



WP(MD)No.21580 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 12/12/2023

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The Hon'ble Mr.Justice **G.ILANGOVAN**

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Ilayaraja : Petitioner

Vs.

1.The Deputy Superintendent of Police,
Musiri,
Trichirappalli District.

2.The Inspector of Police,
Kattuputhur Police Station,
Tiruchirappalli District.

3.Selvi

4.K.Venkatesh : Respondents

PRAYER:-Writ Petition has been filed under Article 226 of the Constitution of India, directing the 1st respondent to investigate further the case Special in Crime No.257 of 2021 pending on the file of the I Additional District Judge (PCR) Court, Trichy, Special SC No.46 of 2021 taking into account the Land Grabbing committed by the respondents 3 and 4 with the help of the other persons, who stand charge sheeted in the said Crime Number and pass other further order or others.

For Petitioner : Mr.S.K.Mani

For R1 and R2 : Mr.M.Sakthi Kumar
Government Advocate
(Criminal side)

For R3 and R4 : Mr.K.Arunraj



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O R D E R

WEB COPY This Writ Petition has been filed seeking for direction to the 1st respondent to investigate further the case Special in Crime No.257 of 2021 pending on the file of the I Additional District Judge (PCR) Court, Trichy, Special SC No.46 of 2021 taking into account the Land Grabbing committed by the respondents 3 and 4 with the help of the other persons, who stand charge sheeted in the said Crime Number.

2.The facts in brief:-

The petitioner's father namely Andi owning punja lands in Survey No.684/4 measuring about 28-1/2 cents in Elurpatti Village, Thottiam Taluk, now Musiri Taluk, Tiruchirappalli District. It is a cultivating land worth about Rs.2,80,00,000/-. The father of the petitioner namely Andi, his elder brother Maharaja and his younger brothers Ragupathi and Ramesh approached one Durairaj through one Mahamuni and Murugesan, borrowed a sum of Rs. 6,00,000/-, on 20/11/2018. At that time, they obtained their signatures in the blank papers. These signatures were obtained for the loan obtained from the above said Durairaj. The family members of the petitioner were asked to execute a sale deed for an extent of 10 cents in Survey No.684/4A in Elurpatti Village for a value of Rs.



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2,90,000/- in the name of K.Venkatesh (4th respondent herein), who is none other than the son-in-law of Durairai. When that was questioned by them, Mahamuni and Murugesan compromised them stating that it is the normal practice to get a registered sale deed, when loan amount is obtained. Believing this, they executed a sale deed in favour of the finance company of the Durairaj and obtained a loan of Rs.5,00,000/- @ 24% per annum from Durairaj through the agents namely Mahamuni and Murugesan. Thereafter, on 30/04/2019, the petitioner along with his father and brothers were taken to the Sub Registrar's Office and another sale deed was obtained for 10 cents in respect of Survey No.684/4A. The petitioner and his family members believed that the above said Durairaj, on repayment of the said loan availed by them, will reconvey the sale. After that, when the petitioner approached the said Durairaj to redeem the lands, there was no proper reply. So a complaint was made before Kattuputhur Police Station. During enquiry, the above said Durairaj, Mahamuni and Murugesan told that the petitioner had to pay Rs.65,00,000/- towards the loan availed, sale deeds executed had become permanent. According to the petitioner, the money that was received by his father and others were only by way of loan arrangements and as a security for the loans received.



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For the above said atrocities committed against the petitioner, he filed a complaint before the 1st respondent in the year 2021. Even though, the case was registered in Crime No.257 of 2021 against three persons, the 1st respondent purposefully omitted the respondents 3 and 4 herein from the array of the accused and laid the charge sheet by arraying the said Murugesan as A1 and Mahamuni as A2 and Durairaj as A3. So, he filed a private complaint before the I Additional District Judge, Trichy, Special Court under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act by arraying Durairaj as A1, respondents 3 and 4 herein as A2 and A3 and Murugesan and Mahamuni as A4 and A5. But that complaint was not taken on file. Now charge sheet has been filed and it was taken cognizance in Special SC No. 46 of 2021 by the I Additional District Judge (PCR), Trichy. With these allegations, the petitioner filed this writ petition seeking the relief as stated above.

3.Heard both sides.

4.The main grievance of the petitioner is that the persons, who are involved in the issue were not arrayed as accused.



5. In the complaint, he has stated that he approached one Murugesan, S/o. Puraviyan and Mahamuni, S/o. Ponnusamy, who are the land brokers for helping to arrange the loan amount. They introduced one Durairaj, who is the money lender. At his instance, he executed a sale deed in favour of one Venkatesh and Selvi for separate extent. At that time, a compromise was made that after return of the loan amount, they will execute resale in favour of his father. According to him, those persons are land grabbers. But unfortunately, they are not included in the final report, namely Selvi and Venkatesh. On that account, they want further investigation to be made.

6. Per contra, the learned Government Advocate (Criminal side) would submit that allegation has been made against A1 to A3; and the respondents 3 and 4 are the only persons, in whose names sale deeds are standing. During the course of the investigation, it was found that they are noway involved in the issue. So rightly they were not included or arrayed as accused in the final report and no interference is called for further investigation or reinvestigation, as the case may be. The Special Court has rightly taken cognizance of the offence.



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7. Per contra, the learned counsel appearing for the petitioner would submit that since the sale deeds are standing in the name of the respondents 3 and 4, naturally they ought to have been arrayed as accused. He will also refer to the relevant provisions of the SC/ST Act. Sections 3(1)(f) and (g) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, reads as follows:-

“(f) wrongfully occupies or cultivates any land, owned by, or in the possession of or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe, or gets such land transferred;

(g) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights, including forest rights, over any land or premises or water or irrigation facilities or destroys the crops or takes away the produce therefrom.

Explanation.--For the purposes of clause (f) and this clause, the expression "wrongfully" includes--



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- (A) *against the person's will;*
- (B) *without the person's consent;*
- (C) *with the person's consent,*
where such consent has been obtained by
putting the person, or any other person
in whom the person is interested in
fear of death or of hurt; or
- (D) *fabricating records of such*
land;"

8. According to the learned counsel appearing for the petitioner, the offence under sections 3(1)(f) and (g) of the Act applies to the offence committed by the respondents 3 and 4. But in the complaint, the petitioner has not made any allegation against the respondents 3 and 4 herein.

9. As mentioned above, the learned Government Advocate (Criminal side) would submit that the main allegations are made only against the accused 1 to 3.

10. When there is no specific allegation, the contention on the part of the petitioner that the respondents 3 and 4 herein ought to have added as co-accused cannot be taken into account at this stage.



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11.The petitioner is not remediless. Now the final report is filed, he can very well approach the trial court with appropriate complaint to redress his grievances. In fact, it is stated that it was filed. But without approaching the trial court, he has filed this petition directly invoking the power under Article 226 of the Constitution of India.

12.When this was pointed out by me, the learned counsel appearing for the petitioner has submitted that liberty may be granted to the petitioner to work out his remedy before the trial court itself. But by relying upon the judgments of the Hon'ble Supreme Court reported in (i)Sivanmoorthy and others Vs. State rep. by Inspector of Police [(2010) 12 SCC 29]; (ii)Vinay Tyagi Vs. Irshad Ali @ Deepak and others [(2013)5 SCC 762]; and (iii)Anil Tuteja Vs. State of Chhattisgarh [2019 STPL 8883 Chhattisgarh), he would contend that not only the trial court, but also the superior court can order further investigation.

13.So the question, which arises for consideration is whether this court can take up such an exercise at this stage.



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14. But I am of the considered view that this is not the fittest case to exercise the power in the light of the above said factual circumstances of the case. But however, I restrain myself from discussing in this regard, in view of the submission made by the learned counsel appearing for the petitioner that he will work his remedy before the trial court itself, more specifically in the light of the submission that private complaint is also filed.

15. With the above said liberty, this writ petition stands **disposed of** granting liberty to the petitioner to work out his remedy before the concerned trial court in the manner known to law. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index: Yes/No
Internet: Yes/No
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To,

1.The Additional District Judge (PCR),
Trichy.

2.The Deputy Superintendent of Police,
Musiri,
Tiruchirapalli District.

3.The Inspector of Police,
Kattuputhur Police Station,
Tiruchirapalli District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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