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Crl.O.P.(MD)No.9390 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED : 15.07.2021

ORDER PRONOUNCED : 18.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.9390 of 2021

and

Crl.M.P(MD)No.4791 of 2021

M.Rajinikanth

... Petitioner

Vs.

1.The State of Tamilnadu,
represented by the Inspector of Police,
Boothapandi Police Station,
Kanyakumari District.
(Crime No.157 of 2017)

2.Viji ... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the FIR in Crime No.157 of 2021 on the file of the 1st respondent, insofar as the petitioner/accused No.1 is concerned and quash the same.

For Petitioner : Mr.S.Pillai Monicantan
For R1 : Mr.R.M.Anbunithi
Additional Public Prosecutor
(Crl.Side)

ORDER

This petition is filed seeking quashment of the First Information Report in Crime No.157 of 2021 on the file of the 1st respondent herein.

2.The case of the prosecution as mentioned in the First Information Report is that on 30.04.2021 at about 04.30 pm., the accused person along with his men cut and stolen the iron rods of the Iron Bridge connecting Derisanamcope and Mundanganvilai in Thellanthi Panchyat. On the basis of the complaint given by the 2nd respondent herein, the aforesaid case has been registered.

3.The First Information Report further reveals that on specific information, the *defacto* complainant went to the place of occurrence and at that time, the Revenue Officials as well as the Police Officials were present. The cuttings of the Iron Bridge



were found stored in the place. Later, those iron materials of the Bridge were taken to the Thoivalai Union Office for safe custody. Whether the Bridge belongs to the Highways Department or the Public Union is not clear. So, pending the enquiry and investigation, the complaint has been given and the case has been registered. Seeking quashment of the First Information Report, the accused has preferred this petition mainly on the ground that even on the face of the allegations made in the First Information Report, no offence under Sections 379 r/w 511 of IPC is attracted. So, according to him, even as per the allegation made in the FIR, the iron rods of the old Iron Bridge were not removed or stolen from the place. What has been mentioned in the First Information Report is that those iron rods have been cut and removed and found stored in the place. So, according to him, even the offence under Section 511 of IPC is not attracted, I am unable to agree with the line of arguments advanced by the petitioner. For what purpose the accused has cut and removed the iron rods of the old Iron Bridge is a matter for investigation. Section 379 of IPC reads as under:-

"379. Punishment for theft:- Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

4. Section 378 of IPC reads as under:-

"378. Theft:- Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft."

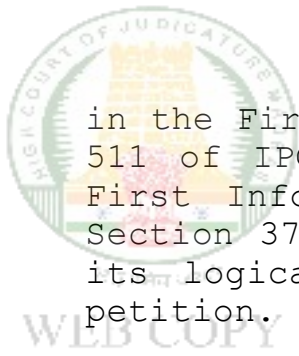
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Illustration:-

"(a) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft."

5. Reading of this definition, more particularly, the illustration (a) will answer to the arguments advanced by the petitioner. Here, as per the First Information Report, the petitioner along with his men cut the iron rods from the old Iron Bridge. The cutting of iron rods of the old Iron Bridge was without any consent of owner of the property. Here, who is the owner is under investigation. Whether the property belongs to the Highways Department or the Public Union is not yet clear and it is not the case of the petitioner that he was permitted to cut and remove the Iron Bridge.

6. In the absence of any such explanation on his part, it is to be presumed that the accused say that on the face of the allegation mentioned



in the First Information Report, no offence under Sections 379 r/w 511 of IPC is attracted. So, the ingredients mentioned in the First Information Report *prima facie* attract the offence under Section 379 of IPC. So, the investigation has to be undertaken to its logical conclusion and I find absolutely no merit in this petition.

7.The argument that now the property has been taken to the Block Development Officer at Thovalai would show that no offence under Section 379 of IPC has been committed. This argument also is not acceptable in view of the aforesaid discussions.

8.This Criminal Original Petition is dismissed, accordingly. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /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 Inspector of Police,
Boothapandi Police Station,
Kanyakumari District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD) No.9390 of 2021
18.08.2021

DJ(CO)
SB(26.08.2021) 3P 3C