



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.09.2019

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl OP(MD)No.3859 of 2015

and

MP(MD)Nos.1 & 2 of 2015

WEB COPY

1.P.Nicolas Ponnuthurai

2.A.Adaikalam

3.Newton

4.Amalorpavamery

... Petitioner/Accused Nos.1 to 4

**Vs.**

1.State, rep.by

The Sub Inspector of Police,  
Thoovakudi Police Station  
Cr.No.112 of 2013,  
Thiruchirappalli District.

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

2.Gnanamery

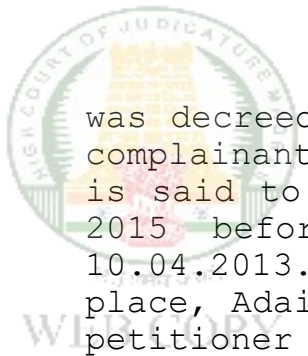
...2<sup>nd</sup> Respondent/Defacto Complainant

**Prayer :** Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to admit this quash petition on file, to call for the records from the lower court in C.C No.278 of 2014 on the file of the Judicial Magistrate No.VI, Thiruchirappalli, Thiruchirappalli District and quash the same.

|                 |                                                                                    |
|-----------------|------------------------------------------------------------------------------------|
| For Petitioners | : Mr.V.Kathirvelu, Senior Counsel<br>for Mr.K.Prabhu                               |
| For Respondents | : Mr.A.Robinson,<br>Government Advocate(crl.side) for R1<br>Mr.C.Jeganathan for R2 |

**ORDER**

The petitioners herein are facing trial in C.C No.278 of 2014 on the file of the Judicial Magistrate No.VI, Tiruchirappalli, Tiruchirappalli District. The second respondent is the defacto complainant. From the final report, one can notice that there was a civil dispute between the petitioners on the one hand and the family of the defacto complainant on the other. Adaiklam, the second petitioner herein had filed O.S No.541 of 2003 on the file of the Principal District Munsif Court, Tiruchirappalli and the same



was decreed on 01.11.2011. A.S No.51 of 2012 filed by the defacto complainant and others was dismissed on 07.12.2012. A second appeal is said to have been filed with condone delay petition in the year 2015 before this Court. The occurrence had took place on 10.04.2013. Therefore, on the date when the occurrence had taken place, Adaikalam had an enforceable decree in his favour. The third petitioner is the son of Adaikalam while the fourth petitioner is the wife Adaikalam. It is further seen that the first petitioner Nicolas Ponnuthurai filed O.S No.415 of 2003. It appears to have suffered a dismissal for default some time in the year 2015. But then, on the occurrence date, the suit was very much pending.

2.The allegation of the second respondent/defacto complainant is that the petitioners used heavy machinery and destroyed the trees as well as the bath room belonging to her. It appears that on the same date, a complaint was lodged before the Thuvakudi police station. Since no action was taken, a private complaint was filed before the jurisdictional magistrate court. Direction under Section 156(3) of Cr.Pc was issued and Crime No.112 of 2013 was registered on 17.05.2013 for the offences under Sections 447, 427, 294(b) and 506(ii) IPC. Investigation was taken up and final report came to be laid. Cognizance of the offences was taken and the case was taken up on file in C.C No.278 of 2014.

3.The learned Senior Counsel appearing for the petitioners would point out that the complaint is a vague one. It is the specific case of the defacto complainant that all the four petitioners herein brought a poclain engine and destroyed the trees belonging to the defacto complainant and also demolished the bath room. Poclain is obviously a slow moving motor vehicle. It will have certain unique details. It is not known as to who drove the vehicle. The owner of the said poclain was not enquired. Not even a photograph of the debris was taken.

4.I therefore find considerable force in the contention of the learned Senior Counsel appearing for the petitioners that the prosecution in question is a motivated one. Admittedly, civil suits have been instituted by the first petitioner and the second petitioner. The one filed by the second petitioner was decreed while the suit filed by the first petitioner was pending on the occurrence date. Since the police have miserably failed to collect the details regarding the poclain vehicle, I am of the view that except the oral allegations of the defacto complainant, there is nothing on record to sustain the charges in question. The Hon'ble Supreme Court in the decision reported in **1992 Supp (1) SCC 335 (State of Haryana vs. Bhajan Lal)** laid down certain parameters which have to be borne in mind while considering a petition for quashing a criminal proceedings. One of the said parameters, reads as follows :



"Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

**WEB COPY**

5.In this view of the matter, the impugned prosecution in C.C No.278 of 2014 stands quashed. This criminal original petition stands allowed. Consequently, connected miscellaneous petition stands closed.

Sd/-

Assistant Registrar (Cr1.Side)

// True Copy //

Sub Assistant Registrar(CS )

Skm

To

- 1.The Judicial Magistrate No.VI, Thiruchirappalli,  
Thiruchirappalli District.
- 2.The Sub Inspector of Police, Thoovakudi Police Station  
Cr.No.112 of 2013, Thiruchirappalli District.
- 3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

+1 CC to M/s.VEERA ASSOCIATES, Advocate SR-89555.

+1 CC to M/s.K.PRABHU, Advocate SR-89764.

**Cr1 OP(MD)No.3859 of 2015**  
**and**  
**MP(MD)Nos.1 & 2 of 2015**

**25.09.2019**

CS (16.10.2019) 3P 6C