



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.09.2019

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P (MD) Nos.3 and 1906 of 2018

and

Crl.M.P.(MD) Nos.2, 3 and 818 and 819 of 2018

WEB COPY

1.Sethu @ Sethupathi Raj
2.Subramanian
3.Ganesan
4.Murugesan
5.Sakthivel

... Petitioners/A1 to A5 in
Crl.O.P.No.3/2018

Ilango

... Petitioner/A6 in
Crl.O.P.No.1906/2018

Vs

1.The State rep. by
The Inspector of Police,
Thalavaipuram Police Station,
Virudhunagar District
Crime No.193 of 2016

2.Mariamammal
Sub Inspector of Police,
The Inspector of Police,
Thalavaipuram Police Station,
Virudhunagar District
Crime No.193 of 2016

... Respondents in both
petitions

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to call for the records relating to the charge sheet in C.C.No.317 of 2017 on the file of the Judicial Magistrate Court, Rajapalayam and quash the same as illegal insofar as the petitioners are concerned.

For Petitioners : Mr.R.Gandhi

For Respondents : Mr.K.Suyambulinga Bharathi,
G.A. (Crl. Side)

O R D E R

These petitions have been filed to quash the charge sheet in C.C.No.317 of 2017 on the file of the Judicial Magistrate Court,
<https://hcservices.mca.gov.in/hcservices>



Rajapalayam, having been taken cognizance for the offence under Section 379 of I.P.C. as against the petitioners.

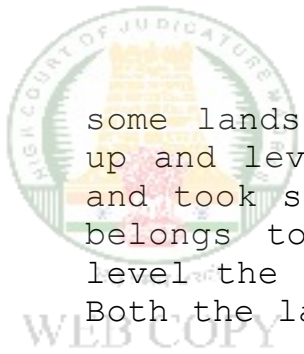
2.The learned counsel appearing for the petitioner would submit that the case of the prosecution is that an agricultural land comprised in S.No.468/1, 468/1B and 472 in Ilanthiraikondan village is owned by A6 and A4 is also the owner of the land situates adjacent to the land of A6. The allegation as against the petitioners is that A1 to A3 used tractor and have taken earth from the land of A6 without obtaining any permission and fill it the same in the land of A4. Hence, the charge.

3.The learned counsel appearing for the petitioners would further submit that even according to the case of prosecution, the charge for the offence under Section 379 of I.P.C. is not made out. The petitioners are all agriculturists and only to level the land of A4, they have taken earth from the land of A6 and filled the same in the land of A4. In respect of the crime allegedly committed by the petitioner, no one is gained and no loss caused to anybody. He further submitted that in order to charge a person for the offence of theft punishable under Section 379 of I.P.C., the prosecution has to prove that there was a movable property and the said movable property was in the possession of the person other than the accused and the accused took out the same out of the possession of said person and the accused did the offence dishonestly i.e., within intention to cause wrongful gain to himself or wrongful loss to another. However, these ingredients are not made as against the petitioners herein to attract the offence under Section 379 of I.P.C. Therefore, he prayed for quashment of the proceedings as against the petitioner.

4.The learned Government Advocate (criminal side) submitted that though A4 and A6 are owners of the land, they have taken sand without any prior permission from the concerned authority and have committed the offence under Section 379 of I.P.C. Further, he submitted that both A4 and A6 admitted that A1 to A3 took the sand from the land of A6 and filled the same in the land of A4. Therefore, the offence under Section 379 of I.P.C. is clearly made out as against the petitioners and hence, he prayed for dismissal of the quash petition.

5.Heard the learned counsel appearing for the petitioners and the learned Government Advocate (criminal side) appearing for the respondents.

6.The petitioners are arraigned as A1 to A6 in both the criminal original petitions. The crux of the complaint is that the land comprised in S.No.468/1, 468/1B and 472 in Ilanthiraikondan village is owned by A6. Likewise, A4 also owned



some lands adjacent to the land belongs to A6. In order to fill up and level the land belongs to A4, A1 to A3 used their tractor and took sand from the land of A6 and filled the same in the land belongs to A4. Admittedly, all are agriculturists and only to level the land of A4, sand was taken from the land belongs to A6. Both the lands are patta land.

7. In order to charge a person for the offence of theft punishable under Section 379 of I.P.C., the prosecution has to prove the following ingredients:

a) there was a movable property;

b) that the said movable property was in the possession of the person other than the accused;

c) that the accused took out the same out of the possession of said person;

d) that the accused did the offence dishonestly i.e., within intention to cause wrongful gain to himself or wrongful loss to another;

e) that the accused took the movable property or moved it without the consent of the possessor of the movable property and as such the Charge as against the petitioners does not stand in scrutiny of law.

8. It is seen from the charge that the accused 1 to 3 have taken the sand from the land belongs to A6 and filled the same in the land belongs to A4 to level the same. Therefore, due to their act, no one is gained and no loss caused to any one. There is also no dishonest intention to gain or loss. The only allege is that without any prior permission from the concerned authorities, the petitioner/accused have taken the earth from the patta land. Since the ingredients of the offence under Section 379 of I.P.C. are not made out as against the petitioner, this Court feels that the entire proceedings as against the petitioners is vitiated.

9. In view of the above discussion, these petitions are allowed and the proceedings in C.C.No.317 of 2017 on the file of the Judicial Magistrate Court, Rajapalayam as against the petitioners is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)



Arul

To

1.The Judicial Magistrate, Rajapalayam

2.The Inspector of Police,
Thalavaipuram Police Station,
Virudhunagar District

3.The Sub Inspector of Police,
Thalavaipuram Police Station,
Virudhunagar District

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

+2 CC to M/s.R. GANDHI, Advocate (SR-86825,86824[F] dated
16/09/2019)

Order made in
CRL.O.P (MD) Nos.3 and 1906 of 2018
13.09.2019

_KM/ (30.09.2019) 4P 7C