

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	06.03.2019
Date of Judgment	04.06.2019

CORAM

THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

Crl.RC(MD)No.2 of 2016

and

Crl.MP(MD)No.20 of 2016

Gnanaprakash

: Petitioner/Accused

Vs.

The Sub-Divisional Magistrate and Sub Collector,
Sub Collector Office,
Beach Road,
Tuticorin District.

: Respondent/Complainant

Prayer: Criminal Appeal filed under Section 397 r/w 401 of Criminal Procedure Code, against the order, dated 18.08.2015 in ROC No.B1/4495/2014-5 on the file of the respondent.

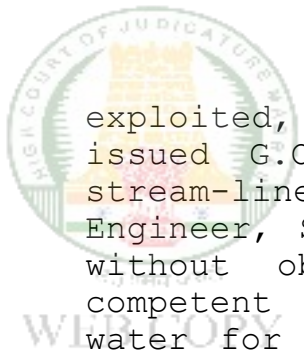
For Petitioner : Mr.V.Malaiyendran
For Respondent : Mr.A.Robinson,
Government Advocate
(Criminal side)

J U D G M E N T

This criminal revision is directed against the order, dated 18.08.2015 made in ROC No.B1/4495/2014-5 on the file of the respondent.

2.It is seen from the records that lot of complaints were received from Thoothukudi District Tamiraparani Nathineer Padukkappu Peravai and the Tamiraparani Pasana Vivasaylikal Padukappu Porattakulu with regard to indiscriminate drawal, transportation and large scale commercial exploitation of ground water depletes the ground water table and affect agriculture is perpetuated with impunity by the exploiters causing gave concern to the maintenance of ground water potential in the district and craved for immediate intervention by the District Administration. The Gram Sabha of Servaikaranmadam Village Panchayat passed a resolution requesting the District Administration to stop the menace of drawal and transportation of ground water from Servaikaranmadam Village.

3.The Government of Tamil Nadu, after carefully considering the availability of ground water passed G.O.Ms.No.52 Public Works Department, dated 02.03.2012 approving the categorization over



exploited, critical, semi-critical and safe blocks and further issued G.O.Ms.No.142, Public Works Department, dated 23.07.2014 stream-lines issuance of "No Objection Certificate" by the Chief Engineer, State Ground and Surface Water Resources Data Centre and without obtaining "No Objection Certificate/Licence" from the competent authority, the persons shall not be permitted to draw water for commercial purposes and in this regard, the respondent passed an order in ROC No.B2/44952-2014-5, dated 15.03.2015 directing the petitioner to stop the unauthorized exploitation of ground water for commercial use from the land in Survey No.133/1D of Servaikaranmadam Village and subsequently, the petitioner filed a writ petition in W.P(MD)No.4739 of 2015 forbearing the respondents from preventing them to use his bore-wells and this court by a common order, dated 31.03.2015 dismissed the writ petition by holding that the act of the petitioner would not doubt deplete the ground water table and affect the very agricultural activities and thereafter, the impugned order came to be passed by the respondent. Aggrieved by the impugned order passed by the respondent, the petitioner is before this court.

4.The learned counsel appearing for the petitioner submitted that the Sub-Divisional Magistrate does not have jurisdiction to invoke Section 138 of the Criminal Procedure Code, for preventing the drawing of water through bore-well and its supply through lorries and that the respondent failed to give opportunity to any of the affected parties including the petitioner and the order is a total denial of natural justice and that the respondent failed to consider that as per the Government report, there are 289 bore-wells in and around Thoothukudi Taluk and also 350 lorries are being used for the purpose of drawing of water for various institutions, but the respondent issued notice to only 13 bore-wells in Servaikaranmadam Panchayat and that the respondent erred in not furnishing a copy of the complaint of the Thamirabarani Nathineer Pathukappu Peravai and the Thamirabarani Pasana Vivasayigal Pathukappu Porattakula and the respondent overlooked the fact that the water is drawn to be consumed by the people, who are living in Thoothukudi Taluk and the denial of water of a section of the public, patients and students living in the same Taluk is a denial of fundamental right to livelihood and further, the Government failed to supply water to the schools, colleges, hospitals, construction companies and the citizens who are living the Thoothukudi Taluk. In view of the above circumstances, the impugned order passed by the respondent is liable to be set aside and the criminal revision has to be allowed.

5.The learned Government Advocate (Criminal side) appearing for the respondent argued that the respondent has passed the impugned order, after considering the entire materials available on record and hence, it does not require any interference by this court and prays for dismissal of the criminal revision.



6.Heard both sides and perused the materials available on record.

7.The learned counsel appearing for the petitioner/accused argued that the respondent does not have jurisdiction to invoke Section 138 of the Criminal Procedure Code, for preventing the drawing of water through bore-well and its supply through lorries and the respondent failed to give opportunity to any of the affected parties including the petitioner and the order is a total denial of natural justice and the respondent failed to consider the explanation for his notice and it is neither wilful nor unlawful to draw water with bore-well for drinking and agricultural purpose and the notice is required for the above purpose and the creation of law and order situation would not be a ground to invoke Section 138 of the Criminal Procedure Code and prays that the criminal revision has to be allowed.

8.On the other hand, the learned Government Advocate (Criminal side) appearing for the respondent submitted that complaints were received as against the petitioner stating that the petitioner overexploited the ground water and the overexploitation will lead to depletion of ground water table, contamination of ground water due to geogenic factors resulting in increasing levels of fluoride, arsenic and iron, salinity ingress in coastal areas, which eventually results in fresh water turning saline and after due enquiry, it was found that the petitioner unauthorisedly exploit the water for commercial use in the petition mentioned land and hence, it is necessary to stop the unauthorised exploitation of the ground water for commercial use and the respondent passed the conditional order under Section 138 of the Criminal Procedure Code, directing the petitioner to stop the unauthorised exploitation of ground water in the petition mentioned land and the petitioner already filed writ petition challenging the conditional order passed under Section 133 of the Criminal Procedure Code by the respondent, but the writ petitions were dismissed by this court and after dismissal of the writ petitions, the respondent sent further notice to the petitioner to submit his explanation, but the petitioner did not send any explanation and after due enquiry by the concerned officials, the respondent found that there was exploitation of ground water in the petition mentioned land and the respondent passed the order under Section 138 of the Criminal Procedure Code and prays that the criminal revision has to be dismissed.

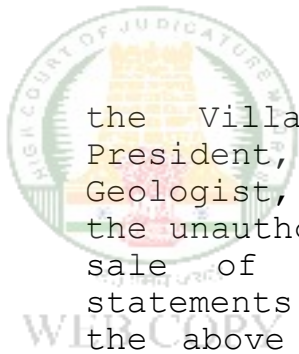
9.The respondent, on receipt of the complaints from the District Administration from Thoothukudi District Pamiraparani Nathineer Padukkappu Peravai and the Tamiraparani Pasana Vivasayikal Padukkappu Porattakulu, directed the Tashildar, Thoothukudi to enquire the matter and after receipt of the report from the Tasildhar, Thoothukudi, the respondent sent the notice under Section 133 of the Criminal Procedure Code to the petitioner to stop the exploitation of ground water in the petition mentioned

land and the petitioner represented through an Advocate and stated that he extracts water for agricultural and drinking purpose. The petitioner challenged the order under section 133 of the Criminal Procedure Code by way of filing writ petitions in W.P.Nos.4722, 4726, 4731, 4733 and 4739 of 2015 before this court and the above writ petitions were disposed on 31.03.2015 with the following observations:-

"Nowadays, the safest drinking water to the people is really next to impossible due to change in climatic world. Therefore, atleast, the nature has to be protected in all its originalities. At this juncture, last but not the least, that no one can deny the fact that the water is an elixir of life. In future, the subject of water is going to be very tough task for the human being. Every effort must be made to protect the water in its originality. Such efforts always have to be applauded for the simple reason that such action can be seen in order to protect the future generation of our country. Overexploitation of ground water leads to depletion of ground water table; contamination of ground water due to geogenic factors resulting in increasing levels of fluoride, arsenic and iron, salinity ingress in coastal areas, which eventually results in fresh water turning saline. The act of the petitioners would no doubt deplete the ground water table and the affect the agricultural activities itself. Once the authorities feel that the water is used for activities other than the purposes meant for, they have every right to stop such illegal actions to save the water from unscrupulous elements. The action of the respondents can never be found fault with by the petitioners."

10.The respondent, after dismissal of the writ petitions, sent fresh notice to the petitioner on 07.05.2015 to submit his explanation. The petitioner has not filed any document to show that he sent his explanation for the above notice. The respondent stated in the counter that the petitioner has not submitted his explanation, hence, he enquired the Village Administrative Officer of Servaikaranmadam village, President, Servaikaranmadam Village Panchayat, Assistant Geologist Ground Water Division, Tirunavelli on 31.07.2015 about the unauthorised exploitation of ground water by the petitioner for commercial use and he recorded the statement of the above persons.

11.It is the bounden duty of the petitioner to submit his explanation for the notice sent by the respondent. But the petitioner failed to submit his explanation. Only after giving reasonable opportunity to the petitioner, the respondent enquired



the Village Administrative Officer, Servaikaranmadam Village, President, Servaikaranmadam Village Panchayat and Assistant Geologist, Ground Water Division, Tirunelveli on 31.07.2015 about the unauthorised exploitation of ground water for commercial use and sale of ground water in Servaikaranmadam Village and their statements were recorded. But the petitioner failed to cross examine the above officials. Hence, there was no violation of natural justice.

12.On careful perusal of the order issued by the respondent, it is found that there was no agricultural land or residential houses found near the petition mentioned land and the petitioner has not done any agricultural activities in the petition mentioned land and further, it reveals that the petitioner exploited the ground water for commercial purpose.

13.In the judgment reported in **2009(3) CTC 412 (M.K.Balakrishnan and another Vs. Union of India)**, it was emphasized the importance of safeguarding the water for irrigation and drinking purpose holding that the right to get water is a right to life guaranteed by the Constitution of India. When there was continuous drawl of underground water, it has drastically affected the nature and only after due enquiry, the respondent came to the conclusion that the petitioner unauthorisedly exploited the ground water for commercial use from S.No.133/1D in Servaikaranmandam Village and selling the ground water and the same is injurious to physical comfort of the people by depriving the water to the community at large and depletion of ground water table, besides causing large scale public nuisance to the community.

14.For all the reasons stated above, this court is of the considered view that the respondent only after giving reasonable opportunity to the petitioner, has passed the order under Section 138 of the Criminal Procedure Code and hence, it is not necessary to interfere in the findings of the respondent.

15.In the result, this criminal fails and the same is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Sub-Divisional Magistrate and Sub Collector,
Sub Collector Office,
Beach Road,
Tuticorin District.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Judgment made in
Crl.RC. (MD)No.2 of 2016
04.06.2019

CS (07.11.2019) 6P 3C