



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Cr1.O.P. (MD) No.6390 of 2014

and

M.P. (MD) No.1 of 2014

1.E.Kuthalingam
2.E.Kumar
3.E.Kannan
4.Poomari
5.Mariyammal

... Petitioners / Accused

vs.

1.The State Rep.by
Inspector of Police
Courtalam Police Station
Courtalam, Tenkasi Taluk
Tirunelveli District

... 1st Respondent / Complainant

2.S.Shanmugam

... 2nd Respondent / *De facto* Complainant

PRAYER: Petition is filed under Section 482 Cr.P.C., to call for the records in charge sheet in S.T.C.No.3445 on the file of the Judicial Magistrate Court, Shencottah and quash the same.

For Petitioners : Mr.R.Manimaran

For Respondents : Mr.M.Chandrasekaran
Additional Public Prosecutor for R1
Mr.R.J.Karthick for R2

O R D E R

On the complaint lodged by Shanmugam, the first respondent Police registered a case in Crime No.131 of 2013 and after completing the investigation, have filed Final Report in S.T.C.No.3445 of 2013, before the learned Judicial Magistrate, Shencottah, for the offences punishable under Sections 147, 294(b) and 506(I) I.P.C. against the petitioners herein, for quashing which, this Criminal Original Petition has been filed.

<https://hservices.ecourts.gov.in/hservices/>
2. Heard the learned counsel for the petitioners, the learned Additional Public Prosecutor for the State and the learned counsel for the *de facto* complainant.



3. The learned counsel for the petitioners submitted that the incident in this case had taken place on 14.03.2013, but, the F.I.R. was itself registered only on 03.05.2013 and therefore, the prosecution stands vitiated. He also contended that there was a boundary dispute between the petitioners and the family of the *de facto* complainant, in which, the *de facto* complainant demolished the compound wall that was built by the petitioners, for which, the fifth petitioner gave a complaint, on which, no action was taken by the Police.

4. Per contra, the learned counsel for the *de facto* complainant submitted that on the complaint lodged by the fifth petitioner, a case in Crime No.68 of 2015 was registered and Charge Sheet has been filed in C.C.No.197 of 2015, against the *de facto* complainant before the learned Judicial Magistrate, Shencottah and both the cases, namely, S.T.C.No.3445 of 2013 and C.C.No.197 of 2015 are posted for trial.

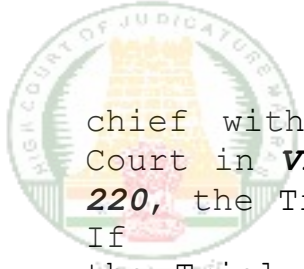
5. This Court gave its anxious consideration to the rival submissions.

6. Just because the Police have registered a case with delay, the prosecution cannot be quashed on that sole ground, especially, when there are *prima facie* materials against the petitioners in the Final Report. On reading the Final Report, it is seen that the petitioners had formed an unlawful assembly on 14.03.2013, around 11.00 a.m. and when the *de facto* complainant was putting up a compound wall in his property, they had abused and threatened him and thereby, prevented him from going ahead with the construction of the wall.

7. In the light of the above, the Charge Sheet in S.T.C.No.3445 of 2013 cannot be quashed at the threshold and therefore, this Criminal Original Petition is dismissed. The petitioners are directed to appear before the Trial Court within a period of four weeks from the date of receipt of a copy of this order and execute fresh bonds under Section 88 Cr.P.C., for Rs.5,000/- (Rupees five thousand only), without sureties.

8. At this juncture, the learned counsel for the petitioners submitted that the presence of the fifth petitioner Mariammal before the Trial Court may be dispensed with as she is 79 years old.

9. Accepting the submission, Mariammal shall be present before the Trial Court at the time of receiving copies under Section 207 Cr.P.C., framing charges, 313 Cr.P.C. examination and on the date of judgment. On all other dates, if Mariammal files an application under Section 317 Cr.P.C., undertaking that she will not dispute her identity and that her counsel will cross-examine the prosecution witnesses in her absence on the day they are examined in



chief without adopting dilatory tactics, as held by the Supreme Court in **Vinod Kumar vs. State of Punjab**, reported in **2015 (3) SCC 220**, the Trial Court may liberally entertain and consider the same. If Mariammal adopts any dilatory tactics, it is open to the Trial Court to insist upon her presence. If Mariammal adopts dilatory tactics, she can be remanded to custody, under Section 309 Cr.P.C., as laid down by the Supreme Court in **State of U.P. vs. Shambhu Nath Singh**, reported in **2001 (4) SCC 667**.

10. It is open to the accused to raise all the defences before the Trial Court, after the charges are framed, since there are *prima facie* materials for framing charges. If any of the accused absconds, a fresh F.I.R. can be registered under Section 229-A I.P.C. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Judicial Magistrate,
Shencottah.

2.The Inspector of Police,
Courtalam Police Station,
Courtalam, Tenkasi Taluk,
Tirunelveli District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.R.J.Karthick, Advocate, SR.No.56480
+1cc to Mr.R.MANIMARAN, Advocate, SR.No.56651

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and

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KK/SAR/09.04.2019/ 3P- 6C