



CrI.O.P.(MD).No.5719 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :09.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

CrI.O.P.(MD).No.5719 of 2019

and

CrI.M.P(MD) No.3596 of 2019

S.Murali Sundaram

... Petitioner

Vs.

1. The Inspector of Police
K.K. Nagar Police Station,
K.K. Nagar,
Tiruchirapalli

2. Jothibai

..Respondents

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records culminated in the final report filed in S.C. No.66 of 2019 on the file of the Principal District Judge, Tiruchirapalli and to quash the same.

For Petitioners	: Mr.R.Maheshwaran
For R-1	: Mr.R.M.Anbunithi
	Additional Public Prosecutor
For R-2	: Mr.T.Antony Arul Raj

ORDER

This Criminal Original Petition has been filed to quash the proceedings in S.C. No.66 of 2019 on the file of the learned Principal District Judge, Tiruchirapalli



2. According to the petitioner the second respondent has given complaint before the first respondent and based on which First Information Report has been registered in Crime No.149 of 2015 for the offences under Sections 427 and 294(b) of IPC. After investigation the first respondent filed final report for the offences under Sections 448,294(b) of IPC r/w.3(1) of TNPPDL Act and thereafter the case was committed to the Court of sessions and taken on file in S.C. No.66 of 2019 by the learned Principal District Judge, Tiruchirapalli. Infact the defacto complainant had encroached the public road and the same was objected by the petitioner and hence he made representation before the concerned authorities but they failed to remove the encroachments. Therefore he had filed a Writ Petition before this Court in W.P(MD) No. 8606 of 2010 before this Court and obtained order in his favour. Thereafter the defacto complainant filed a revision and revision was allowed then as against the order he filed appeal before the Hon'ble Apex Court and the Apex Court has set aside the order and remitted back to this Court along with contempt application. Since the property in question is government property the offence under Section 448 will not attract and the petitioner has not committed any offence as alleged in the First Information Report and the charge sheet. Already in the civil suit filed by the defacto complainant there was compromise between the parties and even as per the compromise the said disputed property is pathway. Therefore the petitioner has foisted this false complaint and



hence proceedings in S.C. No.66 of 2019 on the file of the learned Principal District Judge, Tiruchirapalli is liable to be quashed.

3. The second respondent filed counter stating that based on the complaint given by the second respondent first respondent registered the First Information Report for the offences under Sections 427 and 294(b) of IPC and after investigation altered the offences into Sections 448,294(b) of IPC r/w.3(1) of TNPPDL Act. The petitioner illegally demolished the compound wall of the defacto complainant by using JCB and thereby he gave the said complaint. The petitioner alleged that there is a pathway and the same was encroached by the defacto complainant by putting up compound wall, hence he filed a Writ Petition before this Court in W.P(MD) No.10672 of 2006 and obtained an order for considering his representation. Based on that order the Assistant Commissioner, Trichy Corporation has passed an order stating that there is no proof to show that the alleged pathway is in existence and it is not vested with Corporation. Therefore the petitioner filed a Writ Petition in W.P(MD) No.8606 of 2010 . When the petitioner purchased the property at that time there was pucca compound wall surrounding the property of the defacto complainant and no pathway was in existence. The petitioner only manipulated and tampered the survey records. When the above said Writ Petition is pending for consideration,the petitioner has illegally trespassed into the property of the second respondent



using JCB and demolished the compound wall, hence he filed complaint and the First Information Report has been registered. In the meantime the Writ Petition in W.P(MD) No.8606 of 2010 was allowed and thereafter filed revision and the same was allowed. Earlier the petitioner filed a petition in Crl.O.P(MD) No.12451 of 2015 before this Court to quash the First Information Report and the same was dismissed. Thereafter charge sheet was filed and as per the charge sheet *prima facie* materials are made out and thereby the case has been committed to the Court of Sessions and was taken on file in S.C.No.66 of 2019 by the learned Principal District Judge, Tiruchirapalli, hence this petition liable to be dismissed.

4. The learned counsel for the petitioner would submit that the respondent police has registered the First Information Report in Crime No.149 of 2015 for the offences under Sections 427 and 294(b) of IPC. After investigation the first respondent filed final report for the offences under Sections 448,294(b) of IPC r/w.3(1) of TNPPDL Act and the case has been taken on file in S.C. No.66 of 2019. Infact the defacto complainant had encroached the public road and the same was objected by the petitioner and hence he made representation before the concerned authorities but they failed to remove the encroachments. Therefore he had filed a Writ Petition before this Court in W.P(MD) No.8606 of 2010 before this Court and obtained order in his favour. Thereafter the defacto



complainant filed a revision and revision was allowed then as against the order he filed appeal before the Hon'ble Apex Court and the Apex Court has set aside the order and remitted back to this Court along with contempt application. Since the property in question is government property the offence under Section 448 will not attract and the petitioner has not committed any offence as alleged in the First Information Report and the charge sheet. Hence the petitioner need not face the trial for the vague averments made in the charge sheet, hence the Charge Sheet is liable to be quashed.

5. The learned Additional Public Prosecutor appearing for the first respondent would submit that based on the complaint given by the second respondent, the first respondent has registered the First Information Report in Crime No.149 of 2015 for the offences under Sections 427 and 294(b) of IPC. After investigation the first respondent filed final report for the offences under Sections 448,294(b) of IPC r/w. 3(1) of TNPPDL Act and thereafter the case was committed to the Court of sessions and taken on file in S.C. No.66 of 2019 and now the case is pending for examination of witnesses. As per the final report there are *prima facie* materials available to proceed with the case and thereby this petitioner has to face trial and this Court cannot look into the veracity of the statements at this stage and thereby this petition is liable to be dismissed.



WEB COPY

6. Heard both sides and perused the materials available on record.

7. On perusal of the records, it is observed that already there are so many litigations pending between the parties with regard to the disputed land. According to the petitioner the disputed property is road but the defacto complainant encroached the same. According to the second respondent he purchased the said building with the compound wall and the said compound wall was demolished by the petitioner. The rights of the parties with regard to the disputed property cannot be decided by this Court. However the first respondent filed final report after conducting investigation and as per the final report *prima facie* materials available to proceed with the case and thereby the Sessions Court has also taken cognizance and as such the petitioner has to face trial before the trial Court and thereby the petition is liable to be dismissed.

8. At this juncture, the learned counsel appearing for the petitioner represented before this Court that the personal appearance of the petitioner before the trial Court may be dispensed with.



Crl.O.P.(MD).No.5719 of 2019

9. As far as dispensing with the personal appearance of the petitioner before the trial Court is concerned, it can only be decided by the trial Court on application filed by the petitioner. On such application, the trial Court is directed to consider the same in accordance with law. All the grounds raised by the petitioner in this petition can be agitated before the trial Court.

10. With the above observations and directions, this criminal original petition is disposed of. Consequently connected miscellaneous petition is closed.

09.08.2023

Index : Yes / No
Internet : Yes / No
aav

To

1. The Judicial Magistrate, Pattukottai
2. The Inspector of Police
Athiramapattinam Police Station,
Thanjavur District
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



CrI.O.P.(MD).No.5719 of 2019

P.DHANABAL, J.

aav

CrI.O.P.(MD).No.5719 of 2019

09.08.2023