

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.8.2007

CORAM

THE HONOURABLE MR. JUSTICE S.PALANIVELU

CRL.O.P.No.26628 of 2007
and
M.P.Nos.1 to 3 of 2007

P.Mylsamy ... Petitioner

vs.

1. The State
Rep. by Inspector of Police,
Kinathukkadavu Police Police Station,
Pollachui Taluk
Coimbatore ... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C.
seeking to call for the records in S.T.C. No.3207 of 2007 on the
file of the Judicial Magistrate No.1, Pollachi and quash the
proceedings.

For petitioner : Mr.C.Vijayakumar

For respondent : Mr.A.Saravanan,
Govt. Advocate (Crl. Side)

ORDER

The defacto complainant is one Radha, who is working as
Waterwoman in Kovilpalayam Panchayat within the limits of
Kinatukkadavu Police Station.

2. It is stated in the First Information Report [for short, 'FIR'] and the charge sheet that on 08.4.2007 at about 8.30 am, while the said Radha went to the house of the petitioner / accused to serve the Property Tax Demand Notice, the petitioner is alleged to have held abused him in filthy language besides criminally intimidating with stone and hence, he is punishable under Sections 506 (ii) and 294 (b) IPC.

3. Learned counsel appearing for the petitioner strenuously contends that the defacto complainant, who is a waterwoman in the Panchayat, is not at all authorised to serve any notice to anybody

else in the Panchayat and only the Panchayat Assistant is prescribed in the relevant Rules. Rule 29 of the Tamil Nadu Village Panchayats (Assessment and Collection of Taxes) Rules, 1999 [for short, 'Rules'] states that any tax or fee due to village panchayat shall be collected by the Panchayat Assistant or Part time Clerk of the Panchayat appointed for this purpose.

4. It is the next limb of contention of the learned counsel for the petitioner that the mode of collection as stipulated in the above said Rules has also been violated by the concerned authorities by employing the defacto complainant to serve the demand notice on him. He draws the attention of this Court to Rule 30 of the Rules which states about the mode of collection. He also states that the copies furnished to the petitioner by the Judicial Magistrate Court No.I, Pollachi, does not contain the demand notice and in the absence of demand notice, the prosecution could not establish its stand. He further submits that since the case is a summons case before the Judicial Magistrate Court, there is no question of framing charge and no application for discharge of the case could be filed and hence, he has come forward with this petition.

5. Learned Government Advocate (Criminal Side), repelled the contentions stating that the charge sheet is in order containing the allegations as to the specific offences as mentioned in the FIR and there is nothing wrong in the charge sheet so as to invite quashment of the notice.

6. I have heard the arguments of Mr.C.Vijayakumar, learned counsel appearing for the petitioner and Mr.A.Saravanan, learned Government Advocate (Criminal side) representing the respondent and have bestowed my careful attention to the rival submissions.

7. In the first place, the petitioner could not take recourse to Rules 29 and 30 of the Rules since the matter is not before the Court with regard to the challenging of the demand notice and mode of collection. It is the further contention of the petitioner that the demand notice does not contain the quantum of property tax as well as the period for which it is proposed to be collected. But the fact remains that the occurrence had happened consequent upon the visit of the defacto complainant to the house of the accused for service of notice. The petitioner has uttered filthy language at the defacto complainant for which the charges have been duly drafted and laid before the Judicial Magistrate Court.

8. In this connection, the learned counsel for the petitioner garners support from the decision of the Supreme Court reported in 1997 (1) Crimes 4 (SC) [State of Madhya Pradesh v. Dr.Krishna Chandra Saksena] in which seven parameters have been formulated on the basis of which, quashing of any proceedings may be ordered and

among which, the learned counsel for the petitioner relies upon the seventh illustrating circumstance which reads thus:

"Where a criminal proceedings is manifestly attended with mala fide and / or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

9. As far as the case on hand is concerned, there is nothing on record to attribute any mala fide intention either on the part of the Panchayat authority or the defacto complainant and it appears to be not a malicious prosecution. There is no question of wreaking vengeance against the petitioner with a view to spite him due to private and personal grudge. There is no contention on the part of the petitioner that there was hatred between the persons. Under these circumstances, the petition does not merit any consideration. The petitioner has to face trial and he has to agitate the matter on the strength of his contentions before the trial Court.

10. In fine, the petition is dismissed. Consequently, connected Miscellaneous Petitions will stand closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The Inspector of Police,
Kinathukkadavu Police Police Station,
Pollachui Taluk, Coimbatore

2. ThPublic Prosecutor
High Court, Madras.

1 cc to Mr.C. Vijayakumar, Advocate, sR. 54670

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