(2007) 08 MAD CK 0075

In the Madras High Court

Case No : Criminal R.C. No''s. 800 and 801 of 2005

Venkatachalam and Saroja APPELLANT

Vs

The Executive Officer, Selection Grade, Town Panchayat RESPONDENT

Date of Decision : 08-08-2007

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 313, 357
Tamil Nadu District Municipalities Act, 1920 — Section 30(2), 36(1)

Citation : (2007) 08 MAD CK 0075

Hon'ble Judges : A.C. Arumugaperumal Adityan, J

Bench : Single Bench

Advocate : V. Kathirk, for the Appellant; Jayaprakash Narayanan, for the Respondent

Final Decision : Dismissed

Judgement

A.C. Arumugaperumal Adityan, J.—Both revisions were heard in full on 31.7.2007 itself. Only on the representation made by the learned

Counsel Mr. Karthick appearing for the revision petitioners, the matter was adjourend from 31.7.2007 to 03.08.2007. Thereafter, it was further

adjourned to 7.8.2007 and from 7.8.2007 to today ie. 8.8.2007. Today there is no representation for the revision petitioners. Since I have heard

both the counsel for the revision petitioners as well as the counsel for the respondent in full, my verdict is as follows:

The order passed in C.A. No. 43 of 2004 on the file of the learned Additional District and Sessions Judge, Vellore, modifying the order of the trial

Court in STC. No. 286 of 2002 on the file of the Judicial Magistrate No. IV, Tirupathur, by sentencing a fine of Rs. 5,000/- instead of Rs. 6,000/-

u/s 30(2) and 36(1)(a) & (b) of the (IVth Schedule) Tamil Nadu District Municipalities Act, and directing that out of the fine amount of Rs.

5,000/- a sum of Rs. 4.500/- to be paid as compensation to the complainant-Municipality u/s 357 of Cr.P.C., is under challenge before this Court

in Cr.R.C. No. 800 of 2005.

2. The order passed in C.A. No. 8 of 2004 on the file of the learned Additional District and Sessions Judge, Vellore, modifying the order of the

trial Court in STC. No. 284 of 2002 on the file of the Judicial Magistrate No. IV, Tirupathur, by sentencing a fine of Rs. 5,000/- instead of Rs.

6,000/- under Rules 30(2) and 36(1)(a) & (b) of the (IVth Schedule) Tamil Nadu District Municipalities Act, and directing that out of the fine

amount of Rs. 5,000/- a sum of Rs. 4,500/- to be paid compensation to the complainant-Municipality u/s 357 of Cr.P.C., is under challenge

before this Court in Cr.R.C. No. 801 of 2005.

3. 3(a) The short facts of the case of the complaint is that the accused in STC. No. 284 of 2002 is the mother of the accused in STC. No. 286 of

2002, a discharged army man. The accused in STC. No. 284 of 2002 has failed to pay the property tax for the assessment year 2000-01 and

2001-02 amounting to Rs. 4,518/-, inspite of several demands and attachment notice. Hence, the complainant, the Executive Officer of the

Nattarampalli Municipality, had preferred the complaint against the accused (in STC. No. 286 of 2002)under Rule 30(2) and 36(1)(a) & (b) of

the (IVth Schedule) Tamil Nadu District Municipalities Act. A similar complaint was preferred by the same Executive Officer under Rule 30(2) and

36(1)(a) & (b) of the (IVth Schedule) Tamil Nadu District Municipalities Act, against the son of the accused in STC. No. 284 of 2002, who is the

accused in STC. No. 286/2002, a discharged army man, for the arrears of property tax for the assessment year 2000-01 and 2001-02 amounting

to Rs. 4,338/-, inspite of several demand notices and finally an attachment notice.

3(b) The learned trial judge had convicted and sentenced the accused under Rule 30(2) and 30(1)(a) & (b) of the (IVth Schedule) Tamil Nadu

District Municipalities Act and sentenced the accused in both the cases to pay a fine of Rs. 6,000/- and directed that a sum of Rs. 4,500/- is to be

paid towards compensation in STC. No. 286 of 2002 to the complainant and a sum of Rs. 4,600/- is to be paid towards compensation in STC.

No. 284 of 2002 to the complainant out of the fine amount. Against the findings of the learned trial Judge the accused in STC. No. 284 of 2002

had preferred an appeal in C.A. No. 8 of 2004 and the accused in STC. No. 286 of 2002 had preferred an appeal in C.A. No. 43 of 2004

before the Additional District and Sessions Judge, FTC, Vellore. The learned first appellant Judge has dismissed both the appeals, which

necessitated the accused in STC. No. 286/2002 to prefer Crl.R.C. No. 800 of 2005 and the accused in STC. No. 284 of 2002 to prefer.

Crl.R.C. No. 801 of 2005 before this Court.

4. Bebore the trial Court P.W.1 to P.W.3 were examined in both the STCs and Ex.P.1 and Ex.P.2 were marked.

5. In STC. No. 286/2002:

5(a) P.W.1 is the Executive Officer of the Complainant-Nattrampalli Municipality. According to him, the accused is having a house and a shop

within the Municipal jurisdiction of Nattrampalli and property tax assessment number for the said house is 1278 and for the shop is 1279 and that

the accused had not paid Rs. 330/- towards the property tax due from 1.10.2000 to 31.3.2001 for the house and Rs. 4,008/- being the property

tax for the shop from 1.10.2000 to 31.3.2001 and a demand notice was issued under Ex.P.1 to the accused and an attachment notice under

Ex.P.2 was also served on the accused by affixture, since the accused has failed to pay the above said property taxes due to the complainant-

Municipality. The complainant took steps for attachment by sending notice for attachment of the properties of the accused, which was vehemently

opposed by the accused. The complainant expecting law and order problem, had preferred the complaint before the trial Court.

5(b) P.W.2 is the Office Assistant of the complainant, who has served both Ex.P.1 and Ex.P.2 by way of affixture.

5(c) P.W.3 is the Supervisor of the complainant Municipality, who had accompanied P.W.2 while serving Ex.P.1 and Ex.P.2 notices by way of

affixture.

5(d) When incriminating circumstances were put to the accused u/s 313 of Cr.P.C., the accused would deny his complicity with the crime. He has

examined himself as D.W.1. Through him Ex.D.1 and Ex.D.2 were marked.

6. In STC. No. 284/2002:

6(a) The Executive Officer of the Nattrampalli Municipality was examined as P.W.1. According to him, the accused Saroja, the mother of the

accused in STC. No. 286 of 2002, is owning four houses within the jurisdiction of Nattrampalli municipality and the property tax assessment

numbers for the said houses are 1460, 1462, 1463 & 1464 and that the property tax due for the above said house for the period from 1.10.2000

to 31.3.2002 comes to Rs. 4,518/- and a demand notice was issued to the accused under Ex.P.1 and inspite of the service of Ex.P.1-notice the

accused had failed to pay the property tax. Hence, an attachment notice was issued under Ex.P.2. Since the accused had refused to receive the

said attachment notice, the same was served by way of affixture on 23.2.2002 at 11.30 am. Since there was commotion at the time when P.W.2

& P.W.3 went and serve the attachment notice, to avoid law and order problem, the complaint was preferred by P.W.1.

6(b) P.W.2 is the Office Assistant of the complainant of Nattrampalli municipality, who had served Ex.P.1 and Ex.P.2 notices to the accused by

way of affixture on 16.3.2002 and 22.3.2002 respectively. According to him, the accused had refused to receive the attachment notice and also

restrained him from serving the notice.

6(c) P.W.3 is the Supervisor of the Complainant-Municipality, who had accompanied P.W.2 to the house of the accused at the time when Ex.P.1

and Ex.P.2 were served by way of affixture.

6(d) When incriminating circumstances were put to the accused u/s 313 of Cr.P.C., she would deny her complicity with the crime. She has

examined herself as D.W.1 and marked Ex.D.1.

7. After going through the evidence both oral and documentary, the learned trial judge has convicted the accused under Rule 30(2) and 36(1)(a) &

(b) of the (IVth Schedule) Tamil Nadu District Municipalities Act and sentenced a fine of Rs. 6,000/- each against the accused in both STCs. The

appeals preferred by the accused in C.A. No. 43 & 8 of 2004 before the Additional District and Sessions Judge, FTC, Vellore, were also

dismissed by the first appellate Court, which necessitated the accused in STC. No. 286 of 2002 to prefer Crl.R.C. No. 800 of 2005 and the

accused in STC. No. 284 of 2002 to prefer Crl.R.C. No. 801 of 2005 before this Court.

8. Now the point for determination in these revisions is whether there is any error apparent on the face of the records in following the provisions

under Rule 30(2) and 36(1)(a) & (b) of the (IVth Schedule) Tamil Nadu District Municipalities Act by the complainant to warrant any interference

with the findings of the Courts below?

9. The Point: Heard Mr. Karthik appearing for the revision petitioner in both the revisions and Mr. Jayapraksh Narayanan appearing for the

respondent in both the revisions and considered their respective submissions. The learned Counsel for the revision petitioner Mr. Karthik would

contend hat to initiate proceedings under Rule 30(2) of the (IVth Schedule) Tamil Nadu District Municipalities Act the complainant must show that

the attachment proceedings initiated by the complainant could not be effected due to the intervention of the accused-assesses. The learned Counsel

Mr. Jayaprakash Narayanan appearing for the respondent in both the revisions would focus the attention of this Court to the evidence of P.W.2

and P.W.3, who have categorically stated before the trial Court that since the demand notice under Ex.P.1 in both STCs were refused to receive

by the accused, the same were served by way of affixture on the doors of the respective houses of the accused. Even after the service of Ex.P.1-

demand notice, the accused never bothered to pay the arrears of property tax, which necessitated the Nattrampalli Municipality/complainant in

both the STCs to initiate attachment proceedings against the accused under Ex.P.2. When P.W.2 and P.W.3 went to serve Ex.P.2-attachment

notice to the accused they created law and order problem, which necessitated the complainant to approach the criminal Court to set the criminal

law in motion. The defence taken by the accused in STC. No. 286 of 2002 is that he is an Ex-exmployee of Indian Army. But there is no material

placed before this Court to show that Ex-army employees are exempted from the levy of property tax. The defence taken by the accused in

STC.284/2002, the mother of the accused in STC. No. 286 of 2002, is that the Municipality has assessed and levied the tax of Rs. 4008/- to the

house when Electricity Board was occupying the same as a tenant and subsequently the Electricity Board has vacated. If it is so, the remedy open

to the accused in STC. No. 284 of 2002 is to approach the appropriate authority for reduction of levy of property tax. Without resorting to such a

Course, it is not open to the accused to prevent the complainant-Nattrampalli Municipality from proceeding with the attachment of the property as

contemplated under law. At the fag end of the argument, the learned Counsel Mr. Karthik represented during the last hearing that the government

has already acquired the properties and the property tax levied against the accused have already been adjusted from the sale proceeds. But there

is no material produced to show the same. Under such circumstances, I do not find any reason to interfere with the well considered orders of the

learned first appellate Judge in C.A. No. 43 & 8 of 2004 on the file of the Additional District and Sessions Judge, FTC, Vellore, to warrant any

interference from this Court. Point is answered accordingly.

10. In the result, Crl.R.C. No. 800 & 801 of 2005 are dismissed confirming the judgments in C.A. No. 43 & 8 of 2004 respectively on the file of

the Additional District and Sessions Judge, FTC, Vellore.