



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl.O.P. No.8787 of 2017
and
Crl.M.P.No.6288 of 2017

- 1.Elango
S/o.P.Kuppan
- 2.Logu
S/o.P.Chandrakanthan
- 3.Parthipan
S/o.P.Chandrakanthan
- 4.C.Sridhar
S/o.P.Chandrakanthan

... Petitioners/Accused 1 to 4

Vs.

The Inspector of Police
S9, Pazhavanthangal Police Station,
Chennai.

....Respondent/Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to quash the Charge Sheet filed in C.C.No.69 of 2011 on the file of the Judicial Magistrate, Alandur, Chennai.

For Petitioners : Mr.V.Chandraprabu

For Respondent : Mr.R.Kishore Kumar
Government Advocate (Crl.Side)

O R D E R

(This case has been heard through Video Conference)

This Criminal Original Petition has been filed to quash the final report filed under Sections 147, 294, (b), 353, 336 and 506(ii) of I.P.C.



2. The crux of the prosecution charge is that while the officials of the then municipality based on the interim orders obtained in their favour proceeding to remove the encroachment, the accused has unlawfully assembled and restrained the officials and also intimidated them, besides uttering abusive words, thereby, the petitioners have committed offence under Sections 147, 294, (b), 353, 336 and 506(ii) of I.P.C.

3. The learned counsel appearing for the petitioner would submit that the basis of the complaint is motivated, in fact, on the date of alleged encroachment, the accused are enjoying the benefit of order and it was confirmed in C.M.A. also. It has been recorded by this Court in C.R.P.No.261 of 2012. Therefore, the contention of the defacto complainant that only on the basis of the interim order in their favour, they have tried to remove encroachment is highly improbable. At any event, the final report, on the face value would indicate that in fact, there is no material whatsoever available on record to show that the above materials collected by the prosecution would not constitute any of the offence charged. Hence, prayed for quashing the charge sheet.

4. The learned Government Advocate appearing for respondent would submit that the accused prevented the officials from discharging the duties and abused them.

5. Perused the materials. As contended by the learned counsel appearing for petitioners that the allegation of the defacto complainant is that they proceeded to remove the encroachment on the basis of interim order passed in their favour is not correct and the judgment of this Court in C.R.P.No.961 of 2012, in paragraph 7 itself clearly indicates that only the accused are enjoying the benefit of order, which was confirmed in C.M.A. and C.R.P. Be that as it may. The allegation in the prosecution case is that the accused have restrained P.W.1 and others while discharging their duties and the statement of witnesses available on record indicates that except contending that the accused has unlawfully assembled and prevented them, there is no specific overtact as to the nature of offence committed. No specific overtact has been stated. Further, from the judgment of this court, it appears that there is a conflict and civil dispute exist between the parties. When the accused already enjoying the interim order passed by the civil court, they have assembled at the relevant point of time in the place, which was actually in their possession such assembly cannot be construed mean that that they formed unlawful assembly. It is natural for the person to be in their place, in whose favour injunction is already in existence. Therefore, the offence of unlawful assembly will not be attracted. Similarly, the allegation of wrongful restraint and using of abusive words



was also general in nature. Even such allegations are taken is stated as proved, this Court is of the view that the allegation as alleged in the complaint would not constitute any of the offence and it would also indicates that it is clear abuse of process of law. Accordingly, this Criminal Original Petition is allowed and the charge sheet initiated in C.C.No.69 of 2011 as against the petitioners is hereby quashed. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rpp/gd

To

1. The Judicial Magistrate,
Alandur, Chennai.
2. The Inspector of Police
S9, Pazhavanthangal Police Station,
Chennai.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.V.Chandraprabu, Advocate, S.R.No.58915

Crl.O.P.No.8787 of 2017

BS(CO)
CT 07/12/2021