



Crl.A.No.109 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 26.02.2025

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.109 of 2011

R.Sundarsamy Gounder @ Senthamizh Selvan ... Appellant

Vs.

1.C.Ramachandran
2.A.Shanmugam
3.M.Sivasami
4.Vijayakumar
5.Thambiraj
6.Balan @ Balasubramaniam
7.Vellingiri
8.Amavasai

... Respondents

PRAYER: Criminal Appeal is filed under Section 378 of Code of Criminal Procedure, to set aside the judgment dated 05.03.2008 made in C.C.No.43/2006 on the file of the Judicial Magistrate No.VII, Coimbatore.

For Appellant : Mr.M.N.Balakrishnan

For R1 to R3 & R5 to R8 : Mr.S.Vinod

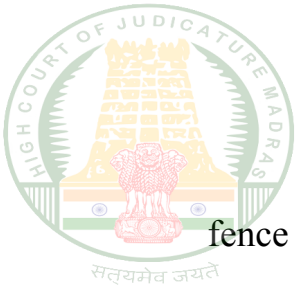


JUDGMENT

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The appellant as complainant filed a private complaint against the respondents in C.C.No.43 of 2006 before the learned Judicial Magistrate No.VII, Coimbatore (Trial Court) and the same was dismissed *vide* judgment, dated 05.03.2008 acquitting the respondents. Challenging the same, the present Criminal Appeal is filed by the appellant/complainant.

2.The case projected by the appellant is that the appellant and the respondents were residing at Etimadai Village, Coimbatore District. In the said village, the 1st respondent encroached the Government Poramboke land, cut the trees grown in the land and benefited out the same. In this regard, the appellant lodged a complaint to the concerned authority against the 1st respondent, due to which, there was enmity between them. The appellant stocked the banana trees in his land. The 1st respondent asked the appellant to clear the same and forced the appellant to give 5 feet of land for his usage. Thereafter, the appellant printed hand bills against the 1st respondent accusing his encroachment, illegal activities and lodged Police complaint. Keeping this in mind, on 15.11.2005, at the instigation of respondents 1 to 3, the respondents 4 to 9 trespassed into the appellant's land, damaged the



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fence and boundary stones. Since the respondents 1 to 3 are politically well connected and powerful, they abetted the respondents 4 to 9 to commit the offence and thereby caused damage to the property worth of Rs.12,000/-. The complaint which was given to the Police not acted upon, the appellant filed private complaint against the respondents before the Trial Court for offence under Sections 427 and 448 r/w 109 IPC.

3.During trial, on the side of the appellant/complainant, six witnesses examined as PW1 to PW6 and 22 documents marked as Exs.P1 to P22. On the side of the defence, no witness examined and no document marked. On conclusion of trial, the Trial Court dismissed the complaint and acquitted all the respondents from all the charges.

4.The learned counsel for the appellant/complainant submitted that in this case, the Trial Court failed to take note that apart from the appellant, all independent eye witnesses (PW2 to PW4) clearly stated about the respondents 4 to 9 entering into the appellant's land, damaging fence and boundary stones. The 1st respondent in connivance with Madhukarai Police



lodge a false complaint against the appellant, a case in Crime No.335 of

2005 was registered and the appellant was arrested. Thereafter, one Askar Ali met the appellant in the Court and forced the appellant to give 50 cents of land favouring the 1st respondent, if accepted, the case against the appellant can be withdrawn. Despite the appellant taken steps to stop the illegal felling of trees in the Government poramboke land, the 1st respondent with the help of muscle men, successfully cut the trees, sold the same and enriched himself Rs.25,000/- every year. He further submitted that the appellant taking steps to curb illegal activities of the 1st respondent is proved by Exs.P2 to P4, the hand bills, and complaint given to the District Collector. The Trial Court failed to consider the 1st respondent forced the appellant to remove the banana trees in the land in survey No.490 to use it as common pathway to his land.

5.The learned counsel further submitted that the appellant made arrangements for free patta for the marginalized poor people in the village by sending representations to the various authorities (Ex.P14) which was opposed by the 1st respondent, a people representative. In this case, the



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respondents 4 to 9 are Panchayat Workers who now claim that they came to lay pipeline on 15.11.2009 and not caused any damage to fence and boundary stones in the appellant's property. The Trial Court not considered all these aspects and mechanically dismissed the complaint. Hence, he prays for conviction setting aside the judgment of the Trial Court.

6.The learned counsel for the respondents submitted that the appellant/complainant is politically enimical against the respondents 1 to 3. The appellant used to create problem in the village by giving political colour on the efforts taken by the 1st respondent. The 1st respondent is a Panchayat President, the respondents 2 and 3 are politically active persons, one of them is the brother of a Former Minister. Having this political animosity in the background, a false private complaint given by the appellant against the respondents. He further submitted that the appellant was stocking cut trees and other articles in the Government poramboke land which was objected by the 1st respondent. On the contrary, the appellant projected a case as though at the instigation of the respondents 1 to 3, the respondents 4 to 9, the Panchayat Workers caused damage to fence and



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boundary stones. In fact, on 15.11.2005, the drinking water pipeline which runs through Government poramboke land was checked and replaced. For repair and relay work, the respondents 4 to 9 cleared the bushes and encroachment which is falsely projected as though damage caused to the appellant's property. Not stopping with that, the appellant gave a complaint to the jurisdictional Police who enquired and found dispute is civil in nature. Added to it, the appellant sent complaints to the District Collector, Chief Minister's Cell and to various authorities, all enquired and found to be false. The appellant also distributed hand bills naming the respondents 1 to 3 casting aspersions. Keeping this in mind, the appellant projected the case as though at the instigation of the respondents 1 to 4, the respondents 4 to 9 caused damage to the fence and boundary stones in the appellant's property and thereby committed the offence. On the evidence and materials, the Trial Court rightly dismissed the complaint acquitting the respondents from all charges which needs no interference.

7.This Court considered the rival submissions and perused the



CrI.A.No.109 of 2011

materials on record.

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8.It is seen that the appellant filed a private complaint against the respondents for offence under Sections 427, 448 r/w 109 IPC before the Trial Court. During trial, the appellant examined himself as PW1 and other witnesses examined as PW2 to PW6 and 22 documents marked as Exs.P1 to P22. In this case, it is not in dispute that there is some animosity between the appellant and the respondents 1 to 3 who are politically in opposite groups. The appellant's complaint is primarily for causing damage to fence and boundary stones. It is admitted by the appellant that he used to cut banana trees and stock the same in Odai Poramboke land which is adjacent to his land, through which panchayat drinking water pipeline passes through. The respondents 4 to 9, Panchayat Workers, on the instructions of Executive Officer dug a trench to verify the leakage of drinking water, and the respondents 4 to 9 cleared the bushes and encroachment made by the appellant.

9.In this case, the other witnesses namely PW2, PW3, PW4, PW5 and



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PW6 admit that the appellant belongs to DMK party and he is the political opponent to the respondents. Clearing of bushes for maintenance of water pipeline by the Panchayat Employees, is not in dispute. In fact, PW5, a Former Counsellor stated that at the instance of the 1st respondent and Village Administrative Officer, the entire maintenance work was done. For maintenance work of drinking water pipeline, the Panchayat Employees/respondents 4 to 9 entrusted with the work. It is not disputed that the drinking water pipeline passes through Odai Porambake land which is adjacent to the appellant's land. The clearing of bushes and digging a trench might have affected the appellant's stocking of trees in Odai Poramboke land which cannot be automatically termed as damage caused to fence and boundary stones. The other allegations of the 1st respondent encroaching upon the Government land, cutting the trees, selling the same and making money, not supported with any documents. The judgment of the Trial Court is cryptic, but from the available evidence PW1 to PW6 and documents Exs.P1 to P22 confirms the encroachment to Odai Poramboke land by the appellant. The hand bills (Exs.P2 & P3) confirms animosity between the appellant and respondents 1 to 3. The appellant's complaint to



the Police and Revenue Officials enquired and closed finding civil in nature.

Thus, the appellant attempted to give a criminal cloak to the civil dispute, was rightly considered by the Trial Court.

10.From the evidence and materials, it is clear that the respondents 4 to 9 were entrusted with the maintenance work of panchayat drinking water pipeline which passes through Odia Poramboke land. For which, the respondents 4 to 9 cleared the bushes and encroachment of the appellant in Odai Poramboke land. Such being the position, the appellant cannot make allegations as though at the instigation of the respondents 1 to 3, the respondents 4 to 9 caused damage to the fence and boundary stones in the appellant's property. Hence, the question of trespass and damage or loss to the property does not arise.

11.In view of the above, this Court finds no reason to interfere with the impugned judgment, dated 05.03.2008 in C.C.No.43 of 2006 passed by the learned Judicial Magistrate No.VII, Coimbatore and the same is hereby confirmed.



CrI.A.No.109 of 2011

WEB COPY 12. Accordingly, this Criminal Appeal is dismissed.

26.02.2025

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

vv2

To

The Judicial Magistrate No.VII,
Coimbatore.



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Crl.A.No.109 of 2011

M.NIRMAL KUMAR, J.

vv2

Crl.A.No.109 of 2011

26.02.2025