



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 06.10.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P (MD) No.18559 of 2016

and

Crl.M.P. (MD) No.9505 and 9262 of 2016

WEB COPY

A.Mohanadhas

... Petitioner/Accused

Vs

A.Vimalan

... Respondent/Accused

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records in C.C.No.160 of 2014 on the file of the Judicial Magistrate, Eraniel and to quash the same.

For Petitioner : Mr.S.C.Herold Singh

For Respondent : Mr.K.P.Narayanakumar

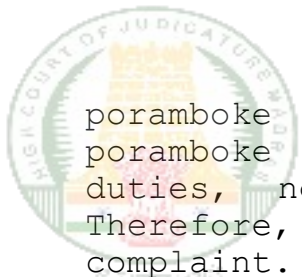
O R D E R

This petition has been filed to quash the private complaint in C.C.No.160 of 2014 on the file of the Judicial Magistrate, Eraniel.

2.The learned counsel appearing for the petitioner would submit that the petitioner, while he was working as Assistant Executive Engineer, discharged his duties in preventing encroachments in good faith in the interest of public. Therefore, there is no question of trespass or commitment of any other offences as alleged by the respondent herein.

3.The learned counsel further submitted that the land comprised in S.No.723/1 happens to be the poramboke land belonging to the Government and under the custody of public works department. On receipt of the complaint from general public, which was forwarded by the higher official of the petitioner herein, the petitioner initiated appropriate proceedings as against the respondent to remove the encroachment. Accordingly, the petitioner had discharged his duties and preventing the encroachments made on the Government lands.

4.The learned counsel appearing for the petitioner would further submit that, in fact, the respondent's father filed a suit in O.S.No.18 of 2009, in which, he categorically stated that in the schedule of property, it has been described that the subject property is a channel poramboke and situated immediate south of his property. Therefore, it is admittedly, the land was classified as



poramboke and the respondent constructed compound wall in the poramboke land. Therefore, since the petitioner discharged his duties, no offence is made out as against the petitioner. Therefore, the petitioner prayed for quashment of the private complaint.

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5.Per contra, the learned counsel appearing for the respondent would submit that the respondent is the owner of the property comprised in S.No.727 of 2014 measuring 26 cent of land situated at Lakshmipuram village along with his house bearing Door No.13/48 A. The property comprised in S.No.723/1 which is situated on the southern side of the property was also inherited by the respondent from his ancestors. In the said land, the respondent constructed compound wall with clay as the same was damaged during the first week of December and as such he constructed compound wall using bricks and cement. He further submitted that while being so, on 02.02.2009, the petitioner trespassed into the property and also threatened to demolish the compound wall. The father of the respondent produced the documents showing that the land belonging to him and patta also granted in his favour. Therefore, he also filed suit in O.S.No.18 of 2009. While pending the said suit, on 06.12.2009, the petitioner along with other accused persons armed with weapon trespassed into the property and demolished the entire compound wall. They also threatened the respondent herein with dire consequences and also scolded him with filthy language. Therefore, there are specific allegations as against the petitioner and prayed for dismissal of the quash petition.

6.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials on record.

7.There are totally six accused, in which, the petitioner is arraigned as A1. The petitioner, while he was working as Assistant Executive Engineer, Water Resource Development/Public works Department, Kothiar Basin Sub Division, Cherupalaur, Kanyakumari District, the higher officials instructed him to take appropriate action on the complaint alleged by the general public, who are residing along with the bunks of the Udayarvilai channel.

8.Perusal of the said private complaint reveals that the respondent has put up construction on the pathway, which belongs to PWD and requested to remove the same. Based on the said complaint, the petitioner went to the spot and found that the entire channel was obstructed and the construction was commenced by blocking the pathway. When the respondent tried to encroach upon the same, the petitioner took appropriate action and prevented the encroachment and also removed the little construction put up by the respondent herein. Therefore, the petitioner discharged his duties as an executive engineer and as his higher official and also on the strength of the



complaint lodged by the general public in good faith to maintain the government land, which belong to the Government.

9.Further, the father of the second respondent filed a suit in O.S.No.18 of 2009 and it is pending. Therefore, the respondent can very well proceed with the suit and no offence is made out as against the petitioner herein. In fact, the complaint lodged by the petitioner herein has been registered in crime No.337 of 2020 by the Inspector of Police, Colachel Police Station for the offence under Sections 147, 148, 427, 447, 294(b), 506(ii) and 166 of IPC. After completing the investigation, they closed the complaint as Mistake of Fact for the reason that the subject property belong to Government, particularly, the Public Works Department and in respect of the very same issue, already suit has been filed by the respondent's father in O.S.No.18 of 2009 and it is pending. After closing the FIR, the respondent was served with the referred charge sheet notice and thereafter, the respondent filed private complaint and the same has been taken cognizance by the trial Court without considering the above facts and circumstances.

10.On perusal of the documents, it revealed that the Assistant Executive Engineer, Public Works Department, Thuckalay, filed a written statement in the suit filed by the father of the respondent herein in O.S.No.18 of 2019 on the file of the District Munsif, Eraniel. wherein, it has been categorically stated as follows:

"3.The plaintiff has to prove the averments regarding the ownership of the 'A' schedule property. 'B' schedule property is admittedly a Government poramboke channel bank. It was never used by the plaintiff or his ancestors for their own use as alleged. It is the channel bank under the control and maintenance of the P.W.D. It has been used as a pathway by the public and by the staff of P.W.D. The plaintiff's ancestors never built mud wall in the B schedule property. The plaintiff deliberately encroached the channel poramboke bund on 25.01.2009 and built a compound wall with hallow bricks and to protect the same filed this vexatious suit. Due to the action of the plaintiff the public were prevented from using the channel bund as pathway and the staff of the department also could not do their inspection work as their pathway was blocked by the unauthorised construction by the plaintiff.

4.Being aggrieved by the illegal activity of the plaintiff the general public represnted before the defendants and asked them to remove the illegal construction. The first defendant, as a preliminary step, went to the house of the plaint and asked him to



remove the unauthorised construction forthwith. But, the plaintiff without obliging the defendant, filed this false case suppressing the real facts. The plaintiff himself has stated in the plaint that he would remove the encroachment if the land is needed for any project, no project can be established at B schedule property. But it is highly essential for the free movement of the public and the department people along the bunds of the channel. Therefore the unauthorised construction of compound wall and encroachment of Government land has to be removed for the public interest."

11. Therefore, it is clear that the petitioner had discharged his official duty in good faith and as such, no offence is made out as against the petitioner. In fact, other accused persons are also government employees working under the petitioner herein. Though they have not preferred any petition to quash the proceedings, in the interest of justice, the complaint lodged by the respondent cannot be sustained as against all the accused persons.

12. In view of the same, the private complaint in C.C.No.160 of 2014 on the file of the Judicial Magistrate, Eraniel is quashed not only as against the petitioner, but also, as against all the accused persons are concerned. Accordingly, this petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P & A)

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/ /2020

Sub Assistant Registrar(CS)

Arul

To
The Judicial Magistrate, Eraniel.

+1 CC to M/s.A. BALAKRISHNAN, Advocate (SR-19263[F] dated 07/10/2020)

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ss (CO)

KK(02.11.2020) 4P 3C