



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.09.2019

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl OP(MD)Nos.17488 of 2014 & 4576 of 2015

and

MP(MD)Nos.1 of 2014 & 1 of 2015

WEB COPY

Crl OP(MD)No.17488 of 2014 :

1.Xavier  
2.Darvin  
3.Inigo  
4.Wilson

... Petitioners/Accused Nos.1 to 4

**Vs.**

1.State, rep.by  
The Inspector of Police,  
Marthandam Police Station,  
Kanyakumari District.

...1<sup>st</sup> Respondent/Complainant

2.Karunakaran

... 2<sup>nd</sup> Respondent/Defacto Complainant

**Prayer :** Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in C.C No.58 of 2014 pending on the file of the learned Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District, and quash the same.

For Petitioners : Mr.N.Mohideen Basha

For Respondents : Mr.A.Robinson,  
Government Advocate (crl.side) for R1  
Mr.A.Thiruvadikumar for R2

Crl OP(MD)No.4576 of 2015 :

1.C.Karunakaran  
2.Ashok  
3.Senthil  
4.Ananth

... Petitioners / A1 to A4

**Vs.**

1. State, rep.by  
The Inspector of Police,  
Marthandam Police Station,  
Kanyakumari District.  
(Crime No.747 of 2011)

...1<sup>st</sup> Respondent / Complainant

2.Wilson

... 2<sup>nd</sup> Respondent / Defacto Complainant



**Prayer :** Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in S.T.C No.735 of 2014 on the file of the learned Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District, and quash the proceedings as against the petitioners.

**WEB COPY**

For Petitioners : Mr.A.Thiruvadikumar  
For Respondents : Mr.A.Robinson,  
Government Advocate (crl.side) for R1  
No appearance for R2

**COMMON ORDER**

A provision store in the name and style of P.S.Stores is being run by one Xavier and his brothers at Marthandam Market Road. There is a civil dispute between the petitioners and others on the one hand and Karunakaran on the other. A civil suit is also pending between the parties. While so, an occurrence took place on 12.08.2011. In this regard, Karunakaran lodged a complaint before the Marthandam Police Station leading to registration of Crime No.748 of 2011. Likewise, one Wilson also lodged a complaint before the very same police station against Karunakaran leading to registration of Crime No.747 of 2011. Both the FIRs were taken up for investigation and in Crime No.747 of 2011, final report was filed and the same was taken on file as STC No.735 of 2014 on the file of the Judicial Magistrate No.1, Kuzhithurai. Crime No.748 of 2011 was also taken up for investigation and final report was filed in C.C No.58 of 2014. To quash both the proceedings, the respective accused have filed these petitions.

2.Heard the learned counsel on either side.

3.A mere reading of both the FIRs and the statements recorded under Section 161 of Cr.PC would clearly indicate that on the occurrence date, some installation work was going on and Xavier and others wanted to install a new weighing machine. This according to Karunakaran, is in violation of the status quo order granted by the civil court. A civil suit was pending. Karunakaran appears to have prevented Xavier and others from carrying on with their civil work. If according to Karunakaran, the interim order of the civil court was being breached, the only course open to him was to file a contempt petition. Therefore, I am of the view that making Xavier and his brothers to face the criminal proceedings when they are victims is a clear abuse of legal process.

4.In this view of the matter, the proceedings in C.C No.58 of 2014 stands quashed. Crl OP(MD)No.17488 of 2014 stands allowed. As a logical corollary, Karunakaran and others/the petitioners in Crl OP(MD)No.4576 of 2015 will have to establish their innocence before the court below. It is made clear that all the defences of



the petitioners in Crl OP(MD)No.4576 of 2015 are left open. The observations made in this order are only for the purpose of disposing of Crl OP(MD)No.17488 of 2014 and it will not have any bearing on the trial.

5.The personal appearance of the petitioners in Crl OP(MD) No.4576 of 2015 is dispensed with. Of course, they will have to appear only on three occasions, namely, for answering the charges, examination under Section 313 of Cr.Pc and at the time of pronouncement of judgment. On all other occasions, the petitioners will have to be represented by their counsel. Accordingly, Crl OP (MD)No.4576 of 2015 stands dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS )

**Skm**

To

1. The The Inspector of Police,  
Marthandam Police Station,  
Kanyakumari District.
- 2.The Judicial Magistrate No.I,  
Kuzhithurai, Kanyakumari District.

+2 CC to M/s.A.THIRUVADI KUMAR, Advocate SR-88693 & 88692.  
+1 CC to M/s.N.MOHIDEEN BASHA, Advocate SR-88912.

**Crl OP(MD)Nos.17488 of 2014 &  
4576 of 2015**

**and  
MP(MD)Nos.1 of 2014 & 1 of 2015  
23.09.2019**

CS(14.10.2019) 3P 6C