



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **13.11.2019**

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD) No. 11249 of 2018

and

Crl.M.P. (MD) .Nos.5107 & 5108 of 2018

Iyankannu : Petitioner/Sole Accused
Versus

1.The State represented by
The Inspector of Police,
Rajakamangalam Police Station,
Kanyakumari District. : Respondent/Complainant

2.A.S.Jawahar :Respondent/Defacto Complainant

Prayer: Petition is filed under Section 482 of the Criminal Procedure Code praying to call for the records in connection with charge sheet in S.C.No.160 of 2015, pending on the file of the Principal District and Sessions Judge, Kanyakumari District at Nagercoil and quash the same.

For Petitioner : Mr.R.Russel Raj
For R-1 : Mr.K.Suyambulinga Bharathi
Govt. Advocate(Crl.side)
For R-2 : Mr.A.Maniraja

O R D E R

This Criminal Original Petition has been filed to challenge the proceedings in S.C.No.160 of 2015, on the file of the learned Principal District and Sessions Judge, Kanyakumari District, Nagercoil.

2. Based on a complaint preferred by the second respondent, the first respondent registered a case in Crime No.315 of 2012, for the offences under Sections 448 of the Indian Penal code and Section 3 (i) of the TNPPDL Act and the same has been taken cognizance in S.C.No.160 of 2015, by the learned Principal District and Sessions Judge, Kanyakumari District, Nagercoil.

3. The crux of the complaint is that the petitioner entered into the property of the *de facto* complainant / second respondent comprised in Survey Nos.696/5, 696/4 and 695/7 and damaged the compound wall situated at Neendakarai Village, Kanyakumari District and caused loss to the tune of Rs.27,000/-.



4. It is seen that there are no allegations made against the petitioner for the offence under Section 447 of the Indian Penal Code, since already there is a dispute between the petitioner and the second respondent / *de facto* complainant in respect of boundary. Admittedly, the petitioner is the owner of the property comprised in Survey No.695/8 to an extent of 7 1/4 cents in Needankarai B Village. He constructed a compound wall within his property and as such, there is no need to enter into the property of the second respondent. Further on perusal of 161 (3) Cr.P.C statement recorded from the Mahazar witnesses, L.W.7 and L.W.8 had categorically stated that in the place of occurrence, no damage was seen by them. Further, a report of the Tahsildar dated 23.06.2011, reveals that there is already a dispute between the petitioner and the second respondent in respect of the boundary. It is also seen that there is no report to attract the offence under Section 3(i) of the TNPPDL Act. Even according to the case of the prosecution, there was no damage in the compound wall and there is no piece of document to show that the damages were caused by the petitioner.

5. In these circumstances, there is absolutely no possibility of guilt as against the petitioner herein. Therefore, the pendency of the proceedings is clearly an abuse of process of law. At the same time, the petitioner need not undergo for ordeal of trial.

6. In view of the above discussions, the proceedings initiated against the petitioner in S.C.No.160 of 2015, on the file of the learned Principal District and Sessions Judge, Kanyakumari District, Nagercoil, is hereby quashed and this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (writs)

// True Copy //

Sub Assistant Registrar (CS)

tsg

To

1. The Principal District and Sessions Judge,
Kanyakumari District, Nagercoil.
2. The Inspector of Police,
Rajakamangalam Police Station,
Kanyakumari District.



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

+1 CC to Mr.R.RUSSEL RAJ, Advocate (SR-98096[F] dated 14/11/2019)

Order made in
Crl.O.P. (MD) No. 11249 of 2018
13.11.2019

MK (22.11.2019) 3P 5C