



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 12.12.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

CrI.O.P (MD) No.4937 of 2016

and

CrI.M.P. (MD) No.2452 of 2016

1.Rajagopal

2.Soundaravalli

3.Ramachandiran

4.Pitchaimuthu

5.Nagesh

6.Dharmasalam

7.Allangan

... Petitioners/Accused 1 to 7

Vs

S.Manivel

... Respondent/Complainant

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to call for the entire records pertaining to the case in C.C.No.129 of 2015, under Sections 119, 218, 294(b), 447, 448, 506(i) of IPC r/w 3 (1) of TNPPDL Act, pending on the file of the learned Judicial Magistrate No.I, Kulithalai, Karur District and quash the same.

For Petitioners

: Mr.M.Saravanan

For Respondent

: Mr.G.Chandrasekar

ORDER

The petitioners herein are shown as accused in C.C.No.129 of 2015 on the file of the Judicial Magistrate No.I, Kulithalai. It is a private complaint instituted by the respondent herein. To quash the same, this criminal original petition has been filed.

2.Heard the learned counsel on either side.

3.The learned counsel appearing for the complainant submitted that the contentions urged by the petitioner's counsel are rather factual in nature and that, therefore, this Court should relegate the petitioners to work out their rights before the Court below.



4.I carefully considered the rival contentions and perused the materials on record.

5.The case of the complainant is that his family was granted a free house site patta on 28.12.2012. The same was subsequently cancelled. Thereafter, their tenement was demolished by the petitioners herein.

6.The complainant would specifically allege that the act of demolition was carried out at the instance of the persons who are inimically disposed towards the complainant's family. The petitioner's herein are the revenue officials.

7.The second petitioner herein is the Revenue Divisional Officer, Kulithalai Revenue Divisional Office, Karur District. She is the Group-I Officer and she is removable from her office only by the Government. Therefore, a case against her could not have been taken cognizance by the Court below without the prior sanction of the Government. That is the statutory mandate set out in Section 197 of Cr.P.C. A mere reading of the complaint would clearly indicate that the petitioners herein have only acted in discharge of their official duties. Therefore, this is a case, in which, taking cognizance of the complaint requires the prior sanction of the Government as per Section 197 of C.rP.C.

8.Of-course, the other petitioners are removable from their post not by the Government but by superior officials. For instance, the first petitioner is only a Tahsildar and he is removable from his post by the District Collector.

9.But then, the second petitioner herein is also one of the accused. The case cannot be split up against the second petitioner alone. This is a composite complaint and it requires prior sanction of the Government. The Court below failed to notice this aspect of the matter. Therefore, the act of taking cognizance is vitiated by non application of mind. It is also seen that the complainant's mother Poovammal was granted free house site patta on 28.12.2012. Complaints were received from the local villagers that this is an encroachment and that therefore, it ought not to have been regularised. There was also a local agitation. Therefore, notice was given to the complainant's mother. After an enquiry, patta was cancelled. The cancellation of patta was on 28.11.2013. Removal of the encroachment was on 07.12.2013. It is not the case of the complainant that the order of cancellation was challenged or stayed or set aside. When the patta was cancelled, the occupation of the complainant and his family becomes an act of encroachment and therefore, the revenue authorities are entitled to take action as per law for removing the encroachment. For carrying out their official functions, the petitioners cannot be fastened with penal liability.



10.As rightly contented by the petitioner's counsel, the complainant has filed the impugned complaint to wreck vengeance on the officials concerned for having removed the encroachment in question. Therefore, the parameters set out in the Bhajanlal's case are more than satisfied. The impugned proceedings are liable to be quashed on two grounds.

(i)the first ground is the lack of sanction as per Section 197 of Cr.P.C.,

(ii)the second ground is that the petitioners have only discharged their official functions in removing the encroachment committed by the complainant's family.

11.The very institution of the impugned prosecution is an abuse of legal process. Therefore, it stands quashed. The criminal original petition is allowed. Consequently, connected miscellaneous petition is quashed.

Sd/-

Assistant Registrar (crl side)

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/ /2020

Sub Assistant Registrar(CS)

Rmi

To

The Judicial Magistrate No.I, Kulithalai, Karur District.

+1 CC to Mr.G.CHANDRASEKAR, Advocate (SR-104821[F]dated 13/12/2019)

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