



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P. (MD) .No.17519 of 2017

and

Crl.M.P. (MD) No.11491 of 2017

Muthuramalingam

... Petitioner/ LW1

Vs.

The State rep. by
The Inspector of Police,
Uthamapalayam Police Station,
Theni District.
Crime No.26 of 2015

... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C. to set aside the final report and to direct the respondent herein to conduct further investigation in S.T.C.No.5776 of 2015, on the file of the learned Judicial Magistrate, Uthamapalayam and file the final report afresh within a stipulated time period in accordance with law.

For Petitioner : Mr.R.Mathiyalagan
For Respondent : Mr.S.Chandrasekar,
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed for a direction to the respondent police to conduct further investigation in S.T.C.No.5776 of 2015, on the file of the learned Judicial Magistrate, Uthamapalayam.

2. The petitioner is the *de facto* complainant. He gave a complaint to the respondent police by alleging that the accused persons illegally trespassed into the property of the petitioner and damaged the entire standing crops and also criminally intimidated the petitioner based on the complaint given by the petitioner under an F.I.R. in Crime No.26/2015 dated 17.01.2015 under Sections 147, 34, 447, 427 & 506(ii) of I.P.C.

3. The respondent police conducted the investigation and a final report came to be filed before the learned Judicial Magistrate, Uthamapalayam against one accused person for an offense under Section 294(b) & 341 IPC. This final report was taken on file in STC No.5776 of 2015.



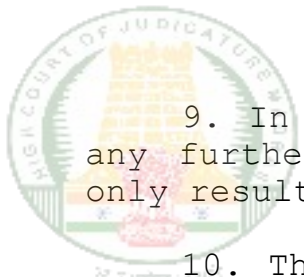
4. The learned counsel appearing on behalf of the petitioner submitted that the respondent police had taken the statement of six witnesses, out of which L.W.2 is the brother's son of the accused, L.W.3 is the employee of the accused and L.W.4 is the sister's husband of the accused and L.W.6 was the person who stood as surety for the accused. The learned counsel submitted that none of the witnesses are going to support the case of the prosecution and that the entire investigation is a farce. The learned counsel further submitted that even in the complaint, the petitioner had specifically alleged that one Rajaveliyappan was the witness to the entire incident and as he was not examined as witness, that itself shows that the investigation has not been conducted in a fair manner. Therefore, the learned counsel for the petitioner submitted that further investigation has to be done by the respondent police in this case.

5. The learned Additional Public Prosecutor appearing on behalf of the respondent Police, on instructions submitted that, Rajaveliyappan was examined by the respondent police and his statement was recorded under Section 161(3) Cr.P.C. However, this witness was not shown in the list of witnesses filed that was filed along with the final report.

6. This Court has carefully considered the submission made on either side and the materials available on record.

7. The grievance of the petitioner seems to be that the investigation was not conducted by the respondent police in a fair manner on the ground that, atleast four witnesses whose statements were recorded, are closely related to the accused person. That apart, one Rajaveliyappan, who was the eye witness to the incident was not shown in the list of witnesses. That apart, the final report does not contain the offense under Section 4 of the Tamil Nadu Property Prevention of Damage and Loss Act, inspite of the fact that the entire standing crops were completely destroyed and the petitioner faced huge loss.

8. A careful perusal of the case shows that Rajaveliyappan was, in fact, examined and his statement was recorded under Section 161 (3) of Cr.P.C. For the reasons best known to the police, his name is not shown in the list of witnesses. He is said to be the eye witness to the incident. Therefore, if his name is also added in the list of witnesses and he is examined before the Court, the major grievance expressed by the petitioner can be taken care of. Insofar as the loss that was sustained by the petitioner, it can always be established before the trial Court since the petitioner will be examined as P.W.1 and he can explain the entire case and also produce the evidence for the loss sustained by him due to mischief and damage done to the standing crops.



9. In view of the above, this Court is not inclined to direct any further investigation at this stage. Any such direction will only result in further delay of the proceedings.

10. The respondent police is directed to add Rajaveliyappan as one of the witnesses in the final report. He shall be examined by the Court below during the trial and during the course of trial, if the overtact of some other accused persons also come to light, the trial Court can always exercise its powers under Section 319 of Cr.P.C. and add them as an additional accused. Accordingly, this Criminal Original Petition is disposed of with the above directions and the Court below is directed to complete the proceedings in S.TC. No.5776 of 2015 within a period of three(3) months from the date of receipt of a copy of this order. Consequently, connected Crl.M.P. (MD) No.11491 of 2017 is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

- 1) The Judicial Magistrate,
Uthamapalyam
- 2) The Inspector of Police,
Uthamapalayam Police Station,
Theni District.
- 3) The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.R.MATHIYALAGAN, Advocate (SR-90034[F] dated 27/09/2019)

Order made in
Crl.O.P. (MD) .No.17519 of 2017
25.09.2019

sts

MK (01.11.2019) 3P 5C