

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 25.06.2018****CORAM :****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****Cr1 OP(MD)No.18460 of 2013****and****MP(MD)Nos.1 & 2 of 2013****WEB COPY**

1.M.P.Ramasamy

2.Sankaranarayanan

3.Subbiah

4.M.S.Perumal

5.Ponnammal

... Petitioners/Accused 1 to 5

Vs.

1. The Inspector of Police,
Perumalpuram Police Station,
Tirunelveli.

... 1st Respondent/Complainant

2. Premnath

...2nd Respondent/Defacto Complainant

Prayer : This Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the records and quash the proceedings in C.C.No.207 of 2013, pending on the file of the Judicial Magistrate No.I, Tirunelveli.

For Petitioners	:	Mr.P.Samuvel Gunasingh
For Respondents	:	Mr.A.Robinson, Govt. Advocate for R1 Mr.R.Anand for R2

ORDER

The petitioners herein and the second respondent formed a partnership firm for running a hospital known as Karthick Nursing Home in Tirunelveli. The partnership deed was executed on 05.02.2010. It appears that dispute broke out among the partners. The second petitioner herein and the second respondent are medical professionals. The second respondent lodged a complaint against the petitioners leading to registration of Crime No.147 of 2013 on the file of the Perumalpuram Police Station, Tirunelveli. The final report was filed and taken cognizance by the learned Judicial Magistrate No.I, Tirunelveli in C.C.No.207 of 2013. To quash the same, this Criminal Original Petition has been filed.

2.Heard the learned counsel on either side.

3.As rightly pointed out by the learned counsel for the petitioner, the occurrence in question had taken place on 26.01.2013 whereas an information was lodged only on 15.03.2013. During this intervening period, the petitioners had given a criminal case against the second respondent herein.



4. Therefore, this Court is of the view that the present complaint has been given more as a counter blast and to wreak vengeance on the petitioners. It is also seen that nowhere has it been alleged that all the five petitioners herein were present together and committed the offences in question. To make out a case of unlawful assembly, there must be a physical presence of five persons. In this case, such is not the case. Ingredients are not available to make out the offence under Section 147 of IPC. This Court is also of the view that the question of trespass will not at all arise. These petitioners are partners of the firm. It is running a hospital in question. Therefore, all the partners are entitled to enter the premises and hence, the offence under Section 448 IPC is also not made out.

5. It is further alleged by the second respondent that there has been misappropriation of the fee amount collected from the patients. This Court is of the view that this issue can be resolved in the civil proceedings. The learned counsel for the second respondent submitted that there is an arbitral clause in the partnership deed. Therefore, it is only just and proper that the issue regarding accounting and appropriation are resolved through the said mechanism. Therefore, continuing the impugned prosecution would only amount to an abuse of legal process. Hence, the impugned prosecution in C.C.No.207 of 2013 on the file of the Judicial Magistrate No.I, Tirunelveli stands quashed. This Criminal Original Petition is allowed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.I, Tirunelveli.
2. The Inspector of Police,
Perumalpuram Police Station, Tirunelveli.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

SKM

VB/SB/SAR3/03.07.2018/2P/4C

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and
MP (MD) Nos.1 & 2 of 2013
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