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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2022

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.NO.4347 OF 2022

AND

CRL.M.P.NO.2201 OF 2022

1. K.Murugan

2. K.Krishnan

3. M.Bharath

... Petitioners/Accused
1 to 3

.Vs.

1. The Deputy Superintendent of Police,
D.S.P./CWC, Katpadi Taluk,
Vellore District.

2. The Inspector of Police,
Thiruvalam Police Station,
Vellore District.

3. S.Vinayagam

... Respondents

PRAYER:-

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for records and to quash the proceedings in Spl.S.C.No.15 of 2021, pending on the file of the Special Court for trial of Cases under Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, Vellore.

For Petitioner : Mr.V.Karthikeyan

For Respondents : Mr.A.Gokulakrishnan
Additional Public Prosecutor
For R1 & R2

No Appearance for R3



ORDER

This Criminal Original Petition has been filed under Section 482 of Code of Criminal Procedure, to call for records and to quash the proceedings in Spl.S.C.No.15 of 2021 for the offence u/s.447, 427 I.P.C. r/w. Section 3(1)(g) of Schedule Caste and Schedule Tribes (Prevention of Atrocities Act), 1989, pending on the file of the Special Court for trial of Cases under Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, Vellore.

2. The crux of the allegation found in the final report is that the petitioners/accused have trespassed into the property of the defacto complainant and damaged the Neem trees using JCB Machine, thereby committed an offence u/s.447, 427 I.P.C.

3. Learned counsel appearing for the petitioners would submit that though the final report has been filed and the entire final report is a result of motive and malafide intention only to recover the possession which was in the enjoyment of the accused/the petitioners herein. It is submitted that originally the occurrence took place on 15.01.2020, but the complaint was registered only on 26.02.2020 in Crime No.103 of 2020 for the offence u/s. 447, 427 I.P.C. Thereafter, on the basis of the complaint, it was sent to the Commission at Delhi. F.I.R. came to be altered after one year for the offence u/s.3(1)(g) of Schedule Caste and Schedule Tribes (Prevention of Atrocities Act), 1989. At any event, the entire materials collected by the prosecution is perused and the same do not constitute the offence. Therefore forcing the accused to face the ordeal of trial is nothing but an abuse of process of law. Accordingly sought for quashing of the same.

4. Heard Mr.V.Karthikeyan, the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the respondent police.

5. Learned Additional Public Prosecutor submitted that when normally the final report is filed and materials collected by the prosecution, the Court cannot conduct roving enquiry as to the validity of the statement or evidence. However when the materials and the evidence collected by the prosecution do not constitute any offence thus there is no difficulty for the Court to exercise its power u/s.482 Cr.P.C.



6. In 1992 SUPP (1) SUPREME COURT CASES - 335 STATE OF HARYANA AND OTHERS Vs. BHAJAN LAL AND OTHERS, the Hon'ble Apex Court has set out the following guidelines for quashing the proceedings.

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(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive



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rights, including forest rights, over any land or premises or water or irrigation facilities or destroys the crops or takes away the produce therefrom.

Explanation: - For the purposes of clause (f) and this clause, the expression "wrongfully" includes -

(A) against the person's will;

(B) without the person's consent

(C) with the person's consent, where such consent has been obtained by putting the person, or any other person in whom the person is interested in fear of death or of hurt; or

(D) fabricating records of such land;

8. It is also brought to the notice of this Court that in the similar allegations, the defacto complainant had already filed a criminal case in similar nature under the unamended Act of SC/ST Act and which was culminated in Sessions Case and ended in acquittal in Spl.S.C.No.13 of 2005 on the file of the Principal District and Sessions Court, Vellore vide judgment dated 04.12.2006 and the said acquittal was challenged in CrI.R.C.No.1516 of 2013 which was also ended in acquittal vide order of this Court dated 09.02.2022.

9. On a perusal of the aforesaid Section, it makes it clear that it is not a case of the prosecution that the members of the Scheduled Caste were in wrongfully dispossess since the petitioners and the defacto complainant are the adjacent land owners and there was some portion that was annexed long ago, the petitioners enjoyed the property. In that scenario, the trespass or the wrongful dispossession of the members of Scheduled Caste and Scheduled Tribe to be presumed to attract the offence u/s. 3(1)(g) of Schedule Caste and Schedule Tribes (Prevention of Atrocities Act), 1989.

10. Considering the above fact, this Court is of the view that the prosecution is nothing but motivated one to get over the civil dispute. Therefore continuation of the prosecution and forcing the petitioners to undergo ordeal of trial is only an abuse of process of law.



11. In the result, the Petition stands allowed and the Spl.S.C.No.15 of 2021 for the offence u/s.447, 427 I.P.C. r/w. Section 3(1)(g) of Schedule Caste and Schedule Tribes (Prevention of Atrocities Act), 1989, pending on the file of the Special Court for trial of Cases under Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, Vellore stands quashed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Court for Trail of cases
under SC & ST Act,
Vellore.
2. The Deputy Superintendent of Police,
D.S.P./CWC, Katpadi Taluk,
Vellore District.
3. The Inspector of Police,
Thiruvalam Police Station,
Vellore District.
4. The Public Prosecutor,
Madras High Court,
Chennai - 600 104.

+2ccs to Mr.V.Karthikeyan, Advocate, S.R.No.38421

CRL.O.P.NO.4347 OF 2022 AND
CRL.M.P.NO.2201 OF 2022

SMI (CO)
PBS/05/07/2022