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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.5188 of 2017

&

CRL.M.P.Nos.3857 & 11638 of 2017

R.Shabudeen ... Petitioner/1st Accused
Vs.

1.State by Inspector of Police,
Kavundapadi Police Station,
Bhavani, Erode District. ... Respondent/Complainant

2.K.Prakash,
Village Administrative Officer,
B.Mettupalayam, Perunthalaiyur Village,
Bhavani Taluk,
Erode District. ... Respondent/Defactocomplainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in S.T.C.No.738 of 2016 on the file of the Judicial Magistrate No.II, Gobichettipalayam and quash the same.

For Petitioner : Mr.SP.Yuaraj

For 1st Respondent: Mr.A.Damodaran
Additional Public Prosecutor

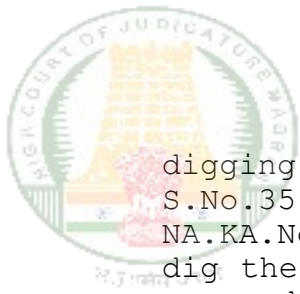
For 2nd Respondent: No appearance

ORDER

This Criminal Original petition has been filed to call for the records in S.T.C.No.738 of 2016, on the file of the Judicial Magistrate No.II, Gobichettipalayam and quash the same.

2. The petitioner who is facing trial in Crime No.263 of 2016, for offences under Section 143, 341 and 188 IPC has filed this quash petition. The petitioner is the first accused in this case. The petitioner along with 14 others are facing trial.

3. The gist of the case is that on 21.08.2016 at about 9 a.m., the residents of Indira Nagar have raised protest for



digging deep bore well in the land of LW2 N.G.Palanisamy in S.No.359/6. The Revenue Tahsildar, Bhavani, in his proceedings NA.KA.No.5473/2016/A1, dated 05.08.2016 granted permission to dig the deep bore well. The petitioner had instigated the other accused to hold a road roko and thereby, disturbing the free movement of vehicles and persons. Despite the Tahsildar and the Revenue Officials requested the petitioner and others to disburse and allow free movement of traffic, the same not heeded to, hence, a case registered on the complaint of the Village Administrative Officer, Perunthalaiyur Village, Bhavani Taluk, Erode. On completion of the investigation, charge sheet has been filed listing witnesses LWs1 to 8 and documents.

4. The contention of the petitioner is that the petitioner is a resident of Perunthalaiyur Village, the other accused are also the residents of the same place. The petitioner being the President of Sunnath Jamath of Perunthalaiyur Village, there is already a dispute between the petitioner and LW2 with regard to the ownership of the land. According to the petitioner, the land belongs to the Waqf, for which steps have been taken. Behind their back, LW2 had approached the District Munsif Court, Gobichettipalayam, in O.S.No.185 of 2011 and obtained interim injunction in I.A.No.847 of 2011. Based on this order, he had approached the Tahsildar, Bhavani and the Tahsildar, Bhavani, in connivance with LW2 issued permission to LW2 to dig deep bore well. According to the petitioner, the deep bore well is admittedly within 100 meters which is very close to the existing Public bore well, which is used for the agricultural activities and for the purpose of drinking water by the entire villagers. If LW2 is allowed to dig the deep bore well, it will affect the Public bore well and thereby, the livelihood of the Public will be affected and the land in which the bore well is to be installed in a Wafq property. It is the admitted case of the prosecution that the petitioner was not present in the scene of occurrence. It is projected that petitioner abetted the other villagers. He further submitted that now disciplinary proceedings initiated against the Tahsildar, who granted permission in NA.KA.No.35692/2016/A3, dated 22.02.2018. He faced three charges. Charge no.1 pertains to granting of permission for the digging the deep bore well. Further the Executive Engineer PW2 had informed the Executive, TANGEDCO stating that the No Objection Certificate issued earlier has been rescinded. He further submits that the Revenue Divisional Officer, Gobichettipalayam, in his proceedings dated 06.06.2018 in NA.KA.No.5255/2015/A1, clearly held that the Tahsildar has got no more power to issue NOC. Further the permission and the approval from the concerned Panchayat President following G.O.No.26 of Rural Development, dated 18.02.2015 not followed in this case. Further, he relied upon the letter of the Principal Secretary to Government, Backward Classes, Most Backward Classes

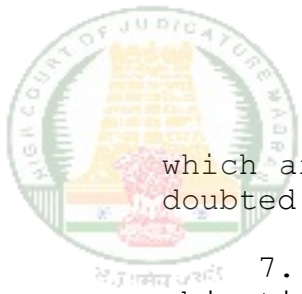


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and Minorities Welfare (T1) Department, Secretariat, Chennai-9 in D.O.Letter No.1497686/T1/2021-1, dated 22.09.2021, wherein, it is instructed that not to register documents, alienating the Waqf properties and thus, the Waqf properties to be saved and retained. On this score, he had filed this quash application.

5. The learned Additional Public Prosecutor submits that on the complaint of the Village Administrative Officer, a case has been registered in Crime No.263 of 2016, by the Sub Inspector of Police, Kavandapadi Police Station, for the offences under Sections 143, 341 and 188 IPC, for which, FIR has been registered against the petitioner, Praveenkumar and 13 others. The petitioner had been instigating violence by abetting the other villagers to conduct the road roko and disturbance to the public and vehicle movement, earlier to the occurrence on 21.08.2016 and on 01.07.2016, a similar agitation was held and the agitators were asked to moveout from the place and thereafter, on 02.07.2016, a peace committee meeting held and all agreed not to hold any road roko and to approach the concerned Court. Thereafter, based on the permission granted by the Tahsildar, LW2 started the work of digging deep bore well and at that time, on the instigation of the petitioner, a road roko was held causing disturbance to the public. On receipt of the complaint, the Inspector of Police visited the scene of occurrence, examined the witnesses present. LW2, the land owner who had dug the deep bore well, produced the permission letter of the Tahsildar, dated 05.08.2016. Further, he produced Civil Court order in O.S.No.185 of 2011 and in I.A.No.847 of 2011. All the orders were in favour of him to proceed with the deep bore well. From the statements of LWs 3, 4, and 5, it is seen that the petitioner was present in the scene of occurrence. LW1 is the Village Administrative Officer, LW2 is the disputed land owner, LWs 3, 4 and 5 are the Villagers and LWs 6 and 7 are the village assistants of LW1. LW8 is the investigating officer in this case. All the witnesses state that the petitioner was present in the scene of occurrence. Lws 3, 4 and 5 are the villagers, who confirm the presence of the petitioner, and is the reason for the road roko, who instigated the villagers and latter moved away from the scene. LWs 6 and 7 are the village assistants corroborate the statements of LW1 and other witnesses. Recording the statement of the witnesses, collecting materials, final report filed. The contention of the petitioners are to be decided during the trial. Now, the documents filed by the petitioner, after completion of investigation and filing of final report. These documents are to be produced during the trial in defence and the same cannot be considered in the quash application.

6. The learned counsel for the petitioner rebutted the same and submitted that the public documents are impeccable documents



which are issued by the revenue officials and the same cannot be doubted.

7. The learned Additional Public Prosecutor has got serious objections on the veracity of the documents produced.

8. On the rival submissions and perusal of the materials, it is seen that the petitioner is the President of the Sunnath Jamath of Perunthalaiyur Village, he is also a resident of the village. Admittedly, in this case, there is a civil suit between the villagers and LW2 N.G.Palanisamy. The contention of the petitioner is that the property is a Waqf property, for which, he had taken initiatives to retrieve the same. It is an admitted case that within 100meter of the proposed bore well already there is a public bore well situated, which is used as main water source for agricultural and other activities of the villagers. It is also to be seen that within 100 meters if another deep bore well is installed, it would definitely affect the existing bore well, its recharge and the agitation appears to be spontaneous, since it affects the livelihood of the villagers. It is seen that the Tahsildar granted permission not followed the procedures in G.O.No.26 of Rural Development, dated 18.02.2015, wherein, it is imperative to get the NOC from the panchayat President. In this case, the panchayat President permission not obtained. Further, the act of the Tahsildar was with malafide and the RDO conducted enquiry, one of the charge issued is for granting permission for digging deep bore well. The RDO found the Malafide act, without procedure, hence, disciplinary action taken and confirmed, penalty imposed with holding increase in salary and increments for six months, without cumulative effect. From the statement of the witnesses, it is seen that earlier there was a protest on 01.07.2016, thereafter a peace committee meeting held on 02.07.2016. Not considering the same, on 05.08.2016, permission granted, thereafter, on 21.08.2016, digging of deep bore well work commenced, hence the protest. The petitioner and the villagers held protest to save their livelihood, which cannot be termed as illegal protest. Further, no public lodged a complaint stating that they were denied movement and free movement of the vehicles restricted. The Tahsildar permission rescinded and cancelled.

9. In view of the same, finding merits in the petition, this Court finds that the continuation of the proceedings will serve no purpose and it will only be an abuse of process of law. Therefore, this Court is inclined to quash the proceedings in S.T.C.No.738 of 2016, on the file of the Judicial Magistrate No.II, Gobichettipalayam not only against the petitioner but also as against all the other accused who are also similarly placed. Hence case in S.T.C.No.738 of 2016 is hereby quashed in total.



10. Accordingly, this Criminal Original petition is allowed, consequently, connected miscellaneous petitions are also closed.

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Sd/-
Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

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To

1.The Judicial Magistrate No.II,
Gobichettipalayam.

2.The Inspector of Police,
Kavundapadi Police Station,
Bhavani, Erode District.

3. The Public Prosecutor,
High Court of Madras.

+1cc to Mr.SP.Yuaraj, Advocate, S.R.No.11152

CRL.O.P.No.5188 of 2017

AJB (CO)
SB(22/03/2022)