

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/09/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION No.19852 OF 2003

AND

CRL.M.P.No.5567 OF 2003.

V.C.Viswanathan ... Petitioner

-Vs-

The Commissioner,
Sathyamangalam Municipality,
Sathyamangalam,
Erode District. ... Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure for the relief as stated therein.

For petitioner : Mr.S.Shanmughavelayutham

For respondent : Mr.A.N.Thambidurai,
Govt.Advocate (crl.side)

:O R D E R

The above criminal original petition has been filed under Section 482 of the Code of Criminal Procedure praying to call for the records relating to S.T.C.No.219 of 2003 from the file of the Court of Judicial Magistrate, Sathyamangalam, Erode District and quash the same as against the petitioner.

2. On a perusal of the materials placed on record and upon hearing the learned counsel for the petitioner and the learned Government Advocate on the criminal side it comes to be known that the respondent has filed a complaint before the Court below in S.T.C.No.219 of 2003 as against the petitioner for the offences punishable under Sections 262 and 313 of the Tamil Nadu District Municipalities Act, 1920 (hereinafter referred to as the 'Act') and when the same is pending trial, the petitioner has come forward to file the above criminal original petition.

3. In his petition, the petitioner would submit that the respondent has filed the complaint on ground that he has not obtained the licence for running a private market in his ginning factory during 2002-2003 at No.6/50, Karattur Road, Sathyamangalam, Erode District and that the

petitioner has not complied with the notice dated 24.10.2002. The petitioner would further submit that the term 'private market' is not defined in the Act and hence the prosecution is not warranted; that to attract the provisions of Sections 262 and 313 of the Tamilnadu Municipalities Act, the prosecution must have a clear case against the petitioner; that there is no proof or material placed before the trial Court to show that the petitioner has collected any money or toll by way of benefits for running the alleged private market; that the respondent without declaring the place of occurrence as a private market, prosecuting the petitioner for running the private market is premature and liable to be quashed and hence, the petitioner has filed the above criminal original petition for the relief extracted supra.

4. During arguments, the learned counsel appearing on behalf of the petitioner besides tracing the facts, as pleaded in the petition, would further submit that they must first notify the area and mere notice is not a sufficient compliance and would cite the judgment of the Bombay High Court delivered in THE BOMBAY MUNICIPALITY vs. YENKANNA ELLAPPA BALARAM reported in 30 Cr.L.J.1929 Bombay 168 wherein it is held:

"A mere collection of shops, though owned by the same landlord and dealing with the same articles would not constitute a private market within the meaning of the City of Bombay Municipal Act, unless the owner has control, over the actions of the shop-keepers and the right to compel them to sell particular commodities and at particular hours.... A person who merely lets a row of shops to different tenants without any such control is not guilty of establishing and keeping open a private market within the meaning of S.403 (1)(a) of the said Act."

5. In reply, the learned Government Advocate on the criminal side, appearing on behalf of the respondent Municipality, would submit that the petitioner did not apply for the licence and hence he is prosecuted; that the term 'private market' has not been defined in the Act is not a bar from taking cognizance of a violation of the statutory provisions of the Act; that any party willing to run the market must get the licence from the local body. The learned Government Advocate would ascertain that a definite offence is committed on the part of the petitioner and therefore he has to undergo the trial and he is not entitled to get the relief prayed for.

6. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, the short question that falls for consideration and determination is 'whether the petitioner is entitled to the relief sought for and whether the requirement of Section 249 of the Tamil Nadu District Municipalities Act is absolutely necessary for the commission of offences under Sections 262 and 313 of the said Act?'

7. The commission of offence, according to the respondent Municipality, is under Sections 262 and 313 of the Act. Among these two Sections, the former deals with 'licence for private market' and would stipulate that 'no person shall open a new private market or continue to keep open a private market unless he obtains from the council a licence to do so'. The other Section 313 is regarding the 'general provisions regarding penalties

specified in the schedule' for the contravention of the provision of any of the Sections or Rules specified in the first column of Schedule VII or for contravening any rule or order made under any of the specified sections or rules or for failing to comply with any direction lawfully given to anyone.

8. There is no denying of the fact on the part of the petitioner that he falls under both these Sections. But, his contention is that the provision of law under Section 249 of the same Act has not been complied with by the respondent/Municipality regarding the notification to be published in the District Gazette regarding the place which shall be used for anyone or more purposes specified in Schedule V. This publication of notification in the District Gazette is required only regarding the industrial and factory activities enumerated thereunder and not for commission of offences under Sections 262 and 313 of the Act. Moreover, the requirements of the Section 249 is only recommendatory and not mandatory.

9. In the above circumstances, citing Section 249 of the Act and stating that the Municipality has no locus standi to question the validity of the acts committed on the part of the petitioner and registering the case for violation of the law and for being punished respectively under Sections 262 and 313 of the Act, the petitioner has come forward to file the above criminal original petition.

10. There is absolutely no pith or substance or truth attached to the case of the petitioner particularly for quashing as prayed for in the prayer column of the petition and therefore no mention need be necessary that the petitioner has to face the trial as warranted under the provisions of the Code of Criminal Procedure and hence the following order: In result, there is no merit in the above criminal original petition and the same is dismissed.

Consequently, Crl.M.P.No.5567 of 2003 is also dismissed.

Index: Yes

Internet: Yes

kvsg/Rao

To

1.The Judicial Magistrate,
Sathyamangalam,
Erode District.

2.The Commissioner,
Sathyamangalam Municipality,
Sathyamangalam,
Erode District.

3.The Public Prosecutor,

High Court,
Madras.

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