



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.22202 OF 2021

&

CRL.MP.NOS.12047 AND 12048 OF 2021

K.Dharshan

... Petitioner/Accused

.Vs.

1. The State Rep. by
The Inspector of Police,
Kolacombai Police Station,
The Nilgiris.
Crime No.7 of 2021

... Respondent/Complainant

2. Gowtham,
The Village Administrative Officer,
Melur-II, Kullakamby Post,
The Nilgiris - 643 218.

... Respondent/Defacto
Complainant

PRAYER:-

Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code to call for the records relating to STC.No.624 of 2021 on the file of the Judicial Magistrate, Coonoor, The Nilgiris and quash the same.

For Petitioner : Mr.B.Kumar
Senior Counsel
For Mr.S.Ramachandran

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
[For R1]

ORDER

The petitioner/accused in STC.No.624 of 2021 for the offence under Section 353 of IPC, filed this quash petition.



2. The gist of the case is that on 13.01.2021 the respondent police registered a case in Crime No.7 of 2021 for the offence under Section 353 IPC on a complaint given by one Gowtham, Village Administrative Officer, Melur-II. The defacto complainant, who is posted as Village Administrative Officer for the past five months in Melur-II revenue village in which the Woodlands Tea Factory which is a division of Craigmores Tea Estate is situated. The employees in the said Tea Estate who are residing in the Tea Estate applied for various certificates like Income Certificate, Nativity Certificate, Community Certificate and for family ration card. For this purpose, the Village Administrative Officer and the revenue officials to cause enquiry, whenever they reached the gates of the Estate, they were made to wait outside for hours and after getting permission from the petitioner, the Manager of the Tea Estate, they were allowed inside the Tea Estate. It is also submitted that information was also received that the Estate was using Kubota vehicle and also cutting down the trees without obtaining permission. Further, to verify whether Covid-19 Standard Operation Procedures followed, the officers were not easily allowed to inspect. Hence, complaint came to be lodged. On receipt of the complaint, initially C.S.R.No.118 of 2020 was assigned on 23.12.2020 and after preliminary enquiry, FIR came to be registered. On registration of FIR, the respondent police examined eight witnesses and filed the charge sheet before the Trial Court. The Trial Court on perusal found prima facie offence made out, took the case on file, issued summons and against which, the present petition is filed.

3. The contention of the learned senior counsel for the petitioner is that the date of occurrence is shown as from 12.08.2020 to 23.12.2020, the case was registered five months thereafter only on 13.01.2021 and the reason for the delay, not properly explained. Further, on the similar ground another Village Administrative Officer of Melur-I lodged a complaint and case in Crime No.8 of 2021 for the offence under Section 353 IPC was registered. The Craigmores Plantation Tea Estate was inspected by the higher officials of District Administration and allegations were made that the Management of the Tea Estate was not adhering to the Covid-19 Protocols, hence the factory premises was sealed by the authority and production activities stopped. Further, Craigmores Plantations (I) Pvt. Ltd. filed a writ petition in W.P.No.1326 of 2021 and this Court on 31.03.2021 passed an order appointing an Advocate Commissioner to inspect and file a report and to put in place all protocols mandated by the government for containment of spread of Covid-19. This being so, the revenue authorities issued another notice under the provisions of Tamil Nadu Encroachment Act, 1905 alleging that the Craigmores Plantation (I) Pvt. Ltd., is obstructing free flow of water in the canal passing through the



Estate and threatened to remove the bridge connecting the Estate and the road. Again the Estate had to approach this Court, filed a writ petition in W.P.No.4183 of 2021, the Division Bench of this Court was pleased to grant interim order on 23.02.2021. The revenue authorities invoking Section 138 of Cr.P.C. directed the Craigmores Plantation to open up the private road for public usage. Challenging the same, Craigmores Plantation (I) Pvt. Ltd. filed a revision in Crl.R.C.No.151 of 2021 and this Court set aside the order passed by the Special Divisional Magistrate. Earlier to this proceedings, in the year 2015 the Craigmores Plantations (I) Pvt. Ltd. filed petitions in W.P.No.23529 of 2015, W.P.No.36716 of 2015, W.P.No.9182 of 2016 and Crl.R.C.No.892 of 2015, resisted the arbitrary action of the authorities and obtained order in its favour. Thus, there have been long tussel between the authorities over opening up of the private road of the Tea Factory to be used as a public road and also questioning the usage of canal water for domestic use. It is further submitted that the Estate was paying rent to the Forest Officials for its usages. Thus, with vengeance a false case foisted against the petitioner. Further, on going through the statement of witnesses, nowhere it is seen that the petitioner obstructed or caused any deterrent to the public servant to carry on with his official duty.

4. The learned Additional Public Prosecutor submitted that in this case on the complaint of the Village Administrative Officer initially C.S.R.No.118 of 2020 assigned, after enquiry FIR registered. The complainant is none other than the Village Administrative Officer, on the registration of FIR the respondent police visited the scene of occurrence, in the presence of L.W.2/Watchman of the Estate and L.W.3/the Mutton shop owner near the entrance, rough sketch and observation mahazar prepared. L.W.4/Tea boy who used to regularly go to the office of the Village Administrative Officer, accompanied VAO when the complaint was initially lodged. L.W.5/the Revenue Inspector also accompanied the VAO when the complaint was lodged. L.W.6 is the Petty shop owner near the gate of the Estate who had seen the Village Administrative Officer standing near the gate helplessly for many hours waiting for permission to enter the Tea Estate. L.W.7 is the Special Sub-Inspector of Police who registered the FIR in this case, L.W.8 is the Investigating Officer, on completion of the investigation, charge sheet filed. The Trial Court on perusal of the materials got satisfied, taken the case on file in STC.No.624 of 2021. He further submitted that the points raised by the petitioner are factual in nature which ought to be decided during trial. Hence, he sought for dismissal of this petition.

5. Considering the submissions made and on perusal of the materials placed before this Court, it is seen that the Village



Administrative Officer lodged a complaint with a delay and no reason for the delay was given. Further, the primary complaint is that the Village Administrative Officer is made to wait near the gates of the Factory and only after getting permission from the Factory Manager/the petitioner herein, he was allowed to enter the Tea Estate. The Tea Estate is a private property, entering the Labour Colony to verify the applicants for the certificates applied, at that time, getting permission and allowing the VAO cannot be construed as an obstruction of a public servant in conduct of his public duty. The Village Administrative Officer can very well summon the applicants to his office or send communication to the Management, so that the VAO can have a free ingress and egress to the Labour Colony. It is not in dispute that the Estate is a private property, the Management of the private property is completely at its discretion. It is also seen that earlier attempts were made to make the private road as a public way which was successfully opposed and defended by the Management, there were several cases with regard to the same as well as with regard to passing of water in the channel. The witnesses examined are the Village Assistant, Tea delivery boy, the gate keeper and a shop vendor, none of the witnesses have stated that there was assault or use of any criminal force. Criminal force is defined under Section 350 IPC, wherein it is stated that it is imperative that intentional force to be used by any person to cause or intend it to cause any injury, fear or annoyance, likewise, assault is defined under Section 351 IPC, wherein gestures to be made or preparation is about to use criminal force against such person to commit an offence. In this case, making the VAO to wait, getting permission to enter the Estate or Factory cannot be construed as an assault or criminal force to deter the public servant from discharging his duty. Thus, on the above facts of the case, this Court finds that no case was made out against the petitioner warranting criminal prosecution, continuation of prosecution would amount to abuse of process of law.

6. In view of the above, the proceedings in STC.No.624 of 2021 pending against the petitioner, on the file of the Judicial Magistrate, Coonoor, The Nilgiris is hereby quashed. The petition is allowed, accordingly. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

cse



To

1. The Judicial Magistrate,
Coonoor, The Nilgiris.
2. Do Thro The Chief Judicial Magistrate,
Nilgiris.
3. The Inspector of Police,
Kolacombai Police Station,
The Nilgiris.
4. The Public Prosecutor,
High Court, Madras.

CRL.O.P.NO.22202 OF 2021

SVI (CO)
PBS/31/03/2022