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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No. 21520 of 2018
and
Crl.M.P.No.11766 of 2018

1.TharmaraiPugazhendhi
2.R.Louis P. Niquet

...Petitioners

Versus

1. The Union Territory of Puducherry,
Represented by its Inspector of Police,
Thirukkanoor Police Station,
Puducherry.

2. G.Patchemuthu

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records of FIR 75 of 2018, dated 23.08.2018 on the file of the 1st respondent police and quash the same as illegal and without jurisdiction.

For Petitioners : Mr.Sharath Chandran

For R1 : Mr.V.Balamurugane
Additional Public Prosecutor
(Pondicherry)

For R2 : Mr.Prakash Adiapadam

ORDER

(This case has been heard through video conference)

This Criminal Original Petition has been filed to quash the First Information Report in Crime No.75 of 2018, dated 23.08.2018, filed against the accused for the offences under Section 166 IPC r/w. 34 IPC and Section 3 of the Prevention of Damage to Public Property Act, 1984, on the file of the 1st respondent police.

2.The First Information Report came to be filed pursuant to the petition filed under Section 156(3) Cr.P.C. The de facto complainant has preferred the complaint alleging that, certain



areas of the lake which is under the possession and control of the present petitioners/A2 and A3, who are the Executive Engineer and Junior Engineer of Public Works Department, Puducherry, are not prevented from encroachment and also for the failure on their part to evict the encroachments.

3.The crux of the allegations in the complaint originally filed under Section 156(3) Cr.P.C. is that, one P.Perumal, who is arrayed as A1, who was the owner of the adjoining flats, in order to make proper way to his flats, tried to purchase the adjoining properties, however, the same has not fructified and therefore, there was an encroachment on the public properties. As these properties are under the possession and control of the Government, the petitioners who are the Government servants are also liable to be prosecuted. Pursuant to the complaint, the learned Magistrate has directed the Police for investigation and the Police have filed the First Information Report. However, the FIR has been filed for the offence under Section 166 IPC.

4.The learned counsel appearing for the petitioners mainly contended that this prosecution is nothing but an abuse of process of law. The learned counsel further submitted that the offence under Section 166 IPC would not be attracted as there is no direction of law. He further submitted that, merely on the allegations that someone has encroached the Government lands, the present petitioners cannot be prosecuted. The learned counsel further submitted that the very reply sent by the Executive Engineer itself indicates that there was no encroachment or there was no removal of trees as alleged in the complaint. Therefore, he submitted that the prosecution is nothing but an abuse of process of law.

5.The learned counsel appearing for the respondent has not advanced any argument today and tried to avoid this Bench, since, in the last hearing, when the matter came up before this Court, this Court posed certain questions as to the maintainability of the complaint.

6.Heard Mr.V.Balamurugane, learned Additional Public Prosecutor (Puducherry) appearing for the Union Territory of Puducherry.

7.I have perused the entire materials available on record.

8.As indicated above, the FIR itself came to be lodged for the offence under Section 166 IPC, pursuant to the complaint filed under Section 156(3) Cr.P.C. Section 166 IPC reads as follows :

"166. Public servant disobeying law, with intent to cause injury to any person -



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Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both. Illustration :

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section."

9. From the above provision, it is clear that, to attract the offence under Section 166 IPC, the public servant should have knowingly disobeyed any direction of law as to the way in which he is to conduct himself as such public servant and such disobedience should have caused injury to any person. Therefore, to proceed against a person for the offence under Section 166 IPC, there must be a direction of law to enforce certain directions and the person despite such directions, should have disobeyed the order or his conduct otherwise should show that he has not enforced the order directed by law, which is likely to cause injury to any other person. Unless these ingredients are made out, the prosecution under Section 166 IPC is not maintainable.

10. The entire crux of the allegations in the FIR does not relate to any direction given by law or any other authority. The Illustration to Section 166 IPC (cited supra) makes it clear that there must be a direction and the same should have been disobeyed by the public servant, which resulted in any injury to any other person, in order to attract the said offence. However, in the case on hand, it is only alleged that encroachments are said to have been made in the river bank. It is relevant to note that a complaint has been sent to the Government in this regard. The Executive Engineer had enquired and found that the allegations of removal of trees and encroachments have not been proved and he has stated that, only the farmers are regularly going to their lands and have just widened the existing pathway, except which, there are no encroachments at all. Therefore, merely on such allegations, the Government officials cannot be prosecuted under Section 166 IPC unless there is disobedience of directions of law or by the authority, committed by the Government officials. Moreover, the present petitioners have not caused any damage to the public property and the ingredients of mischief are also not made out as against the present petitioners and therefore, the offence



under Section 3 of the Prevention of Damage to Public Property Act, 1984, also cannot be attracted as against the present petitioners.

11. Further, it appears that, to prosecute the present petitioners, who are the Government servants, no sanction has been obtained. The Hon'ble Apex Court, in the case of Anil Kumar and others v. M.K. Aiyappa and Another reported in (2013) 10 SCC 705 has held that, sanction is a precondition for ordering investigation against public servant under Section 156(3) Cr.P.C., even at the pre-cognizance stage. The same ratio has been followed by the High Court of Calcutta in the case of Dr. Nazrul Islam v. Basudeb Banerjee and others reported in (2022) SCC Online Cal 183.

12. In such view of the matter, this Court is of the opinion that the very allegations itself do not attract any offence as against the present petitioners. Therefore, there is no point in continuing the prosecution as against the present petitioners/A2 and A3.

13. Accordingly, the proceedings in Crime No.75 of 2018, dated 23.08.2018, on the file of the 1st respondent police, is quashed insofar as the present petitioners/A2 and A3 are concerned, and accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

psa/mkn

To

1. The Inspector of Police,
Union Territory of Puducherry,
Thirukkanoor Police Station,
Puducherry.

2. The Public Prosecutor,
Pondicherry.

+lcc to Mr.E.Anbarasan, Advocate, S.R.No.7267

+lcc to Mr.Govind Chandrasekhar, Advocate, S.R.No.7263

Cr1. O.P. No. 21520 of 2018

MT(CO)

RGA(25/02/2022)