. Kathirvelu, learned Senior Counsel representing Mr.S.M.A.Jinnah, learned counsel on record for Nayeem.

5. In the private complaint filed by Nayeem, he has stated that he is a practising advocate; the commercial building in R.S. No.12/3 in Ellis Nagar was purchased by his grandfather in 1926 and since then, his family was in possession and enjoyment of the building and that they had rented out the shops in the complex to various tenants; in the year 1979, the Government of Tamil Nadu issued a notification under Section 4(1) of the Land Acquisition Act, 1894 (for brevity "the LA Act") and also a declaration under Section 6, *ibid*; the owners of adjacent lands, including his father, assailed the declaration issued under Section 6 of the LA Act in W.P. No.11223 of 1981, which was allowed on 15.12.1983 by the High Court, but, with a caveat that the Housing Board can proceed with the acquisition proceedings from the stage of the Section 4(1) notification; thereafter, the Housing Board did not take any step and so, his father Kutha Baksh filed O.S. No.451 of 2004 before the Sub Court, Madurai, seeking an order of permanent injunction restraining the Housing Board and the Government of Tamil Nadu from interfering with his peaceful possession and enjoyment of the property and obtained a decree in his favour; while that being so, on 21.06.2013, around 10.00 a.m., when he (the petitioner) was getting ready to go to the Court, the Housing Board officials and police came in huge numbers and started demolishing the building; when he produced the Civil Court's order, Ganesan, Assistant Commissioner of Police, (Law & Order) threw it down and proceeded with the demolition drive; Ravichandran, Sub Inspector of Police, (Law & Order) pulled him by his shirt collar and pushed him down; the police bundled him into a police van and went ahead with the demolition process; after some time, when he alighted from the police van, Ganesan, Assistant Commissioner of Police, kept his service pistol on his forehead and pushed him down in the presence of public; in this regard, he sent a complaint on the same day, i.e., on 21.06.2013, by post to the senior officials and since no action was taken, he was constrained to file the private complaint.

6. The learned counsel for Ganesan submitted that the entire prosecution is a motivated one inasmuch as Nayeem, being an advocate, has engineered the prosecution with an ulterior motive in order to put spokes in the acquisition proceedings that was lawfully initiated.

7. From a bare perusal of unimpeachable records of sterling quality produced before this Court, the following aspects come to light.

7.1. The Housing and Urban Development Department issued a notification under Section 4(1) of the LA Act vide G.O.Ms.No. 311 on 17.02.1979, which was published in the gazette on 07.03.1979 for



acquiring 2 acres and 9 cents of land in S.No.12/2 and 0.74 cents of land in S. No.12/3, Ponmeni Village, Madurai. The lands were acquired for providing housing facility to the people of low income group and the scheme was called Ellis Nagar Development Scheme.

7.2 The total extent of land that was proposed to be acquired in West Madurai, Ponmeni Village and Madakulam Village was about 220 acres. An enquiry was conducted under Section 5-A of the LA Act and a declaration was issued under Section 6 of the LA Act vide G.O.Ms.No.735, Housing and Urban Development Department dated 02.06.1980. Notices were served on the land owners and an enquiry was conducted under Section 11 of the LA Act.

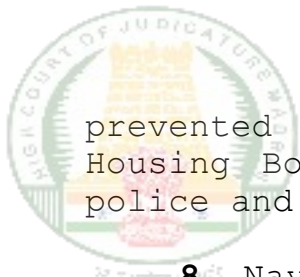
7.3 The owners of the land in S.No.12/2 and 12/3 in Ponmeni Village, viz., Meyyappa Chettiar and four others participated in the enquiry through their authorised agent A.R. Rathinam Chettiar. On 28.04.1982, compensation amount was awarded to the land owners and the possession of the property was handed over to the Tamil Nadu Housing Board on 04.12.1982.

7.4 While so, the erstwhile owners of the land filed W.P. No.108 of 1998 challenging the acquisition proceedings, which was allowed by a Single Judge of this Court on 21.04.1998, challenging which, the Tamil Nadu Housing Board preferred a writ appeal and the same came to be dismissed by a Division Bench of this Court on 18.04.2001. Thereagainst, the Housing Board moved the Supreme Court in Civil Appeal No.1757 of 2002, which was allowed on 29.10.2010, whereby and whereunder, the orders passed by the Division Bench and the Single Judge of this Court were set aside and the acquisition proceedings was upheld. The said judgment of the Supreme Court is reported in **(2011) 1 MLJ 171 (SC)**.

7.5 While so, Nayeem's father Kutha Baksh, who is the owner of the adjoining land in S. No.12/4 and 12/5, had constructed a complex by encroaching into the lands in S.No.12/2 and 12/3 belonging to the Housing Board. Kutha Baksh also challenged the acquisition proceedings and W.A. No.296 of 1982 filed by him was dismissed holding that he had no right to question the same. Kutha Baksh filed O.S. No.945 of 2000 in respect of S.No.12/4 and 12/5 and obtained a decree of injunction from the III Additional Sub Court, Madurai. The Housing Board took the matter on appeal in S.A. No.719 of 2010 and the same is pending before this Court.

7.6 While that being so, the Housing Board wanted to remove the encroachments in S.Nos.12/2 and 12/3 and therefore, thought it fit to seek police protection to the Housing Board officials during the demolition drive. Accordingly, the Housing Board obtained legal opinion from their counsel and thereafter, gave a request letter dated 18.06.2013 for police protection.

7.7 When the Housing Board officials, along with the Revenue officials, went on 21.06.2013 to remove the encroachments, they were



prevented by the petitioner's father and others. Therefore, the Housing Board officials gave a complaint on the same day to the police and hence, the police went there to give protection.

8. Nayeem, in his private complaint, has also admitted the fact that the Housing Board officials and the police came for demolishing the building, but, it is his contention that he has the Civil Court's decree in his favour.

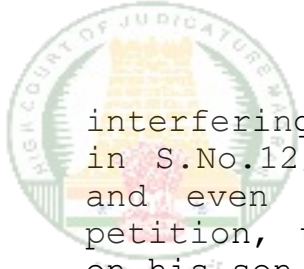
9. On the contrary, it is the contention of the Housing Board that the Civil Court decree covers only the lands in S. Nos.12/4 and 12/5 and not the lands in S.Nos.12/2 and 12/3, which were the subject matter of the acquisition proceedings and the matter had gone upto the Supreme Court, where, the Housing Board had succeeded.

10. Be that as it may, it is obvious that Ganesan had not gone on his personal work. He had gone only on official duty to provide police protection to the Housing Board officials for removing the encroachments.

11. Now, coming to the facts alleged by Nayeem that while he was going to Court on 21.06.2013, the police pushed him and bundled him into the police van, etc., this Court finds that this story has been contrived by Nayeem only on 01.07.2013. It may be relevant to state here that soon after the demolition, Nayeem's father issued a legal notice dated 21.06.2013 through his advocate M. Ponniah to the Housing Board and to the police officials, wherein, he has stated as follows:

"Likewise, in O.S. No.451 of 2004 on the file of the II Additional Subordinate Court, Madurai, a decree of permanent injunction has been passed as against the State of Tamil Nadu as well as Tamil Nadu Housing Board. Despite permanent injunction passed by the competent Court, notwithstanding the order, all of you have committed an act of criminal trespass into the property of my client on 21.06.2013 at about 10.00 a.m. and demolished a portion of the compound wall and caused damages to his property. But, my client's effort to restrain all of you was ended in vain. The illegal act committed by all of you is amounting to contempt of court and each one of you are held responsible for the act committed by you and the damages to be claimed by my client. Stop immediately all your illegal activity of demolishing or trespassing into my clients above said property. Contempt of Court and other legal proceedings will follow as against all of you."

12. In the aforesaid notice dated 21.06.2013, there is no whisper with regard to the alleged pushing and jostling of Nayeem by the police on 21.06.2013. Besides issuance of legal notice, Kutha Baksh filed W.P. (MD) No.10107 of 2013 against the Housing Board and the police officials seeking a writ of mandamus forbearing them from



interfering with his peaceful possession and enjoyment of the land in S.No.12/2 and 12/3. This writ petition was filed on 22.06.2013 and even in the affidavit filed in support of the said writ petition, there is absolutely no whisper about the alleged assault on his son Nayeem by the police.

13. Mr.V.Kathirvelu, learned Senior Counsel appearing for Nayeem contended that since the matter stands committed to the Sessions Court, a full-fledged trial should be conducted to fix criminal responsibility and that this Court should not quash the proceedings at the threshold. Placing reliance upon the judgment of the Supreme Court in **Inspector of Police and others vs. Battenapatla Venkata Ratnam and another [(2015) 13 SCC 87]**, he contended that no sanction is required under Section 197 Cr.P.C. for the acts committed by the police in demolishing the building and threatening Nayeem.

14. In **Battenapatla Venkata Ratnam** (supra), the issue before the Supreme Court was that the Sub-Registrars in various offices in the State of Andhra Pradesh had conspired with stamp vendors and document writers to manipulate registers and records to gain monetary benefit. On those facts, the Supreme Court held that it is no part of the official duty of the public servants to indulge in misappropriation and cheating and concluded that no sanction was required to prosecute them.

15. Whereas, the case at hand is squarely covered by the judgment of the Supreme Court in **Jayasingh vs. K.K. Velayutham and another [(2006) 9 SCC 414]**, the relevant passages of which, are extracted hereunder:

"10. The basic fact of the matter is not in dispute. The fact that the wife of Respondent 1 herein was running a tea stall is admitted. It furthermore stands admitted that the Government of Tamil Nadu issued a government order containing a policy decision to remove all such kiosks, tea stalls and bunks from the hospital premises in public interest, inter alia, on the ground that food is prepared in such tea stalls in unhygienic conditions and the same had otherwise been causing nuisance to others. No court has declared such a policy decision to be ultra vires. We have noticed hereinbefore that, in fact, the validity of such a policy decision has been upheld by this Court in Jagadeesan [(1997) 4 SCC 508].

11. If, in the aforementioned situation, the appellant herein only complied with the order of the Executive Engineer asking him to remove the said tea stall; we are of the opinion that thereby he cannot be said to have committed any offence whatsoever. The name of the appellant was taken by the Executive Engineer himself, under whose direction he acted. He, in his statement made before the



police, merely stated that the appellant by his letter dated 2-8-1997 intimated to him that the tea stall had been removed. On the basis of the said statement no inference could be drawn that the appellant committed an offence purported to be under Section 427 of the Penal Code. From a perusal of the charge-sheet, as also the materials which are available on record, it does not appear that there is anything to show as to how and in what manner the appellant could be said to have committed a mischief or how the ingredients of the said provision stood satisfied."

16. It is now brought to the notice of this Court that the Sessions Judge has discharged the co-accused, viz., the Housing Board Engineers from the prosecution in S.C. No.270 of 2014 under Section 227 Cr.P.C. on 11.02.2019.

17. In view of the aforesaid discussion, while, on facts, this Court holds that the allegations of Nayeem, advocate by profession, appear false, on law, this Court holds that the present prosecution against the police officers and the officials of the Housing Board is an abuse of process of law.

In the result, this quash petition is allowed and the proceedings in S.C. No.270 of 2014 on the file of the I Additional District Court, Madurai, is quashed not only against Ganesan (A1) but also against Ravichandran (A2), Inspector of Police, who had provided protection to the Housing Board officials during the encroachment drive, though he is not a petitioner before this Court, since precious time of the Court should not be wasted on such vindictive litigations engineered by members of the noble profession. Connected Crl.M.Ps. are closed.

Sd/-

Assistant Registrar (CS-III)

/ True Copy /

Sub Assistant Registrar (CS)

To

The I Additional District Judge
Madurai

+1 CC to M/s.BABU.RAJENDRAN, Advocate (SR-59345[F] dated 05/04/2019)
+1 CC to M/s.S.M.A.JINNAH, Advocate (SR-59591[F] dated 08/04/2019)

Cr1.O.P. (MD) No.5426 of 2015