

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 22.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE **V.BHARATHIDASAN****Cr1.O.P. (MD) No.10209 of 2019****and****Cr1.M.P. (MD) .Nos.6429 and 6430 of 2019**1.Muthupandi
2.Parthiban

... Petitioners/Accused No.7 & 8

Versus

1.State represented by
the Inspector of Police,
Irukkangudi Police Station,
Virudhunagar District.
Crime No.215 of 2016

... 1st Respondent/Complainant

2.Karmagakannan

... 2nd Respondent/Defacto Complainant

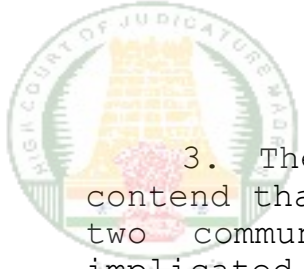
Prayer: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code to quash the S.C.No.25 of 2018 on the file of the learned Subordinate Judge, Sivakasi, Virudhunagar District.

For Petitioners : Mr.N.Mohideen Basha

For R1 : Mr.K.Suyambulinga Bharathi
Additional Public Prosecutor**O R D E R**

The criminal original petition has been filed to quash the criminal proceedings in S.C.No.25 of 2018 on the file of the learned Subordinate Judge, Sivakasi, Virudhunagar District.

2. The petitioners are the accused Nos.8 and 9 in the criminal proceedings and they have been charged with for the offences under Sections 147, 148, 294(b), 323, 324, 307 and 506(ii) of I.P.C. Now, to quash the above criminal proceedings, the present criminal original petition has been filed.



3. The learned counsel appearing for the petitioners would contend that in a temple festival, there was a wordy quarrel between two community peoples and the petitioners have been falsely implicated in this case. From the statement of the witnesses, it could be seen that the de-facto complainant is only the aggressor and he only instigated the accused. That apart, while the de-facto complainant admitted in the hospital, he has given a statement before the Doctor that only one person has attacked him, whereas in the final report, as many as 13 accused have been included as accused. The de-facto complainant also attacked the petitioners and they have filed a complaint against the de-facto complainant and the counter case is pending against the de-facto complainant.

4. The learned Government Advocate (Crl.side) would submit that the petitioners are named accused in the F.I.R. and during investigation, the statements given by all the witnesses clearly indicates that petitioners' have specific overt act. The statement given before the Doctor is not substantial evidence, and that apart, only during the trial, it would be known who are the aggressor and at this stage, the criminal proceedings cannot be quashed on that ground.

5. I have considered the rival submissions and perused the materials available on record.

6. The allegation against the petitioners is that on 09.10.2016, in a temple festival, there was a wordy quarrel between two community peoples regarding playing of song pertaining a particular community, at that time, the petitioners attacked the de-facto complainant, and abused him with filthy language. The occurrence said to have taken place on 09.10.2016 at about 6.30 p.m., and the complaint has been filed on the very same day and in the F.I.R., the petitioners' overt act has been clearly mentioned. During investigation, the statement given by all the witnesses clearly attributed overt act against the petitioners.

7. Now, the contention of the learned counsel for the petitioners is that the de-facto complainant has given a statement before the Doctor that only one person attacked him, and the petitioners have been falsely implicated in this case. As rightly contended by the learned Government Advocate (Crl.side) that the statement given before the Doctor is not a substantial evidence, it can only be used to corroborate or contradict the witnesses. That apart, only during the trial, it would be known whether the petitioners are the aggressor or the de-facto complainant. Admittedly, the counter complaint given by the petitioners also now pending against the de-facto complainant. In the above circumstances, as the materials collected during investigation clearly make out a *prima facie* case against the petitioners, this court is not inclined to quash the criminal proceedings in S.C.No.25 of 2018 on the file of the learned Subordinate Judge, Sivakasi,



Virudhunagar District. Accordingly, this criminal original petition is dismissed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(AD-II)

WEB COPY/TRUE COPY/

Sub Assistant Registrar

To

- 1.The Subordinate Judge,
Sivakasi, Virudhunagar District.
2. The Inspector of Police,
Irukkangudi Police Station,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.N.MOHIDEEN BASHA, Advocate (SR-77395[F] dated 24/07/2019)

Order made in
Cr1.O.P. (MD) No.10209 of 2019

Dated: **22.07.2019**

akv

JM/12.09.2019/3P/5C