



CrI.O.P.No.2336 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2024

CORAM

THE HONOURABLE Mrs. JUSTICE T.V.THAMILSELVI

CrI.O.P.No.2336 of 2022

and

CrI.M.P.No.1025 of 2022

1.Ravi
2.Damodharan
3.Alamelu
4.Venkatesan
5.Dayalan
6.V.Vijayakumar

...Petitioners

Vs.

1.Devagi
2.The Commissioner,
Vaniyambadi Municipality,
Vellore District.

..Respondents

(R2 suo- motu impleaded as per Order dt.04.01.2024 in
CrI.O.P.No.2336 of 2022 and CrI.M.P.No.1025 of 2022)

Prayer:- Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, seeking to call for the records in C.C.No.63 of 2015 pending on the file of the learned District Munsif cum Judicial Magistrate, Vaniyambadi, Vellore District and quash the criminal proceeding.



Crl.O.P.No.2336 of 2022

For Petitioners : Mr.E.Kannadasan

For Respondents : Mr.R.Sankarasubbu for
Mr.K.Thiruvengadam for R1
Mr.S.Vinoth Kumar
Government Advocate (Crl. Side)

ORDER

The petitioners are ranked as Accused No.2 to 7 in a private complaint lodged by the 1st respondent. Based on that, C.C.No.63 of 2015 was initiated for the offences under Sections 147, 148, 167, 294(b), 323, 324, 379, 420, 442, 448 and 506(ii) of I.P.C. Aggrieved over the same, the petitioners / accused 2 to 7 preferred this petition to quash the proceedings.

2.Admittedly, the 1st petitioner is an Engineer of Vaniyambadi Municipality and 2nd petitioner is a Town Planning Officer, the 3rd and 4th petitioners are the Building Inspectors, 5th respondent is a Chairman of Vaniyambadi Municipality and the 6th petitioner is a Photographer. It is the claim of the petitioners that they have falsely implicated in this case as there was no such allegations as alleged by the 1st respondent.



WEB COPY

3.It is the case of the petitioners that the 1st respondent / complainant constructed a house by encroaching the Government land at Ward No.E, Block No.12, C.L.Street, Kathapet, Vaniyambadi, Vellore District. The Municipality Authorities issued eviction notice to remove the small portion of the backside of the 1st respondent's building. On receipt of the notice, instead of removing the encroachment, she filed a suit in O.S.No.83 of 2013 and also obtained temporary injunction restraining the petitioners from interfering with the peaceful possession and enjoyment of her property on 31.07.2013 and the interim order was periodically extended by the Court concerned till 19.06.2014 and thereafter, the case was listed on 04.06.2014 in the special list and neither the respondent nor her counsel appeared. Hence, the suit was dismissed for default on 04.06.2014.

4.Immediately, on came to know about the dismissal of her suit, she filed a restoration petition in I.A.No.33 of 2014 and notice was ordered and the same was served to the petitioners. It is claimed that the petitioners trespassed into her property without any order of the District Collector and demolished the building without proper instructions. Therefore, she



preferred a private complaint. Based on that, the petitioners were charged offences under Sections 147, 148 167, 294(b), 323, 324, 379, 420, 442, 448 and 506(ii) I.P.C. Admittedly, prior to that, the authorities also gave a complaint against the 1st respondent in Crime No.156 of 2015 for the offence under Sections 294(b), 353 and 309 of I.P.C and final report was filed wherein C.C.No.5 of 2018 was taken on file and trial also commenced. According to the petitioners, encroachment notice was issued to the 1st respondent on 05.04.2013 under Sections 182, 339(2), 340 (1) & 344 Tamil Nadu District Municipalities Act to remove the encroachment of 120 Metre X 9.00 Metre within 15 days and subsequently, on 08.05.2013 further notice was also issued. On 15.07.2013, the Municipality had issued a final notice informing that on 19.07.2013 at 11.00 a.m., Authorities concerned will propose to remove the encroachment.

5.That being while so, the defacto complainant filed a suit in O.S.No.83 of 2013 and also obtained interim order and the same was periodically extended. Subsequently, the suit was dismissed on 04.06.2014 for non-prosecution. It is claimed by the petitioners that after the dismissal,



there was no interim order on 19.06.2015, hence, the concerned authorities have decided to remove the encroachment. Accordingly, the date was fixed on 20.06.2014 to remove the encroachment. On 20.06.2014, while the Authorities concerned attempted to remove the encroachment, the defacto complainant raised objections and not permitted the authorities to perform their duty and her husband one, K.Sampath also talked the officials that he would commit suicide from the upstairs of the house and his wife / the 1st respondent Devagi also threatened them that she would commit suicide by using the gas cylinder and the same has also been photographed and thereafter, a complaint has been given concerned Police Station. Upon the complaint, on 27.06.2014 the encroachment was removed with the help of police protection.

6.In the meanwhile, the defacto complainant gave application to restore the suit on 18.06.2014 and notice was issued on 19.06.2014 to the Municipality Counsel. Therefore, as per the contention of the petitioners, on the date of the encroachment, there was no order enforced. There was no injunction in the suit. It is submitted by the petitioners that as the notice was



already served, the Authorities, except the action of removal of the encroachment, they have not committed any default on their part. On the claim of the 1st respondent that at the time of the eviction proceeding, the petitioners were stolen away the jewels and articles belonging to her are totally false, the learned counsel would submit that they were Officials concerned and they have not involved such unlawful activities therefore, the private complaint lodged by the defacto compainant is liable to be rejected.

7.By way of the reply, the learned counsel for the 1st respondent submit immediately after disposal of the suit, they filed application to restore the same on 18.06.2014 and notice was also given to the Municipality Counsel on 19.06.2014. Furthermore, before removing the encroachment again no notice was given by the Authorities and not informed to the Collector. Therefore, the removal of the encroachment made by the authorities on 20.06.2014 is clear violation of the proceedings of the law and that they have not complied with the procedure required under Section 4 & 5 of the Act.



WEB COPY

8.For that, the learned counsel for the 1st respondent relied upon the judgment of this Court in ***M.Tara Singh Vs. The Assistant Divisional Engineer Highways and Rural Works, Cuddalore***. It is true that Section 4 & 5 requires notice to be given before removal of the encroachment. If at all any property title is under dispute and it needs proper enquiry with which the authorities concerned has no right to take such action of eviction.

9.By way of reply, the learned counsel for the petitioners submit that already they issued notice for eviction to the respondent in 2013 itself and final notice also issued. It is also submitted that they gave a sufficient opportunity to remove the encroachment but the respondent has not complied with the same. Further more, they have also contended that on the date of the removal of the encroachment, there was no injunction order was in force and though the suit was restored. It is true that that application to restore the suit was filed by the respondent and the suit was restored to file, but no interim order enforced on that date.



WEB COPY

10. According to the authorities, the 1st respondent encroached 1.20 meter x 900 meter encroaching road portion. The Officers issued a notice on 08.05.2013 and also another notice on 14.07.2013 and also 31.07.2013 but, encroachment was not removed by the 1st respondent, but she filed a suit in O.S.No.83 of 2013. Admittedly, the same was dismissed for default on 04.06.2004. They filed a petition to restore the suit, there was no injunction order at all. Admittedly, 20.06.2014 encroachment was removed at that time interim order was not in force. Before removing such encroachment, the petitioners already issued notice in the year 2013 by giving sufficient opportunity so she was already aware of that eviction proceeding, hence further notice not required.. Therefore, the authorities relied by the respondent not apply to the facts of this case.

11. The authorities concerned granted the permission to put up construction in her property, but for the encroached portion, they refused. She has already filed a civil suit in O.S.No.51 of 2015, more particularly, relief of declaration, if at all she is having any right over the property, she is bound to prove the same before the Court of law. Therefore, I do not find



CrI.O.P.No.2336 of 2022

any irregularity in the removal of the encroachment made by the petitioners nor the respondent established her claim with sufficient materials, therefore her complaint is vexatious and also civil in nature

12.In view of the same, this Criminal Original Petition is allowed, C.C.No.63 of 2015 pending on the file of the learned District Munsif cum Judicial Magistrate, Vaniyambadi, Vellore District is quashed. No costs. Consequently, connected miscellaneous petition is closed.

08.02.2024

kkn

Internet : Yes/No

Index: Yes/No

Speaking / Non-speaking order

Nuetral Citation: Yes/No



CrI.O.P.No.2336 of 2022

To:-

- 1.The District Munsif cum Judicial Magistrate,
Vaniyambadi, Vellore District
- 2.The Commissioner,
Vaniyambadi Municipality,
Vellore District.
- 3.The Public Prosecutor
High Court of Madras,
Madras.



WEB COPY



Crl.O.P.No.2336 of 2022

T.V.THAMILSELVI, J.

KKN

Crl.O.P.No.2336 of 2022

and

Crl.M.P.No.1025 of 2022

08.02.2024