



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 11.01.2021

DATE ON WHICH PRONOUNCED : 04.03.2021

WEB COPY

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.17043 of 2017

and

Crl.MP(MD)No.11212 of 2017

Santhanaselvan

... Petitioner/1st Accused

Vs.

Radhakrishnan

... Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for records pursuant to the private complaint in C.C.No.144 of 2016 on the file of the Judicial Magistrate, No.I, Kulithalai, dated 14.07.2017 and quash the same.

For Petitioner : Mr.S.Gogulraj
For Respondent : Mr.V.Illan Chezian

ORDER

This Criminal Original Petition has been filed to quash the private complaint in C.C.No.144 of 2016 on the file of the Judicial Magistrate, No.I, Kulithalai,

2. The facts of the case:-

The complainant has filed a private complaint before the Trial Court setting of the following facts:-

(i) The complainant's wife namely, Silumpayee was assigned house site in S.No.982/3 in Melappakuthi Village, Viraliipatti. In that site, the complainant and his family are residing. On the western side of the land, Live fence was put up and several trees are grown. The first accused belongs to the same village and the second accused is the wife of the first accused's brother. The second accused and the complainant were not having cordial relationship and so, the second accused was making trouble to the complainant. At the instigation of the first accused and the other accused namely, 3 to 5, on 14.06.2017, at about 06.30 p.m, came to the place of the complainant and asked him to remove the live fence. The third accused told him that live fence is an encroachment and that is must be removed. But, the complainant stated that it was not an encroachment and the second accused have some other access to her house. But, the accused Nos.1, 3 to 5



threatened the complainant and his wife and the first and the second accused abused the complainant and his wife. Further, the first accused assaulted his wife in the neck portion and pushed her to the ground. So, the wife of the complainant fell down and fainted. All the accused along with four unknown persons, removed the live fence, worth about Rs.5,000/- and they also damaged the standing trees. They also threatened the complainant not to disclose the same to any person.

(ii) The injured Silumpayee was admitted in the Mylampatti Government Hospital and she took treatment for about 5 days. Even though, intimation was sent to the police about the admission, police did not record any statement from her. So, on 15.06.2017, the complainant launched a complaint in writing. Even after that, there was no action. But, the sixth accused threatened the complainant to withdraw the same. So, on 20.06.2017, he sent a complaint to the Superintendent of Police, Karur. Even after that, there was no action. So, he filed a private complaint before the Trial Court making allegations that all the accused persons have committed offences punishable under Sections 147, 294(b), 323, 354, 441, 427, 107, 108, 506 (i) r/w 4 of Women Harassment Act. On the basis of the complaint, cognizance was taken and summons were issued.

3. This petition is filed by the petitioner, who is the first accused before the Trial Court to quash the same, mainly on the ground that the second accused Manimegalai has sent a representation to the District Collector, Karur, that the complainant namely, the respondent herein, has made obstructions in the pathway. On the basis of the representation, the District Collector, Karur, has directed the Tahsildar, Kadvoor, to remove the obstructions. The Tahsildar, Kadvoor, has directed the revenue officials to remove the obstructions if any.

4. On that basis, they went to the place of occurrence along with other revenue officials and removed the obstructions. So, twisting those facts, private complaint has been filed. Moreover, the petitioner acted only in discharge his official duty as ordered by his higher officials. So, the complaint, filed by the complainant, requires sanction as per the Section 197 of Cr.P.C. So, without obtaining sanction, private complaint has been filed.

5. Originally, the petition was heard on 11.01.2021. After perusal of the records filed by the petitioner, this Court thought it fit to send for entire records since allegations of assault has been levelled against this petitioner by the defacto complainant. So, the copy of the entire records were received by this Court and after perusal of the copy of the Trial Court records, this order is passed.



6. Records shows that the Trial Court took cognizance of the offence only against this petitioner and against the second accused namely, Manimegalai. Even though, two accused were shown in the complaint and the second accused has not challenged the cognizance. The only point to be decided is **whether in the facts and circumstances of the case, sanction under Section 197 Cr.P.C, is required for proceeding against this petitioner.**

7. As mentioned earlier, it is a case of the petitioner that he acted only in discharge of his official duty as ordered by his higher officials. To show the same, he has also produced the copy of the revenue proceedings that were undertaken by the Revenue Officials, over the representation made by the second accused namely, Manimegalai about the encroachment made by the complainant. It appears that the alleged encroachment was also removed by the Revenue Officials including the petitioner herein on 14.06.2017. A report to that effect has also been submitted by the Village Administrative Officer, Melappakuthi Village, Kadvoor Taluk, to the Tahsildar, Kadvoor, on 07.07.2020, wherein, it has been stated that the pathway used by the second accused was found obstructed and so, it was also removed in the presence of the Tahsildar, the Revenue Inspector etc., Removal of this alleged encroachment is not disputed by the complainant. He would say that this is not an obstruction at all. But, this Court cannot go into those factual aspects.

8. Reading of the complaint shows that some sort of trouble arose in the place, when the Revenue Officials removed the alleged encroachment. Along with the complaint, the complainant has enclosed a copy of the complaint, sent by him on 20.06.2016 to the Superintendent of Police, Karur. Wherein, it is also stated that this petitioner assaulted his wife. The very same, allegations have been repeated in the private complaint.

9. Medical records shows that she was admitted in the hospital. But, no external injuries were found. So, perusal of records shows that some sort of trouble or commotion took place when the wife of the respondent trying to prevent the removal of encroachment. But, whether she was actually assaulted by the petitioner is a question of fact. That got to be decided only at the time of trial. When the allegation of assault is made, the powers under Section 482 of Cr.P.C cannot be exercised, which may amount to go into the factual aspects of the case. Moreover, sanction is not required for prosecuting the public servant, who alleged to have involved in assault. Even though, removal of the alleged encroachment was lawful and prevention of lawful act by the wife of the complainant is totally unlawful, but, the allegation of assault by a public servant is not protected and no sanction is required for prosecuting. So, I am of the considered view that this is not a fittest case to exercise the discretion under Section 482 of Cr.P.C to quash the



complaint.

10. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dss

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
The Judicial Magistrate No.I,
Kulithalai.

+1 CC to M/s.S.GOKULRAJ, Advocate (SR-8795[F] dated 04/03/2021)

+1 CC to M/s.V.ILLANCHEZIAN, Advocate (SR-9327[F] dated 08/03/2021)

Crl.O.P.(MD)No.17043 of 2017
and
Crl.MP(MD)No.11212 of 2017
04.03.2021

mj (CO)
TR(25.03.2021) 4P 4C