



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.04.2018

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THE HONOURABLE MRS. JUSTICE R.THARANI

Crl.R.C.(MD)No.441 of 2017
and
Crl.M.P.(MD)No.4578 of 2017

1.K.Mohammed Abdulla
2.S.Ahamed Rafeesyed Ismail Gori ... Petitioners

Vs.

State Rep. by the Inspector of Police,
Palani Town Police Station,
Dindigul District.
(Crime No.165 of 2015) ... Respondent

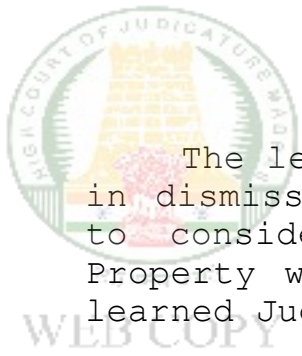
PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records in Crl.M.P.No.2533 of 2017 dated 17.04.2017 in C.C.No.406 of 2015 order passed by the learned Judicial Magistrate, Palani and set aside the same.

For Petitioners	: Mrs.Seeni Ammal for Mr.T.Lajapathi Roy
For Respondent	: Mr.K.Sumbulinga Bharathi Additional Public Prosecutor

ORDER

This petition has been filed challenging the order passed by the learned Judicial Magistrate, Palani in Crl.M.P.No.2533 of 2017 dated 17.04.2017.

2.On the side of the petitioners, it is stated that the criminal case is registered against the petitioners under Sections 147, 148, 457, 380 and 506(i) of I.P.C. It is stated that the property is a wakf property and Al who is the mutawalli of the Madina Masijid Mosque and Mutawalli is entitled to engage the members and the other accused are the members of the Jamath engaged by the Mutawalli. There is no question of theft as the Mutawalli is entitled to handle the cash of the Madina Masjid Mosque. Only to evade from the civil dispute, the complainant has lodged this complaint. There is no *prima facie* case is made out.



The learned Judicial Magistrate has come to a wrong conclusion in dismissing the discharge petition. The trial Court has failed to consider that Mutawalli neet not trespass into the Wakf Property which is under his custody and the order passed by the learned Judicial Magistrate, Palani is to be set aside.

3.On the side of the respondent, it is stated that totally 14 persons involved in the offence and the petitioners are arrayed as A10 and A11. The complainant is running a Mahima Masjid Educational Institution for Muslim children and the accused trespassed into the Masjid and had break open the lock with hammer and stolen money from the institution. The allegation levelled by the petitioners is not true and the learned Additional Public Prosecutor has filed a copy of the judgment rendered in **P.Vijayan Vs. State of Kerala** reported in **CDJ 2010 SC 110**, wherein, it has been held that whether the materials at the hands of the prosecution are sufficient or not are matters for trial, whether the trial will end in conviction or acquittal is also immaterial. At this stage, it cannot be claimed that there are no sufficient grounds for proceeding against the petitioners and the trial Court has rightly dismissed the discharge petition.

4.On the side of the petitioners, it is further stated that one of the petitioner is working as a Government Servant and the second petitioner is running a optical shop who intends to get passport. It is further stated that A1 who is the Mutawalli of Madina Arabic Pada Salai, Palani. The copy of the Registration Certificate dated 25.06.2014 was marked by the petitioners.

5.Records perused.

6.The period of the post of Mutawalli or whether A1 is still continuing in the post or not stated in the petition. The civil case in W.O.P.No.2 of 2014 is pending before the Wakf Tribunal, Dindigul, wherein, complainant has claimed that he is the Mutawalli of the Educational Institution. The occurrence said to have taken place on 09.12.2014. There is a delay in lodging the complaint. It is seen from the records that the F.I.R. is registered after the directions of this Court in Crl.O.P.(MD) No.22436 of 2014, dated 25.12.2015. Whether the petitioners are the members of the Masjid and whether the allegation against the petitioners are true or false can be decided only after completion of the trial and therefore, there is nothing wrong for the petitioners to face the trial.

7.As per the citation relied upon by the learned Additional Public Prosecutor, there is no sufficient ground made out for allowing the revision petition against the order passed in the discharge petition at this stage and there are no grounds made out to interfere with the order passed by the learned Judicial



Magistrate, Palani. Hence, this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar(w)

Sub Assistant Registrar

To

1. The Judicial Magistrate, Palani.
2. The Inspector of Police,
Palani Town Police Station,
Dindigul District.

RMI

VB/KKR/SAR3/27/04/2018/3P/3C

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