

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2017

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Cr1.O.P.No.23031 of 2012

and

M.P.Nos.1 and 2 of 2012

1.P.Arumugam

2.P.Dharuman

... Petitioners/Accused

Vs.

State by: Inspector of Police,
Diyagadurgam Police Station,
Villupuram District,
(Cr.No.510 of 2010)

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Code of Criminal Procedure Code, to call for the records relating to C.C.No.58 of 2012 pending on the file of learned Judicial Magistrate, Kallakurichi and quash the same.

For Petitioners:Mr.G.Sankaran

For Respondent :Mr.Muthukumar

Assistant Public Prosecutor

JUDGMENT

This Criminal Original Petition is filed by the petitioners/accused by invoking the inherent powers of this Court under Section 482 of Cr.P.C. to quash the final report laid in C.C.No.58 of 2012 on the file of the Learned Judicial Magistrate, Kallakurichi.

2.The case of the prosecution is that on 03.12.2011 the petitioners herein / accused destroyed the black gram field of the defacto complainant by taking advantage of his absence by ploughing Tractor. The said incident was informed to the defacto complainant by one Munusamy, S/o. Kaluvan. Since the defacto complainant was not in station and he came to the village only on 14.12.2012 and immediately on his return he went to the field where the petitioners herein was there and the defacto complainant asked the petitioners as to why they destroyed his field on 03.12.2011. For that the petitioners herein threatened the defacto complainant with dire consequences and scolded with filthy language which was witnessed by one Palanivel and Munusamy. For the said incident the defacto complainant lodged a complaint against the petitioners herein before the respondent

police and the same was registered in Crime No.510 of 2011 for the offences under Sections 294(b), 427 and 506(ii) of IPC. After investigation the respondent police filed a final report before the Learned Judicial Magistrate, Kallakurichi and the same was taken on file in C.C.No.58 of 2012.

3.Challenging the above said final report the petitioners herein filed this Criminal Original Petition.

4.It is the contention of the Learned Counsel for the petitioners that the above complaint by the defacto complainant is a false one which could be established from 161(3) Cr.P.C. statement of the alleged eye witnesses namely Palanivel and Munusamy. It is further contented that according to the prosecution version JCB Machine was used to destroy the black gram field of the defacto complainant, whereas, according to the version of the eye witnesses Tractor was used to destroy the field. Further the alleged eye witnesses namely Munusamy and Palanivel did not mention about the occurrence taken place on 03.12.2011 within their 161(3) statement. All the above aspects clearly prove that the prosecution has not conducted proper investigation and laid a false charge sheet against the petitioners herein. Hence they prayed to quash the above C.C.

5.Per contra, the Learned Assistant Public Prosecutor would submit that the prosecution has conducted the investigation in a manner known to law and after thorough and proper investigation came to the conclusion that there is a prima facie case against the petitioners herein for their involvement in the above said occurrence and laid the final report against them and to prove the same it is required full fledged trial. It should not be quashed at the threshold itself without giving opportunity to the prosecution to prove their case.

6.I have heard Mr.G.Sankaran, learned counsel for the petitioners and Mr.Muthukumar, learned Assistant Public Prosecutor for the respondent and perused the entire materials available on record.

7.It is seen from the records that according to the prosecution the alleged occurrence taken place on 03.12.2011 and the same was said to have witnessed by one Munusamy and Palanivel. But the perusal of 161(3) statement of the above said eye witnesses to the occurrence not even spoken any single word about the alleged occurrence dated 03.12.2011. That itself would go to show that the version of the prosecution is a false one and in my opinion the occurrence would not have taken place on 03.12.2011. Further, when the incident was informed to the defacto complainant over phone by Munusamy S/o. Kaluvan on 03.12.2011 itself, what prevented the defacto complainant to rush to the scene of occurrence i.e his agricultural field

immediately after the alleged occurrence was intimated to him. The defacto complainant came to the place of occurrence only on 14.12.2011, after more than a delay of 10 days. For that there is no explanation from the prosecution which creates a serious doubt in the mind of this Court with regard to the alleged occurrence.

8. That apart there is a lot of contradiction over the vehicle used to destroy the field of the defacto complainant. In the mahazar prepared by the respondent police it was mentioned that JCB machine was used, but the defacto complainant stated that tractor was used to destroy his field. Again there is a contradiction in respect of the weapon used by the petitioners/accused to threaten the defacto complainant. According to the defacto complainant a sword was used by the accused on 14.12.2011, whereas the eye witnesses stated that knife was used to threaten the defacto complainant.

9. Apart from that already there is a Civil dispute pending between the defacto complainant and accused in respect of the property involved in this case and in this regard a civil suit is also pending. Further the perusal of records disclosed that the accused gave a complaint to the Superintendent of Police, Vilupuram District against the defacto complainant even prior to the date of occurrence i.e on 16.11.2011 itself and in which he has specifically mentioned that there is a life threat to the petitioners herein by the defacto complainant.

10. All the above said facts would clearly demonstrate that the above case is foisted against the petitioner herein only to circumvent the civil dispute. In the view of the above I have no hesitation to hold that the prosecution has not conducted the investigation properly and hence I am of the clear view that it is a fit case to exercise the inherent powers conferred to this Court under Section 482 of Cr.P.C. to quash the impugned final report.

11. In the result, this Criminal Original Petition is allowed and the above charge sheet relating to C.C.No.58 of 2012, pending on the file of the learned Judicial Magistrate, Kallakurichi stands quashed. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

vs

To

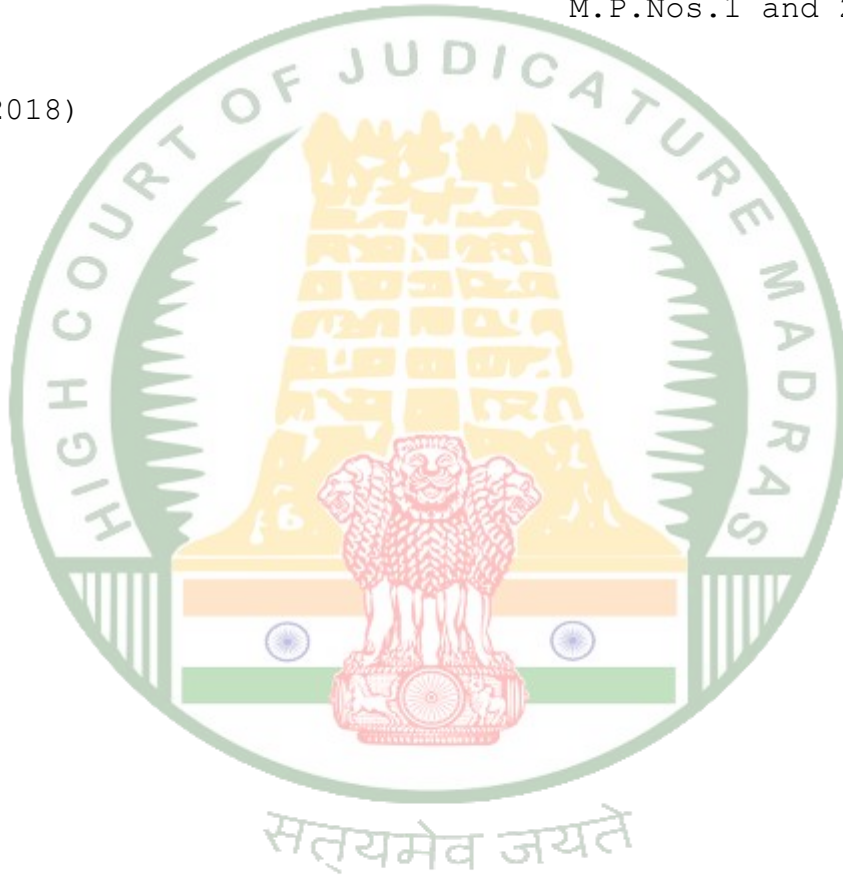
1. The Judicial Magistrate, Kallakurichi.

2. The Public Prosecutor
High Court, Madras 104.

+1 CC to Mr.G.Sankaran, Advocate sr 41077.

CrI.O.P.No.23031 of 2012
and
M.P.Nos.1 and 2 of 2012

NMI (CO)
SP(19/12/2018)



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