



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.06.2020

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CrI.O.P(MD)No.4764 of 2018

and

CrI.M.P. (MD)No.2331 of 2018

WEB COPY

1.Anitha Jenkins
2.Surilivel
3.Thason
4.John Victor

... Petitioners/Accusd No.1 to 3 & 5

Vs.

Bright Alwin

... Respondent/Complainant

Prayer: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records relating to the proceedings in C.C.No.23 of 2018 on the file of the learned Judicial Magistrate, Padmanabhapuram and quash the same insofar as the petitioners herein are concerned.

For Petitioners : Mr.T.Antony Arul Raj
For Respondent : Mr.G.Ramanathan

O R D E R

This criminal original petition has been filed for quashing the proceedings in C.C.No.23 of 2018 on the file of the learned Judicial Magistrate, Padmanabhapuram. The complainant is the respondent herein.

2.The case of the complainant is that the local panchayat officials at the instance of the first petitioner herein were attempting to lay road across his private patta property. In this regard, the complainant had given an application to the revenue authorities for survey and measurement. The complainant would further claim that firka surveyor issued notice and also carried out the survey on 11.07.2017. But ignoring the survey proceedings, the accused trespassed into his property and threatened him and went ahead by laying a road on his property. Several other allegations have also been made by the complainant against the accused. The private complaint filed by the respondent was taken on file by the learned Judicial Magistrate. To quash the same, this criminal original petition has been filed.

3.Heard the learned counsel on either side.

4.The learned counsel appearing for the petitioners would



reiterate all the contentions set out in the memorandum of grounds and wanted this Court to quash the entire proceedings.

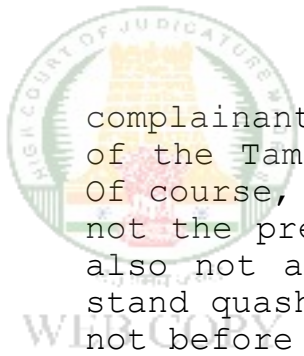
5.Per contra, the learned counsel appearing for the respondent pointed out that the accused in this case have trampled the civil rights of the complainant underfoot and laid a road across his property. He would point out the malafides on the part of the accused by drawing attention to the fact that the survey exercise was already concluded on 11.07.2017, while the occurrence in question took place on 14.07.2017. He would also point out that in order to protect his property the complainant put up fencing which was forcibly removed by the accused. The accused also are alleged to have cut the standing trees on the property of the complainant herein.

6.He submitted that in any event the inherent powers of this Court under Section 482 of Cr.P.C., are clearly not available.

7.I carefully considered the rival contentions. It is not in dispute that out of six accused, A2, A3, A4 and A5 are employees of the panchayat. A2/Surilivel was the Executive Officer. A3/Thason was the Office Assistant. A4/Robi was the Bill Collector. A5/John Victor was also one of the panchayat servants. The pointed contention of the learned counsel appearing for the petitioners is that Section 230(1) of the Tamilnadu Panchayats Act, 1994 contemplates that no Court shall take cognizance of any offence committed by a member of the panchayat while acting or purporting to act in the discharge of his official duty with the previous sanction of the Government. Likewise Section 232 accords protection to the panchayat officers and servants. Of course the official act should have been done in good faith.

8.In the case on hand, the panchayat officials did not have anything personal against the complainant. All that they had done was to lay a mud road. According to the local panchayat, a road was laid only on panchayat land. The case of the complainant is that the road has been laid on his private land. In this regard, a suit has already been filed by the wife of the complainant in O.S.No.141 of 2017 on the file of the learned District Munsif, Padmanabhapuram. The first petitioner herein is very much figuring as one of the defendants. The panchayat itself has been arrayed as third defendant in the said suit. The suit is for the relief of declaration, recovery of possession and award of damage. The suit is still pending.

9.I am able to note that the panchayat officials have laid a road on a land which they claim to be a public property. The case of the complainant is that it is a private property. The Civil Court is seized of the matter and it is yet to render its adjudication. Therefore, in a case of this nature when the



complainant, the protective provision in Section 230 and Section 232 of the Tamilnadu Panchayats Act, 1994 will clearly come into play. Of course, these provisions can be invoked only by A2 to A5. A1 was not the president of the panchayat during the relevant time. A6 is also not a panchayat servant. Therefore, the impugned proceedings stand quashed only against A2 to A5. I am conscious that A4/Robi is not before this Court as petitioner but then the reasons which impel me to quash the impugned proceedings by invoking Sections 230 and 232 of the Act will very much apply for A4/Robi also. Therefore the benefit of this order will enure in her favour also. I make it clear that since the impugned proceedings have been quashed against A2 to A5 on technical ground, the proceedings will go on against A1/Anitha Jenkins and A6/Chandran. However, the personal appearance of the first petitioner before the Court below will stand dispensed with. She needs to appear only on those occasions when she is mandated to appear. Of course on all other occasions she has to be represented by her counsel. Considering the over all facts and circumstances and in the interest of justice, I request the learned District Munsif, Padmanabhapuram to expedite the trial in O.S.No.141 of 2017 and conclude the same on merits and in accordance with law within a period of six months from the date of receipt of a copy of this order. I make it clear that I have not gone into the merits of the matter. The rights and contentions of the respective parties are left entirely open. This criminal original petition is partly allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To:

1.The Judicial Magistrate,
Padmanabhapuram.

2.The District Munsif,
Padmanabhapuram.

+1 CC to M/s.T.ANTONY ARUL RAJ, Advocate (SR-13038[F] dated 03/06/2020)

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SPU (09.06.2020) 3P-4C