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Crl.O.P.No.4840 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.03.2023

Pronounced on : 29.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.O.P.No.4840 of 2021

and

Crl.M.P.No.3080 of 2021

1.Senthilkumar

2.Murugesan

... Petitioners

Vs.

1.The Inspector of Police,

Barur Police Station,

Barur,

Krishnagiri District.

2.Selvarasu

... Respondents



Crl.O.P.No.4840 of 2021

Prayer: This Criminal Original Petition has been filed under Section 482 Cr.P.C., to call for the entire records of charge sheet in PRC No.19/2020, on the file of the District Munsif cum Judicial Magistrate, Pochampalli, Krishnagiri District and quash the same.

For Petitioners : Mr.M.Muruganantham

For R1 : Mr.S.Balaji
Govt. Advocate (Crl.Side)

For R2 : No Appearance

ORDER

The petition is to quash the final report in PRC No.19 of 2020 on the file of the District Munsif Cum Judicial Magistrate, Pochampalli, Krishnagiri District for the alleged offence under Section 3 (1) of Prevention of Damage to Public Property Act, 1984.

2.It is alleged in the impugned final report that the first petitioner/A1 was working as Secretary of the Pannanthur Panchayat; that on 19.03.2018 at about 4 p.m, the petitioners/A1 and A2 abetted A3 who had damaged the building belonging to the Palm Jaggery Society by using a JCB machine; that the said building is a public property and that the value of the damage was to the tune of



Crl.O.P.No.4840 of 2021

Rs.5,87,657/- (Rupees Five Lakhs Eighty Seven Thousand Six Hundred and Fifty Seven Only). The petitioners have hence been charged for the offence under Section 3(1) of Tamil Nadu Property (Prevention of Damages and Loss) Act 1994 r/w 114 I.P.C.

3.The learned counsel for the petitioners would submit that the building was in dilapidated condition and there was a resolution passed at the Panchayat to demolish the building after seeking permission from the concerned officials. The learned counsel also pointed out that the Block Development Officer had sent a letter on 14.03.2018 to the Panchayat to ascertain the quality of the Society's building and take further action since the building is situated near a School. The learned counsel further submitted that the respondent in any case ought to have obtained sanction under Section 230 of the Tamil Nadu Panchayat Act, 1994 before prosecuting the first petitioner as the alleged act even admitting to be true was committed in discharge of his official duty. He would submit that there is no material against the second petitioner.



Crl.O.P.No.4840 of 2021

4.Mr.S.Balaji, the learned Government Advocate (Crl.Side) appearing for the first respondent submitted that the first petitioner had no authority to cause damage to a public property. He ought to have approached the concerned officials, even assuming that the said building was in a dilapidated condition. The learned Government Advocate (Crl.side) further submitted that the sanction could be obtained even during the trial and hence, the points raised by the petitioners have to be adjudicated only during the trial. Hence, he prayed for dismissal of this quash petition.

5.Though notice was served on the second respondent, none has entered appearance on his behalf.

6.Heard Mr.M.Muruganantham, the learned counsel for the petitioners, and Mr.S.Balaji, the learned Government Advocate (Crl.Side) appearing for the first respondent.

7.The allegation against the first petitioner is that as secretary of the Pannanthur Panchayat, he had instigated the demolition of building belonging to



the Palm Jaggery Co-operative Society. It is admitted that the building was damaged and was in a dilapidated condition. This is found in the letter dated 14.03.2018 sent by the Block Development Officer, Kaveripattinam to the Special Officer, Palm Jagerry Cooperative Society. The Block Development Officer had requested the Special Officer to take steps for demolition since the School is situated nearby, there is a possibility of the building falling down and causing danger to the life of the School Children. That apart, the learned counsel also produced the proceedings of the District Collector, Krishnagiri dated 25.05.2020 directing the Block Development Officer to take action for demolishing the building belonging to the Palm Jaggery Cooperative Society. No doubt, this is a letter which was issued two years after the alleged occurrence. However, this only indicates that the building was in a dilapidated condition and the first petitioner had taken action in his capacity as Secretary, Pannanthur Panchayat. The petitioners also pointed out a resolution passed by the Panchayat on 16.02.2015, wherein, the members agreed to approach the authorities concerned for demolishing the building. The allegations suggest that the first petitioner had acted in excess of the powers conferred on him. Since, the action was taken by the first petitioner in exercise of his powers as Secretary of the Panchayat, the first



Crl.O.P.No.4840 of 2021

respondent ought to have obtained the sanction under Section 230 of the Tamil

Nadu Panchayat Act, 1994 which reads as follows:

“230.Sanction of Prosecution - (1) When the president or the executive authority or the chairman or vice chairman of a panchayat union council or district panchayat or the commissioner or the Secretary or any member is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction of the Government.

(2) When according previous sanction under sub-section (1), it shall be open to the Government to direct by order that the president, executive authority, chairman, vice chairman or commissioner or the Secretary, as the case may be, shall not discharge his duties as such until the disposal of the case.”

The first respondent has not obtained sanction as per the above said provision.



Crl.O.P.No.4840 of 2021

8.Further, this Court finds that neither the Palm Jaggery Society nor the Government Officials have given any complaint with regard to the alleged acts of the petitioners.

9.Considering the overall circumstances of the case, since the officials themselves were considering action for demolishing the building because of its dilapidated condition and the fact that no sanction has been obtained to prosecute the first petitioner, this Court is of the view that the prosecution against the petitioners deserves to be quashed. Hence, the impugned final report is quashed.

10.Accordingly, the Criminal Original Petition stands allowed. Consequently, the connected Miscellaneous Petition is closed.

29.03.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1.The District Munsif cum Judicial Magistrate,
Pochampalli,
Krishnagiri District

7/8



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Crl.O.P.No.4840 of 2021

SUNDER MOHAN, J

dk

2.The Inspector of Police,
Barur Police Station,
Barur,
Krishnagiri District.

3.The Public Prosecutor
High Court of Madras
Chennai – 600 104.

Pre-delivery order in

Crl.O.P.No.4840 of 2021

and

Crl.M.P.No.3080 of 2021

29.03.2023