WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **08.12.2022**

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Crl.O.P No.20798 of 2019
and
Crl.M.P No.10691 of 2019

Chinnasamy ... Petitioner

Vs.

1.The State Rep. By
The Inspector of Police
Dhali Police Station
Udumalpet Taluk
Tiruppur District

2.T.Thileep ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records pertaining to the criminal case in S.T.C No.445 of 2019 on the file of the Judicial Magistrate No.I, Udumalpet, and quash the same by allowing this Criminal Original Petition.

https://www.mhc.tn.gov.in/judis

WEB COPY

For Petitioner : Mr.D.R.Arunkumar

For Respondents : Mr.A.Damodaran for R1
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been preferred, seeking to call for the records pertaining to the criminal case in S.T.C No.445 of 2019 on the file of the Judicial Magistrate No.I, Udumalpet, and quash the same as illegal.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the 1st respondent.

3. The petitioner is the sole accused in the above case; the 2nd respondent is the official de-facto complainant, who was Village Assistant of Periya Valavadi Village, Udumalpet Taluk, Tiruppur District at the time of the occurrence.

https://www.mhc.tn.gov.in/judis

WEB COPY

4. The case of the prosecution as it appears from the FIR is that on 25.10.2017 at about 5.45 p.m., he was instructed by the Revenue Inspector to go to the place of occurrence in order to check whether the persons are taking gravel sand beyond the permitted time; the 2nd respondent went to the spot and asked the persons to stop taking gravel sand; the petitioner/accused had challenged the de-facto complainant under what authority he prevented them and threatened him; on the basis of the above allegation, a case has been registered for the offences under Sections 353 and 506(ii) IPC. However, after the investigation charge sheet has been filed against the petitioner for the offence under Section 353 IPC.

5. The learned counsel for the petitioner submitted that the petitioner has got permission to take gravel sand in accordance with the permission given by the Tahsildar vide his proceedings dated 23.10.2017 in Na.Ka.No.2320/2017/A2; the petitioner had been taking sand only in accordance with the said permission given to him in his capacity as agriculturist; since there was misunderstanding between the petitioner and the 2nd respondent, the 2nd respondent has exaggerated the issue and given the complaint.

https://www.mhc.tn.gov.in/judis

WEB COPY

6. The learned Additional Public Prosecutor submitted that the 2nd respondent and other charge sheet witnesses have stated about the manner in which the petitioner had prevented the 2nd respondent from executing his public duty; since there are sufficient materials available on record, the petitioner is subjected to trial.

7. Eventhough the case has been registered for the offences under Sections 353 and 506(ii) IPC, the charge sheet has been filed for the offence under Section 353 IPC which relates to assault or use of criminal force to deter a public servant from discharging his duty. The 2nd respondent had been to the spot on the instructions of his superiors to check whether the gravel sand has been taken by the persons beyond the permitted time. When the 2nd respondent had been to the spot, he was questioned by the petitioner. However, the de-facto complainant has stated that he was prevented by the petitioner from executing his public duty.

8. It is relevant to see the statement of the other witnesses who have witnessed the occurrence. The witnesses LW2 to LW14 have stated that the 2nd respondent was able to stop the vehicle which had the gravel load

https://www.mhc.tn.gov.in/judis

WEB COPY

from moving out of the spot. Along with the petitioner, the other witnesses LW2 to LW14 also went to the place for taking gravel sand. Their statement does not disclose that the petitioner had exercised criminal force to prevent the 2nd respondent from executing his public duty. The defacto complainant has not stated that he was assaulted by the petitioner. When there is no ingredients for the application of any criminal force, the offence under Section 353 IPC cannot be made out. The statement of other witnesses would show that the petitioner was angry and he questioned the de-facto complainant why he was stopping. When some of the persons have started to move their vehicle, that was prevented by the 2nd respondent. Since the 2nd respondent could execute his duty and prevented the persons from taking gravel sand beyond the prescribed time limit, it cannot be said that he was prevented from executing his duty. He could also pass information to his superior and his superior arrived at the spot and thereafter, the 4 Tipper lorries had been taken away from the spot.

9. The statement of the witnesses would only show that there was some commotion in a fit of anger; since the 2nd respondent prevented the petitioner and others from taking the gravel sand, there was some

https://www.mhc.tn.gov.in/judis

WEB COPY

commotion. Eventhough there are materials to show that the petitioner was angry and uttered some angry words, there is no intention to show that he exercised force on the 2nd respondent and prevented him from executing his public duty. The 2nd respondent has successfully executed the work assigned to him by his superior by stopping the vehicles. Thereafter, the persons cannot take gravel sand and went away. The superiors of the 2nd respondent also at his call. If he was prevented by the petitioners and others, it would not have been possible for him to execute the job assigned to him. So, the materials available on record does not have any ingredients to make out a case against the petitioners for the offence under Section 353 IPC, especially when there is absence of any criminal force. No case against the petitioner for the offence under Section 353 can be made out without the basic materials for the required offence. If the petitioner is subjected to the ordeal of trial, that would only waste the precious time of the court and no useful purpose would be served. Hence, l feel it is appropriate to invoke the jurisdiction of this Court under Section 482 Cr.P.C to quash the proceedings as against the petitioner.

https://www.mhc.tn.gov.in/judis

WEB COPY

10. In the result, this Criminal Original Petition is allowed and the proceedings in S.T.C No.445 of 2019 on the file of the Judicial Magistrate No.I, Udumalpet, is hereby quashed. Consequently, connected Miscellaneous Petition is closed.

08.12.2022

Index : Yes/No
Speaking Order : Yes / No
uma

To

1.The Judicial Magistrate No.I
Udumalpet

2.The Inspector of Police
Dhali Police Station
Udumalpet Taluk
Tiruppur District

3.The Public Prosecutor
High Court of Madras.

https://www.mhc.tn.gov.in/judis

WEB COPY

R.N.MANJULA.,J
uma

Crl.O.P No.20798 of 2019
and
Crl.M.P No.10691 of 2019

08.12.2022

https://www.mhc.tn.gov.in/judis