



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:02.12.2020

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THE HONOURABLE Mr.JUSTICE **G.K.ILANTHIRAIYAN**

Cr1.O.P. (MD) .No.23292 of 2016

and

Cr1.M.P. (MD) .No.12279 and 12280 of 2016

K.Saravanan

... Petitioner/1st Accused

Vs

S.Etteswaran

... Respondent/Complainant

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to call for the records pertaining to the case in C.C.No.279 of 2016 on the file of the learned Judicial Magistrate, Palani and quash the private complaint and consequential further proceedings with regard to the petitioner alone.

For Petitioner : Mr.K.Hemakarathikeyan

For Respondent : Mr.D.Venkatesh

ORDER

This criminal original petition has been filed seeking to quash the private complaint in C.C.No.279 of 2016 on the file of the learned Judicial Magistrate, Palani as against the petitioner.

2.The learned Counsel appearing for the petitioner submitted that the petitioner is working as Commissioner of Municipality, Palani and as such, the sanction from the authorities concerned is mandatory to take cognizance as against the petitioner herein. While the petitioner being the public servant and he was discharging his official duty, without any sanction to prosecute the petitioner, the impugned complaint is vitiated and not at all maintainable. He further submitted that the petitioner being the Commissioner of Municipality, had entered into his official duty as per the provisions of Tamil Nadu District Municipality Act, 1920. When the respondent applied for planning permission, the petitioner has communicated a clarification issued by the Deputy Director of Town and Country Planning, Madurai, with regard to the regularisation of the plots for the year 2009. In fact, the respondent has already lodged a complaint before the Ombudsman, Tamil Nadu Local Authorities, Chennai for the very same allegation and the same was dismissed by order, dated 26.05.2016. In fact, the respondent has also challenged the order passed by the petitioner herein, thereby,



returned the application filed by the respondent for planning permission in W.P.No.9604 of 2006 before this Court and it is pending for adjudication. The present impugned complaint is nothing but a clear abuse of process of law to grant of planning permission illegally by the respondent herein.

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3.Per contra, the learned counsel appearing for the respondent submitted that the respondent applied for planning permission to construct a house by application, dated 31.07.2015. On receipt of the said allegation, it was returned and the same was questioned by the defacto complainant and informed that the first accused on his proceedings dated 19.06.2009 already the approval was regularised for the extent of 10117 sq. ft., in which, the defacto complainant has purchased only to the extent of 2345 sq. ft. Therefore, without sub-dividing the subject property, the planning permission could not be granted. He further submitted that when the respondent applied for planning permission with all requirements, the accused person returned the application only for want illegal gratification. Therefore, the petitioner failed to do his official duty and thereby committed the offence under Sections 166, 167, 217, 218 and 120B of IPC. There are specific allegations in the complaint to attract those offences as against the petitioner. He further submitted that insofar as the sanction is concerned, vide application, dated 20.04.2016 applied for sanction to prosecute the accused persons is still pending. Therefore, he prayed for dismissal of the quash petition.

4.Heard Mr.K.Hemakarthiskeyan, learned counsel appearing for the petitioner and Mr.D.Venkatesh, learned counsel appearing for the respondent.

5.Totally, there are two accused in this case, in which, the petitioner has been arrayed A1. When the petitioner was working as Commissioner of Palani Municipality, the respondent herein being an advocate made an application for approval before the Municipality vide Doc. No.240/2015 in respect of the house plots. The said plan was returned for some defects on 23.09.2015. Thereafter, the respondent submitted his rectified plan, but the same was refused to be approved by the Town Planning Officer. Thereafter, the petitioner had sent a clarification to the Deputy Director of Town and Country Planning, Madurai, in his proceedings, dated 23.02.2016 and inturn the Deputy Director of Town and Country Planning, Madurai, in his letter dated 15.03.2016, instructed to act as per the Tamil Nadu District Municipalities Act, 1920. On perusal of the documents, it revealed that the total area of 10117 sq. ft. was regularized in the year 2009 and thereafter, the said plot was divided into three plots, in which, one plot was purchased by the respondent herein and he has sought for clarification and on the basis of the clarification, the Deputy Director of Town and Country Planning, Madurai, had directed the respondent to approach the Director of Town Planning, Chennai, vide communicated dated 11.04.2016.



6.The respondent has also challenged the said communication dated 20.04.2016 before this Court in W.P.(MD).No.9064 of 2016 and the same is pending for adjudication. The learned counsel appearing for the petitioner contended that the respondent failed to obtain any sanction before lodging complaint as against the petitioner herein. In this regard, it is relevant to extract provision under Section 353 (A) of Tamil Nadu District Municipalities Act, 1920, reads as follows;

"353-A. Sanction for prosecution of chairman, councillor or executive authority:

When the chairman, any councillor or the executive authority is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction of the State Government."

7.Accordingly, while any Executing Authority alleged to have committed offence while discharging his official duty, no Courts shall take cognizance without approval of sanction from the State Government. Admittedly, the respondent sought for sanction to prosecute only as against the second accused and it is pending vide application, dated 24.03.2016. No application was filed seeking permission to prosecute the petitioner herein. Further, when the petitioner was working as Commissioner of Palani Municipality, the respondent applied for planning permission and the same was returned and directed the respondent to approach the Director of Town Planning, Chennai. In fact, the said order was also challenged by the respondent before this Court.

8.That apart, on the perusal of the complaint, though the respondent made an allegation that the petitioner demanded bribe for granting planning permission while it was questioned by the respondent, this application was returned, there is no piece of evidence to show that the petitioner has rejected this application. On a perusal of the order passed by the petitioner herein, he only returned the application and also directed the respondent to approach the Director of Town Planning, Chennai. Therefore, no offence is made out as against the petitioner as alleged by the respondent. Therefore, the respondent also failed to obtain any sanction to prosecute the petitioner herein and as such, the entire impugned complaint is not at all maintainable as against the petitioner and it is nothing but a clear abuse of process of law.

9.Accordingly, this criminal original petition is allowed and the private complaint in C.C.No.279 of 2016 on the file of the ~~Magistrate, Palani~~ is hereby quashed in respect of



the petitioner alone. Consequently, the connected criminal miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

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/ /2021

Sub Assistant Registrar (CS)

Vsg

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

The Judicial Magistrate,
Palani.

+1cc to Mr.K.Hemakarthiskeyan, Advocate Sr.No.23802

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