

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Cr1.O.P.No.19180 of 2018

and

Cr1.M.P.No.10103 of 2018

1.Kuppusamy

2.Kandasamy

.. Petitioners/ Respondents

Vs.

K.Deivasigamani

.. Respondent/ Complainant

Prayer: Petition filed under Section 482 of Cr.P.C., to call for the records relating to the complaint in C.F.R.No.3611 of 2018 dated 10.04.2018 on the file of the learned Human Rights Court / Principal District Court, Erode, quash the same.

For Petitioners : Mr.N.Manokaran

ORDER

The petitioner has filed this petition seeking to call for the records relating to the complaint in C.F.R.No.3611 of 2018 dated 10.04.2018 on the file of the learned Human Rights Court / Principal District Court, Erode, quash the same.

2. Facts leading to the present round of litigation is that the petitioners are resident of Sempoothampalayam, Periya Puliyur Village, Erode District and they are in separate blocks of land measuring an extent of 10.00 acres bearing in R.S.No.515/12, Periya Puliyur Village and the respondent is also in possession of separate block with specific boundaries in R.S.No.515/12. It is alleged that the petitioners have engaged the workers to deepen their ground level well which is situated 50 feet away from their house, to cultivate their lands. When the petitioners started deepening the existing well in their portion, the respondent, whose house is located 100 feet away from the petitioners' house, has raised objections. Further the respondent has given a petition dated 12.03.2018 to the District Collector, Erode and since the said official has found no truth in the complaint, no action was taken in the said complaint. Thereafter, the respondent with an oblique motive, has filed a frivolous complaint before the learned Sessions Court, Erode, as if it is a human rights violation has been committed. Challenging the said complaint, the present petition is filed.

3. The learned counsel appearing for the petitioners

submitted that Section 30 of the Protection of Human Rights Act empowers the State Government, with the concurrence of the Hon'ble Chief Justice of the High Court, by notification, to specify for each District a Court of Sessions to be a Human Rights Court 'to try the said offences'. However, in the present case, there is no material to show that the State Government has issued notification as contemplated under the Act, by specifying the respective Court of Sessions in the State of Tamil Nadu as the Human Rights Courts. While such being the case, the respondent has filed a petition before the Principal Sessions Court alleging human rights violation and the said Court has also taken the petition on file in C.F.R.No.3611 of 2018 and also issued summons for the appearance of the petitioners on 23.04.2018, in the unnumbered stage.

4. The learned counsel appearing for the petitioners further submitted that the allegations made in the complaint do not make out any offence for violation of human rights. The respondent has conveniently converted the civil dispute as a human right violation and approached the District Court and thereby prevented the right of the petitioners to get water from their own well. When the allegation made in the complaint are civil in nature, the respondent has to approach the competent civil Court to redress his grievance. He cannot maintain the above complaint before the District Court, which has not been notified as the Human Rights Court and the said issue was also settled by this Court in T.Vellaiyan - Vs - The Registrar, State Human Rights Commission & Ors. (AIR 2005 Madras 80), wherein this Court has clearly held that the civil dispute cannot be resolved under the guise of human rights violation and it is to be settled only before the competent Civil Court. Further, the Trial Court, without taking note of the material aspects, has taken cognizance of the said complaint and issued summons for the appearance of the petitioners, which is non-est in the eye of law. Hence, the Trial Court has no jurisdiction to take cognizance of the matter and prays for quashing of the complaint.

5. The learned counsel appearing for the respondent submitted that the petitioners, under the guise of digging a well, are causing damage to the house of the respondent and thereby caused noise pollution also and the respondent is not able to live in his house peacefully. Hence he filed a complaint before the law enforcing agency.

6. This Court has carefully considered the rival submissions and also perused the materials available on record.

7. As rightly submitted by the learned counsel appearing for the petitioners, admittedly the summons were issued before taking cognizance of the matter. By specific notification issued by the Government in consultation with the Hon'ble Chief Justice

of the High Court, Sessions Court could be vested with the power to entertain the complaint, but the said Courts have to follow the procedures prescribed under the Criminal Procedure Code for entertaining private complaints before issuing summons. Though the Principal Sessions Court is vested with the jurisdiction of Human Rights Court to entertain the petition, however, the said Court has not followed the procedures prescribed under the Code of Criminal Procedure before issuing summons, as summons seems to have been issued before cognizance is taken as is evident from the stage of the case. In the above backdrop, without taking cognizance of the matter, issuing summons to the petitioners, is not justifiable and therefore, the impugned summons warrant interference on the above ground.

8. For the reasons aforesaid, this Criminal Original Petition is allowed by quashing the summons issued by the Principal District Court, Erode, for the appearance of the petitioners on 23.04.2018,

9. However, it is needless to add that the Courts, which are designated as Human Rights Court by issuance of appropriate notification, are directed to proceed the matter relating to violations of Human Rights, upon filing of appropriate complaint, by following the procedures as contemplated under Cr.P.C. and no summons be issued before a case is taken cognizance of by the said Courts. In this regard, the concerned courts shall adhere to the directions/observations made in the decision in Vellaiyan's case (supra) and the procedures as contemplated in the code of Criminal Procedure needs to be followed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Human Rights Court / Principal District Judge,
Erode,

+1cc to Mr.N.Manokaran, Advocate, S.R.No.51337

Cr1.O.P.No.19180 of 2018

SR(CO)
SB(23/11/2021)