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Crl.O.P.(MD)No.9658 of 2019.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 05/08/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.OP (MD) No.9658 of 2019

and

Crl.MP (MD) Nos.6158 and 6159 of 2019

S.Jhawahar Muthuraj
Assistant Divisional Engineer,
Highways Department,
Race Course Road,
Madurai-625 002.

: Petitioner/Sole Accused

Vs.

R.Mathiazhagan

: Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in CC No.288 of 2014 on the file of the Judicial Magistrate No.VI, Madurai and quash the same.

For Petitioner : Mr.C.M.Arumugan
for M/s.Dhana Law Associates

For Respondent : Mr.V.Viswanathan



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O R D E R

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This criminal original petition is filed seeking quashment of the case in CC No.288 of 2014 on the file of the Judicial Magistrate No.VI, Madurai.

2.The facts in brief:-

The respondent filed a private complaint with the following allegations:- He is residing in the house bearing Door No.4/91, GST Road, Thiruppuramkundram, Madurai. He was also issued with a patta. He demolished his own building and put up a new construction. He obtained proper plan approval also. At the instigation of his enemies, who belongs to a political party, the Revenue Officials tried to evict him from that place. So he filed a suit in O.S No.463 of 1997 by impleading the Municipal Corporation, Thiruparamkundram as one of the parties. He also filed another suit in O.S No.472 of 1997. Both the suits were decreed in favour of the complainant, on 23/09/2005.

3.The accused persons are trying to encroach upon the property. So he filed WP(MD)No.12345 of 2010 and as per the direction, he submitted all the relevant records. Again,



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there was a trouble. So a suit in O.S No.628 of 2010 was filed and injunction was also granted in I.A No.1491 of 2010 and that was also allowed in his favour. Later, appeal was filed in CMA No.1 of 2011 before the Sub Court, Madurai. Pending the above said appeal, on 09/02/2011 at about 9.00 am, the accused persons attempted to demolish the house. Even though, it was pleaded not to do that, it was not heard. The total damage is worth about Rs.1,23,00,000/- and a false case in Crime No.32 of 2011 was also registered against him and he was arrested and later, released on bail and a case in CC No.274 of 2011 is also pending. Seeking punishment, the respondent filed a private complaint stating that petitioner has committed the offences under sections 107, 116, 426, 427, 166, 167, 341, 342, 392 and 395 IPC and that was taken cognizance in CC No.228 of 2014 by the Judicial Magistrate No.VI, Madurai.

4. Seeking quashment of the same, this petition has been filed by the petitioner.

5. Heard both sides.



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6.The learned counsel appearing for the petitioner would straightaway submit that the property under dispute is a pathway, which is in survey No.202/1, over which the action was initiated after obtaining proper legal opinion. So according to him, it was a *bona fide* action undertaken by the petitioner, discharged his official duty as public officer. So section 197 Cr.P.C will squarely come to this rescue of the petitioner.

7.The further contention is that since the *bona fide* action is saved under section 63 of the Tamil Nadu Highways Act and no prosecution will lie against him regarding the occurrence took place, on 09/02/2011 and in this connection, a case in Crime No.32 of 2011 was registered. So after complying due procedure only, the encroachment was removed in Survey No.202/1, which is totally unconnected with the survey No.202/5, over which, the above said suits were filed and injunction was obtained.

8.Per contra, it is the contention on the part of the respondent to the effect that knowing fully well that the property belongs to the respondent and he is in possession of the same, it was demolished, on 08/10/2011. According to him, it is out and out *mala fide* action, which was



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undertaken by the petitioner under the guise of discharging his official duty.

9.The disputed question of facts are involved in this matter. The respondent claims right over the property in survey No.202/5, which was comprised in old survey No. 202/1(Part). The patta number is mentioned as 1170 covering 0.03.20 hectares. In the above said survey number, it is seen that north-east 6 feet road, which was allotted for common pathway for Thiruparamkunram Primary Union school is also lying.

10.Now the contention on the part of the petitioner is that the encroachment was made upon the common pathway and that was only removed by perusing true facts; the respondent obtained patta, which was subsequently cancelled by the Revenue Divisional Officer. Regarding the subject complaint, WP(MD)No.7918 of 2011 was filed by the respondent seeking various reliefs. A similar plea has been raised to the effect that the construction was put up by him in the property, which does not lie in the common pathway. So that writ petition was allowed by directing the Highways Authorities to remove the fence and restore the possession to the respondent. Against which, WA((MD)Nos.28



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and 401 of 2018 was filed and that was dismissed by observing that it is a case of awarding compensation, but without any material, the amount of compensation cannot be decided on merits. That order was passed, on 01/09/2016. Subsequent to the above said judgment, further action was taken and against the writ appeal, SLP was also filed before the Hon'ble Supreme Court and that was also dismissed, on 29/10/2019. So naturally, the order has been passed complied in the above said writ petition. On 24/10/2021, an undertaking was given to the effect that the judgment has been given proper effect and the fencing has been removed and no trouble will be made to the respondent. So reading of the writ petition and the writ appeal orders, it is seen that under the misapprehension of facts and law, trouble appears to have been made by the petitioner in removing the alleged encroachment. It has been observed by this court to the effect that no authority has been given to the petitioner to take action under the provisions of Land Encroachment Act. If at all the petitioner can proceed only in accordance with law for acquiring the land for the National Highways Project. Now it has become final as per the judgment of the Hon'ble Supreme Court.



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11.In view of the above said factual aspects, the question is to be answered is whether the criminal prosecution will lie against the petitioner or not.

12.As mentioned earlier, it was the *bona fide* action undertaken by the petitioner by getting proper legal opinion and on going the records, whether proper proceedings have been undertaken as per law for removing the encroachment, cannot be a matter for consideration by this court, in view of the clear finding recorded in the writ petition and the writ appeal. So this court cannot once again go into the above said issue. Suffice to say that whether the action that was undertaken by the petitioner is *bona fide* one and section 197 Cr.P.C save him from criminal liability. On 09/11/2010, the then Government Pleader gave an opinion that the property under the dispute was classified as common pathway. After getting proper reply from the respondent, further action was taken. According to me, it was a *bona fide* exercise of power, which is saved under section 63 of the Tamil Highways Act.



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13. Section 63 of the National Highways Authorities Act reads as follows:-

"63.Bar of certain proceedings.-(1) No suit or other legal proceedings shall lie against the Government of anything which is in good faith done or intended to be done by or under this Act.

(2) (a) No suit, prosecution or other proceedings shall lie against the State Highways Authority or any Highways authority, or officer or person for any thing done or intended to be done under this Act, without the previous sanction of the Government, and such suit, prosecution or proceeding shall be filed within thirty days from the date of the act complained of.

(b) No such authority or officer or person shall be liable in respect of any such Act in any civil or criminal proceedings, if the Act was done in good faith in the course of the execution of the duties or the discharge of the functions assigned to such authority or officer or person by or under this Act.



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14.By going to the factual aspects, it is seen that it is clear case of *bona fide* exercise of power under the provisions of the Tamil Nadu Highways Act, over which no criminal prosecution will lie. Absolutely, there is no criminal intention on the part of the petitioner to exercise the power under a colourful authority. The petitioner, being the public servant has discharged his duty in his official capacity and as has been observed by the Division Bench of this court in the above said writ appeal to the effect that it is a case of compensation, which got to be decided by way of filing proper suit. This complaint has been filed in 2014, when the writ petition and the writ appeal were pending before this court.

15.So I am of the considered view that continuation of criminal proceedings against the petitioner will amount to clear abuse of process of the court and law and harassing the Government servant, who has discharged his official duty in a *bona fide* manner. So the entire prosecution against the petitioner is liable to be quashed.



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16.In the result, this criminal original petition is **allowed**. The impugned CC No.288 of 2014 on the file of the Judicial Magistrate No.VI, Madurai is quashed. Consequently, connected Miscellaneous Petition is closed.

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To,

The Judicial Magistrate No.V,
Madurai.



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G . ILANGO VAN , J . ,

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