

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	25.08.2021
Date of Order	28.10.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P. (MD)No.2605 of 2021

and

Crl.MP (MD)No.4447 of 2021

T.P.David Dhass

: Petitioner

Vs.

1.The Superintendent of Police,
Kanyakumari District,
Kanyakumari.

2.The Inspector of Police,
Arumanai Police Station,
Kanyakumari District.

3.The District Forest Officer,
Nagercoil.
(R3 sumotu impleaded as per order,
dated 18.02.2021 in Crl.OP (MD)No.
2605 of 2021)

: Respondents

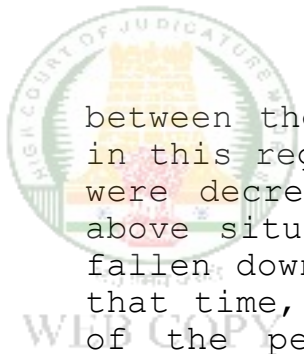
Prayer: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to direct the 2nd respondent to register a case against the proposed accused person, pursuant to the order, dated 14.12.2020 passed in Crl.MP No.2901 of 2020 by the Judicial Magistrate No.1, Kuzhithurai.

For Petitioner : Mr.G.Cenil
For Respondents : Mr.K.Sanjai Gandhi
Government Advocate
(Criminal side)

O R D E R

This petition has been filed by the petitioner seeking direction to the 2nd respondent to register a case against the Proposed Accused person, pursuant to the order, dated 14.12.2020 passed in Crl.MP No.2901 of 2020 by the Judicial Magistrate No.1, Kuzhithurai.

2.The case of the petitioner in brief:- The petitioner purchased the land situated in RS No.216 of Kadayal village to an extent of 2 Acres through a registered sale deed, dated 01.07.1996 and ever-since, he is in possession of the same. A dispute arose



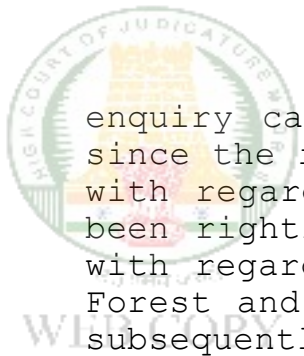
between the vendor of the petitioner and the Forest officials and in this regard, several civil suits have been filed and those suits were decreed in favour of the petitioner and his vendor. In the above situation, due to Okkey Cyclone, 50 Rubber Trees have been fallen down and the petitioner loaded the trees, on 13.12.2017. At that time, the Forest Officials forcibly entered into the property of the petitioner and seized 23 tonnes of Rubber Trees. But however, those were not produced before the court and the same have been misappropriated by the Forest officials, worth about Rs.3 Lakhs. A complaint has been lodged by the petitioner, on 14.02.2017. But there was no action. So, he filed a petition in Crl.MP No.2901 of 2020 under section 156(3) Cr.P.C before the Judicial Magistrate No.1 Kuzhithurai. By order, dated 14.02.2020, the learned Judicial Magistrate No.1, Kuzhithurai directed the 2nd respondent to investigate the matter and file a final report. So, on the basis of the said order, the 2nd respondent ought to have registered FIR. But without doing so, preliminary enquiry has been conducted. Hence, seeking an order of direction to the 2nd respondent to register a case against proposed person, this petition came to be filed.

3.When the matter was taken up for hearing, finding that the the District Forest Officer is also necessary party, he was *sumotu* impleaded as 3rd respondent. He also entered appeared.

4.Heard both sides.

5.In this case, status report has been filed along with the closure report. In the closure report, it has been stated that the records from the Sub Registrar Office was produced and in the encumbrance certificate, the name of the petitioner has not been mentioned. No patta or other revenue records are also available at the hands of the petitioner. He further stated that the jurisdictional Tashidlar has given a certificate that the disputed property belongs to the Forest Department. Before purchase, that has been made by the petitioner, dispute arose between the vendor and the Forest Department. Since no records were available in favour of the petitioner, either in the Registration Department or in the Revenue Department, finding that the petitioner is a history sheeted and it was closed.

6.Now, the learned counsel appearing for the petitioner would submit that when the cognizance offence has been made on the basis of the complaint, the 2nd respondent police ought to have registered the FIR and investigate the matter. In this case, no petition is available to make preliminary enquiry with regard to the title of the disputed property. But I am unable to agree with the argument advanced by the petitioner for the simple reason that the Hon'ble Supreme Court in **Lalitha Kumari's** case has categorically held that depending upon the case, preliminary



enquiry can be undertaken. So I am of the considered view that since the issue involved in this matter requires a thorough enquiry with regard to the title of the property, preliminary enquiry has been rightly conducted by the 1st respondent. Since the dispute is with regard to the ownership on the one hand by the Department of Forest and on the other hand, by the vendor of the petitioner and subsequently, the finding of ownership of the property is in the preliminary stage. So only on finding a preliminary enquiry and prima facie offence to show that the disputed property belongs to the petitioner is the only subject, that can be taken. So this is a fittest case for preliminary enquiry as rightly undertaken by the first respondent. I find no illegality that has been committed by the first respondent in adopting such a course. But however, the learned counsel appearing for the petitioner circulated the original typed set of paper and additional typed set of papers to work out the case that the property exclusively belongs to the petitioner and the Department had no right over it. But this court cannot embargo upon the disputed issue with regard to the title of the property. It is also seen that repeated attempts have been made by the petitioner to show that a declaration has been made by the State Government officials that the disputed property belongs to the petitioner. But however, an option is available to the petitioner is to file appropriate protest petition before the concerned court for appropriate remedy. Without resorting such an remedy, this petitioner has approached this court, which is at all maintainable. But however, the learned counsel appearing for the petitioner relied upon the judgment reported in **2017(2) MWN (Cr.) 618 (S.Pandiyarajan Vs. Perumal)**, wherein it has been observed that when a Magistrate passes an order under section 156(3) Cr.P.C, it is obligatory on the part of the police to register a FIR, investigate the matter and without resorting the course, no option is available to the police to file a closure report on the basis of the preliminary report. But as mentioned earlier, the Constitution Bench of the Hon'ble Apex Court in the case of Lalitha Kumari, has categorically held that depending upon the nature of the case, the preliminary enquiry can be undertaken and there is no bar for the Enquiry Officer, who adopted such a course, even if an order has been passed under section 156(3) Cr.P.C. This petitioner cannot rely upon the above said decision for sustaining his argument.

7. On perusal of the additional typed set of papers, it is seen that based upon the judgment passed in O.S No.1 of 1981, he has filed EP No.17 of 2017 and that EP has been filed for attachment of sale of movable property mentioned in the EP proceedings to meet out the damages incurred by the petitioner due to the detention in Civil Prison and that was dismissed for default. To restore the same, he filed EA No.44 of 2018 seeking restoration of the same. In the affidavit, he has stated the subject occurrence. It has been stated by him that anticipatory bail was granted by the Sessions Court, Nagercoil, in Crl.MP No.4497 of 2017. So probably this



petition is also filed invoking the criminal process for violation of the permanent injunction, that has been passed in O.S No.1 of 1981. When such is being the position, on the very set of facts, it appears that this complaint has also been given. No doubt, simultaneous civil and criminal proceedings can be undertaken. But however, in the facts and circumstances of the case, as mentioned earlier, the only course available to the petitioner is to file a protect petition before the concerned court. It is also seen that based on the closure report, Crl.MP No.3572 of 2020 has also been disposed of on 29.04.2021 that means during the pendency of this petition.

8.With the above direction, this Criminal Original Petition stands **dismissed**. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS I)

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/ /2021

Sub Assistant Registrar(CS)

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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

- 1.The Judicial Magistrate No.I, Kuzhithurai.
- 2.The Superintendent of Police,
Kanyakumari District, Kanyakumari.
- 3.The Inspector of Police,
Arumanai Police Station,
Kanyakumari District.
- 4.The District Forest Officer, Nagercoil.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.OP (MD)No.2605 of 2021
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TP (CO)

RS/PM (19.11.2021) 4P 5C

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