

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2018

CORAM

THE HONOURABLE MR.JUSTICE P. RAJAMANICKAM

CRL.O.P.No.8063 of 2013

and

M.P.No. 1 of 2013

1. Thennarasu
2. Periyannan
3. Thangarasu
4. Manankutti

...Petitioners/A1 TO A4

Vs

- 1.The Sub Inspector of Police,
Gingee Police Station,
Gingee, Villupuram District.
(Crime No.270/2009)

- 2.A.Amaravathi
(impleaded the second respondent
as per the order of this Court
dated 02.04.2013 made in
Crl.OP.No.8063 of 2013)

....Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records in C.C.No.349 of 2009 on the file of Judicial Magistrate, Gingee and quash the same.

For Petitioners : M/s.U.Venkatesan
for Respondents : M/s.T.Shunmuga Rajeswaran
Government Advocate(Crl.Side) for R1

No appearance for R2

O R D E R

This petition has been filed by the accused Nos.1 to 4 to quash the proceedings in C.C.No.349 of 2009 on the file of the Judicial Magistrate, Gingee.

2. The learned counsel for the petitioners has submitted that the first respondent herein has filed a charge sheet against the petitioners herein stating that the petitioners

herein have committed theft of viral fish weighing about 1000 kilograms in the Periya Eri, Thaiyur between 12.00 to 2.00 p.m on 28.02.2009 and that they have sold the same for Rs.120/- per k.g and caused loss to the tune of Rs.1,20,000/- to the Thaiyur Village Panchayat. He further submitted that in the complaint, the second respondent has not stated that she has seen the occurrence directly. She also not stated in the complaint, how she came to know about the occurrence. He further submitted that only in the statement recorded under Section 161 Cr.P.C., the second respondent has stated that she came to know about the occurrence through the witnesses Mr.Elumalai and Mr.Muthan, but, the aforesaid witnesses also have not stated in their statements that they have seen the occurrence directly. He further submitted that the first respondent has not seized any material objects to show that the petitioners have committed any offence under Section 379 I.P.C. He further submitted that the first respondent has filed a charge sheet without any materials and hence, he requests to quash the proceedings against the petitioners in C.C.No.349 of 2009.

3. The learned Government Advocate (Criminal side) who is appearing for the first respondent has submitted that even though in the F.I.R, the second respondent has not stated that she has seen the occurrence, in the statement recorded under 161 Cr.P.C, she has categorically stated that the occurrence has been seen by the witnesses Mr.Elumalai and Mr.Muthan. He further submitted that the witnesses Elumalai and Muthan have categorically stated in their statements that they have seen the occurrence and hence, based on their statements, charge sheet has been filed against the petitioners herein. He further submitted that the prosecution has produced enough materials prima facie, to show that the petitioners herein have committed offence under Section 379 I.P.C, and he requested to dismiss this petition.

4. Though notice was served to the second respondent, she did not appear either in person or through counsel.

5. The petitioners herein are facing trial for the offence said to have been committed by them under Section 379 I.P.C. According to the learned Government Advocate (Criminal Side), the witnesses Mr.Elumalai and Mr.Muthan have categorically stated in their statements which were recorded under Section 161 Cr.P.C that they have seen the occurrence and that the petitioners herein have committed theft of 1000 kilograms viral fish in the aforesaid lake. A perusal of the records shows that based on the complaint given by the second respondent, F.I.R has been registered in the above case. In the said F.I.R, no where it is stated that anyone has seen the occurrence. In the complaint, the second respondent has categorically stated that

the petitioners herein have committed theft of 1000 kilograms of viral fish in the lake without the knowledge of the public and also the Panchayat administration. So, it is clear that no one has seen the occurrence. Only in the statement recorded under Section 161 Cr.P.C, she has stated that she came to know about the occurrence only through the witnessess Mr.Elumalai and Mr.Nanthan.

6. The statement of the witness Mr.Elumalai would show that he also has not seen the occurrence directly. He has stated that these petitioners have committed theft of 1000 kilograms of viral fish and sold the same for Rs.1,20,000/-, but, he has not specifically stated that he has seen the occurrence. He further stated that the aforesaid occurrence known to one Mr.Nanthan also. The statement of witness Mr.Nanthan would show that he also has not personally seen the occurrence. So, it is clear that there is no material to implicate these petitioners in the above case. Therefore, this Court is of the view that the continuation of the proceedings against the petitioners herein would amount to abuse of process of law. Therefore, the proceedings against the petitioners herein in C.C.No. No.349 of 2009 on the file of the Judicial Magistrate, Gingee are liable to be quashed. The learned Government Advocate has submitted that during pendency of this petition, the third petitioner namely Thangarasu died on 13.12.2013. He has produced a copy of Death Certificate also.

7. In the result, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed. The proceedings against the petitioner Nos.1, 2 and 4 herein/Accused Nos.1,2 and 4 in C.C.No.349 of 2009 on the file of the Judicial Magistrate, Gingee, are quashed. Since, the petitioner No.3/Accused No.3 died, charge against him is abated.

Sd/-

Deputy Registrar

//True Copy//

Sub Assistant Registrar

vv/tsg

To

1. The Judicial Magistrate,
Gingee.

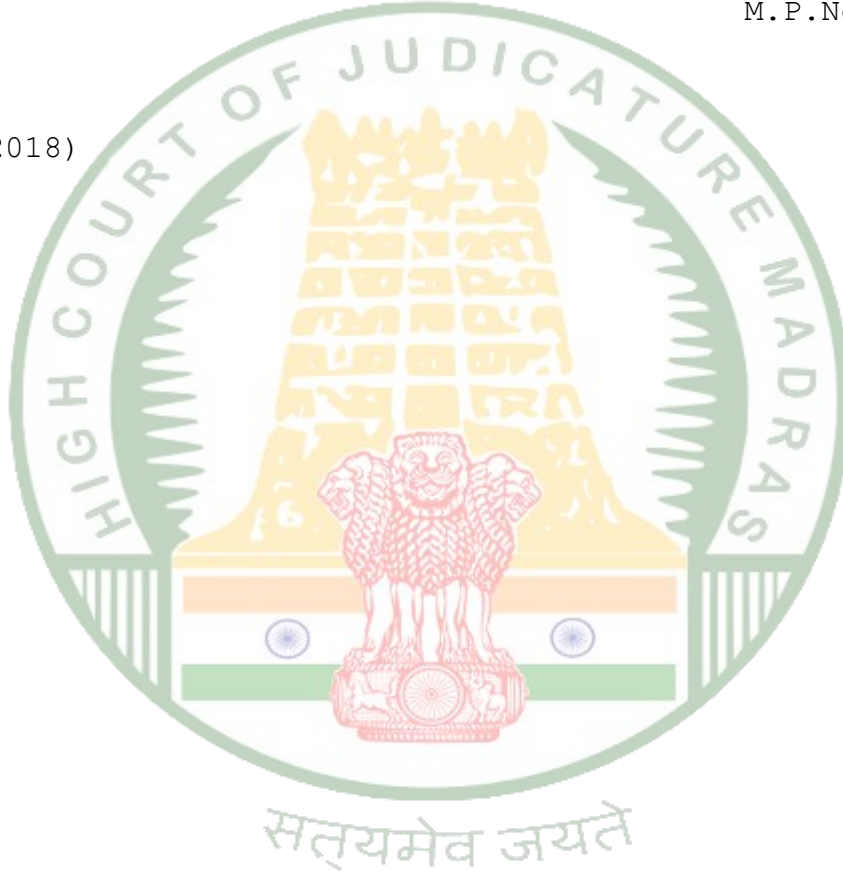
2. The Sub Inspector of Police,
Gingee Police Station,
Gingee, Villupuram District.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.U.Venkatesan, Advocate, S.R.No. 56283

CRL.O.P.No.8063 of 2013
and
M.P.No.1 of 2013

SSV(CO)
GN(20/09/2018)



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