



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.11.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

CrI.O.P.(MD)No.16812 of 2018

and

CrI.MP(MD)No.7437 of 2018

WEB COPY

X.Jeyaraj : Petitioner/Petitioner/
Complainant

Vs.

1.Mrs.Sathiya Devi,
The Chairman,
Padmanabhapuram Municipality,
Padmanabhapuram & Post,
Kanyakumari District.

2.Hari Kumar,
Padmanabhapuram Municipality,
Padmanabhapuram & Post,
Kanyakumari District.

: Respondent/Respondent/
Accused

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to set aside the order passed in CMP No.1157 of 2017 in CC No.181 of 2016 on the file of the Judicial Magistrate, Padmanabhapuram, dated 05.04.2018.

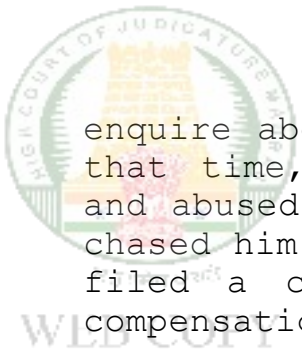
For Petitioner : Mr.C.K.M.Appaji
For Respondents : Mr.Pala Ramasamy

O R D E R

This petition is filed seeking to set aside the order that has been passed by the trial court in Cr.MP No.1157 of 2017 in CC No.181 of 2016.

2.The case of the petitioner in brief:-

The petitioner filed a complaint against the respondents in CC No.181 of 2016 before the trial court for the offence under section 294(b), 341, 506(i) and 500 IPC. In the complaint, it has been stated that the first respondent is the Chairman of the Padmanabhapuram Municipal Corporation. The 2nd respondent is her husband. On 02.09.2013, the petitioner approached the above said Municipal Corporation for water service connection to his house for payment of registration fee of Rs.50/-. But no steps have been taken for giving water connection. He also remitted the tax arrears for the building bearing No.18/27C. He also applied for plan approval for his land compromised in R.S No.41-3-1B of Kalkulam Village, Padmanabhapuram Municipality. He visited the Municipal Corporation Office on 26.03.2014 at about 11.00 am to



enquire about the water service connection and plan approval. At that time, the respondents wrongfully restrained the petitioner and abused him in filthy language and also tore off his shirt and chased him away from the Municipal Office. For this allegation, he filed a criminal case to punish the respondents and claiming compensation of Rs.2,00,000/- under Section 357 Cr.P.C.

3.He was examined himself along with two other witnesses as PW1 to PW3. The respondents had set up a plea of alibi. So the petitioner filed Cr.MP No.1157 of 2018 to reopen the case for the purpose of examining the municipal staff and the eye witnesses namely Mohan, Murali and K.Xavier. That application was came to be dismissed by the trial court. Against which, this petition came to be filed.

4.Heard both sides.

5.A short point involved in this matter is that whether the petitioner can be allowed to examine further witnesses to prove his case against the respondents. That petition came to be dismissed by the trial court stating that neither in the chief examination of the complainant, nor in the original complaint witnesses list, the proposed witnesses have been mentioned as eye witnesses. So on that ground, it came to be dismissed.

6.I am unable to agree with the stand that has been taken by the trial court. It is purely a technical defect that has been made by the petitioner at the time of filing the original complaint. But he has mentioned in the complaint that the occurrence was witnessed by several persons, who were available in the place of occurrence. In para 3 of the complaint, the following averments have been made:-

'Due to the force applied by the 2nd accused, the complainant fell down, all these incidents are seen by the public and employees of municipality.'

7.So when a specific averment made in the complaint, the stand taken by the trial court that the proposed witnesses are not mentioned in the complaint should not be a ground for rejecting the petition. In the complaint, only two persons has been shown as witnesses. It is a basic thing that every trial is a journey towards finding of truth. So for the purpose of finding of the truth, when the petitioner says that eye witness are available to give evidence about the occurrence, it may not be proper on the part of the trial court to reject the request without any valid reasons. When the matter was taken up for hearing, at the time of argument, the learned counsel for the respondents has relied upon the judgment of the Punjab-Haryana High Court in the case of **Dalip Singh Vs. R.P.Biswasj** (AIR 1967 PH 95), for the purpose of argument that when the proposed witnesses are not mentioned in the complaint or examined during pre-cognizance



stage, permission should not be granted to the complainant to examine further witnesses.

8.The learned counsel would straightway rely upon para 11 of the above said judgment. The Panjab-Haryana High Court relied upon the judgment of the Full Bench in **Heman Ram's case (AIR 1945 Lah.201)**, wherein it has been mentioned that when the prosecution closed the pre-charge evidence and excepting the witnesses named in the list, no permission should be granted to the complainant to examine further witnesses. But here, the position is entirely different. As mentioned earlier, in the complaint itself, the petitioner stated that the occurrence was witnessed by the public as well as the staff of the Municipal Corporation. Now the proposed witnesses are staff members of the Municipal Corporation. So the observation made in the conclusion, that has been rendered by the trial court is absolutely faulty and cannot be sustained.

9.Section 311 Cr.P.C gave wide power to the court to examine or re-examine the witnesses at any stage of the proceedings. As mentioned earlier, every endeavour is to be made by the trial court to find out the truth and when such a request has been made by the complainant, I am of the considered view that they must be properly considered. So the impugned order of the trial is liable to be set aside and accordingly, it is set aside and permission is granted to the petitioner to examine the additional witnesses that was mentioned in the petition.

10.In fine, this criminal original petition stands **allowed**. The impugned order passed by the trial court in Cr.M.P No.1157 of 2017 in CC No.181 of 2016 is set aside. Since the matter is of the year 2016, there shall be a direction to the trial court to complete the trial process within a period of three months from the date of receipt of a copy of this order and after completing the trial process, dispose the same on merits. The compliance report must be sent to the Registry forthwith. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

er

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, the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



Cr1.O.P.(MD)No.16812 of 2018

To,

The Judicial Magistrate,
Padmanabhapuram.

Copy to

The Registrar(Judicial),
Madurai Bench of Madras High Court,
Madurai.

Cr1.OP(MD)No.16812 of 2018
25.11.2021

RK(27/12/2021) 4P 3C