



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.09.2019

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WEB COPY

CrI OP(MD)No.7595 of 2014

and

MP (MD) No.1 of 2014

- 1.Ramalingam
- 2.Karnan
- 3.Karnan
- 4.Muruganandham
- 5.Sakthi
- 6.Dhanapal
- 7.Bose
- 8.Ramar
- 9.Velu
- 10.Muthuramalingam
- 11.Velu
- 12.Andi Thevar
- 13.Shanmuganathan
- 14.Rajapandi
- 15.Karthikeyan
- 16.Thirukumar
- 17.Annadurai
- 18.Kulanthaivelu
- 19.Ravi
- 20.Kasi



21.Anbalagan

22.Govindhan

23.Karuppasamy

24.Karuppasamy

25.Andi

26.Chandran

27.Malaiyandi

28.Boominathan

29.Shanmugavel

30.Subramani

31.Ramasubbu

32.Karuppiah

... Petitioners / Accused

Vs .

1.State, rep.by

The Deputy Superintendent of Police,
Mudhukulathur Police Station,
Ramanathapuram District.
In Cr.No.86/2001

... 1st Respondent / Complainant

2.Suresh

...2nd Respondent / Defacto complainant

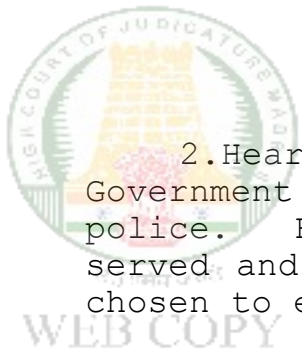
Prayer : Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records relating to the case in PRC No.2 of 2013 pending on the file of the learned Judicial Magistrate, Mudhukulathur and quash the same.

For Petitioner : Mr.R.Venkateshwaran

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

ORDER

The petitioners are stand accused in PRC No.2 of 2013 on the file of the Judicial Magistrate, Mudhukulathur. To quash the said proceedings, this criminal original petition has been filed.



2. Heard the learned counsel for the petitioner and the learned Government Advocate (crl.side) appearing for the first respondent police. Even though the defacto complainant Thiru.Suresh has been served and his name is also printed in the cause list, he has not chosen to enter appearance.

3. The case of the prosecution is that on 19.07.2001, fight broke out between two communities in Aathanakurichi Village in Mudhukulathur Taluk in Ramanthapuram District. Members belonging to both the communities suffered grievous injuries. Against the petitioners, Crime No.86 of 2001 was registered on the file of the Mudhukulathur Police Station. Against the group led by the defacto complainant, Crime No.87 of 2001 was registered. Both the cases were taken up for investigation and final reports were filed and cognizance of the offences in both the cases was taken. The case against the petitioners was taken up for committal in PRC No.2 of 2003. The case against the second respondent and others was taken up for committal in PRC No.3 of 2003 on the file of the Judicial Magistrate, Mudhukulathur.

4. After a few years, the Government of Tamil Nadu took a policy decision to withdraw all such communal clash related cases. G.O.No.576 dated 09.05.2008 was issued by the Home Department, Government of Tamil Nadu for withdrawal of PRC No.3 of 2003 that was pending against Thiru.Suresh and others. Permission was granted and the said case has since been closed. In as much as the case against the petitioners involved the offence under Section 3(1)(x) and 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989, concurrence of the Central Government was necessary. Therefore, the Government of Tamil Nadu addressed vide Letter No.13094/L&O C/2007-5, dated 13.08.2008 to the Central Government seeking permission to withdraw the case registered in connection with communal clash cases in Mudhukulathur Police Station in Cr. No.131 of 1998. There was no response to the said letter. A reminder was sent on 11.07.2019. Again there was no response. One more reminder was also sent in Letter No.1605/L&O.C/2019-3, dated 16.08.2019. Again, there is no response.

5. The learned counsel appearing for the petitioners would point out that whenever a case and counter case are registered, the procedure that will have to followed is laid down in PSO 588(A). The Hon'ble Supreme Court in the decision reported in **1990 (Supp) SCC 145 (Nathi Lal vs. State of U.P)** held as under :

"3. We think that the fair procedure to adopt in a matter like the present where there are cross-cases, is to direct that the same learned Judge must try both the cross-cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he



must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments.

4. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other."

6. The learned counsel for the petitioners would point out that if both the cases had been committed, the accused in the case on hand would have an opportunity to let in evidence as prosecution witnesses in the other case namely PRC No.3 of 2003. On account of withdrawal of PRC No.3 of 2003 which has become final, the petitioners have lost a valuable opportunity to establish who was the actual aggressor. I find the said contention to be well founded. The Criminal Procedure Code is all about ensuring the right of fair trial to accused. In this case, cases were registered not only against the petitioners but also against the second respondent and others. The case against the second respondent and others has since been withdrawn. Therefore, the petitioners are now at a clear disadvantage. I am of the view that continuing the impugned prosecution while withdrawing the cross case, can only be characterised as an abuse of legal process. The impugned prosecution therefore stands quashed.

7. This criminal original petition stands allowed. Consequently, connected miscellaneous petition stands closed.

Sd/-
Assistant Registrar(CO)

/TRUE COPY/

Sub Assistant Registrar

Skm

To

1. THE DEPUTY SUPERINTENDENT OF POLICE,
MUDHUKULATHUR POLICE STATION,
RAMANATHAPURAM DISTRICT.



2. THE JUDICIAL MAGISTRATE,
MUDHUKULATHUR.

3. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.R. VENKATESWARAN, Advocate (SR-90668[F] dated
01/10/2019)

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and

MP(MD)No.1 of 2014
30.09.2019

JM/18.10.2019/5P/5C