

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.07.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.17787 of 2018
and Crl.M.P.Nos.9220 & 9221 of 2018

1. Kumarasamy
2. Tamilselvan
3. Vinothkumar ... Petitioners

Vs

1. The State Rep. by
Inspector of Police,
Sankari Police Station,
Salem District.

2. Venkatasalam ... Respondents

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records in C.C.No.37/2018, pending on the file of Judicial Magistrate No.-1, Sankari, Salem District, quash the charge sheet and pass such other further orders as this Hon'ble Court.

For Petitioners : Mr.R.Balakrishnan
For Respondents : Ms.Kritika Kamal (for R1)
Govt. Advocate [Crl. Side]

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.37 of 2018 on the file of the Judicial Magistrate Court No.1, Sankari, Salem District.

2.On the complaint given by one Venkatachalam, the respondent Police registered a case in Crime No.640 of 2017 and after completing the investigation, filed a charge sheet in C.C.No.37 of 2018 before the learned Judicial Magistrate No.I, Sankari, Salem District for the offences under Section 435, 294 [b] and 506[2] IPC against the petitioners herein. For quashing which, this petition has been filed.

3. Heard Mr. Balakrishnan, learned counsel for the petitioners and the learned Government Advocate [Crl. Side] appearing for the 1st respondent.

4. Mr. Balakrishnan submitted that there are no prima facie materials against the petitioners, inasmuch as, the entire prosecution is an abuse of process of law. He further contended that even according to the prosecution, the loss was Rs.100/-. That apart, he submitted that there is a border dispute between the petitioners and the de facto complainant, on account of which, a false complaint has been given.

5. Per contra, the learned Government Advocate [Crl. Side] refuted the contentions.

6. On a reading of the charge sheet, it is alleged by the de facto complainant that on 31.12.2017, around 07.30 a.m., the accused set fire to the coconut trees in the land of the de facto complainant and when the de facto complainant and his family members intervened, they were abused and threatened.

7. Mr. Balakrishnan submitted that the Police have not even recovered the knife, with which the accused said to have threatened.

8. The fact remains that the petitioners have been released on anticipatory bail and therefore, there is no possibility of custodial interrogation and hence, there was no recovery. Just because the Police had failed to recover the weapons, it cannot be stated that the incident had never taken place. Apart from the de facto complainant, there are three witnesses, who have spoken to about the incident.

9. Mr. Balakrishnan submitted that all the three witnesses are relatives of the de facto complainant and they are interested witnesses.

10. The fact remains that the incident had taken place in the land of the de facto complainant at 07.30 a.m. Obviously, only the relatives of the de facto complainant will be available there. Just because the witnesses are related to each other, the testimony cannot be disbelieved without anything more. Since there are prima facie materials for the prosecution to proceed, this petition is dismissed with liberty to the petitioner to raise all the points before the trial Court, after the charges are framed. Consequently, connected Miscellaneous Petitions are closed.

11.Mr.Balakrishnan submitted that Tamilselvan/A2 and Vinothkumar/A3 are working in Chennai and their presence before the trial Court may be dispensed with.

12.Accepting his submission, petitioners 2 and 3 are directed to surrender before the trial Court within two weeks from the date of receipt of a copy of this order. Thereafter, they would file an application under Section 436[1] of Cr.P.C. for bail. The trial Court shall release them on bail, on the same day, on executing a bond for Rs.10,000/- with two sureties. Thereafter, they shall appear to receive the complaint under Section 207 of Cr.P.C., to answer the charges, for questioning under Section 313 of Cr.P.C. and on the date of judgment. For other hearings, if they file an application under Section 317 of Cr.P.C., undertaking that they will not dispute their identity and that their counsel will cross-examine the prosecution witnesses on the day, they are examined in-chief, without adopting any dilatory tactics, their presence can be dispensed with.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.1,
Sankari, Salem District.

2.The Inspector of Police,
Sankari Police Station,
Salem District.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.BALAKRISHNAN, Advocate, S.R.No. 46023

CRL.OP.No.17787 of 2018

TR(23/07/2018)