



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 02.12.2019

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Crl.O.P. (MD)Nos.4397 & 4425 of 2017

and

Crl.M.P. (MD)Nos.3153, 3154 & 3165 of 2017

1.P.Sakthivel Murugan

2.P.V.Palani Murugan

P.Gurusamy

.. Petitioners in Crl.O.P. (MD)No.4397/17

.. Petitioner in Crl.O.P. (MD)No.4425/17

Vs.

1.The Inspector of Police,
Pudur Police Station,
Vilathikulam,
Tuticorin District.
Crime No.135 of 2015

2.S.Sakthivel

.. Respondents in both petitions

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of the Criminal Procedure Code to call for the records pertaining to the charge sheet in S.C.No.43 of 2017 on the file of the learned Additional District Judge II, Tuticorin District, in Crime No.135 of 2015, dated 19.11.2015, on the file of the 1st respondent and quash the same.

For Petitioners : Mr.T.Lajapathi Roy

For Respondents : Mr.K.K.Ramakrishnan
Additional Public Prosecutor
for R.1

Mr.J.Bharathan
for M/s.T.R.Jeyapalam
for R.2
(In both petitions)

COMMON ORDER

The petitioners are accused nos.1, 2 & 14 in S.C.No.43 of 2017 pending on the file of the learned Additional District Judge II, Tuticorin. They have filed this petitions to quash the charge sheet laid against them in S.C.No.43 of 2017.

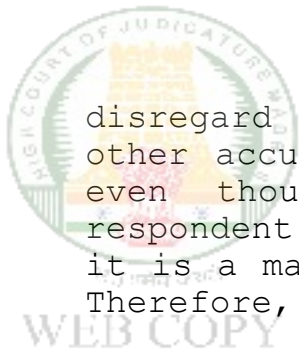


2. The case of the prosecution is that the second respondent / defacto complainant is the President of Hindu Nadar Uravinmurai Kalvi Sangam (in short "Sangam"), Kulakatankuruchi, Pudur Village, Tuticorin District and they are running a School in S.No.21 of Pudur Village. The place which was earmarked as playground for the School was used by the villagers as a pathway and it was also recorded as pathway during the UDR entry. As against the same, the Sangam filed a civil suit and has also obtained a decree in their favour. The decree challenged before this Court, by way of a second appeal, was also lost by the accused. Thereafter, the Sangam, by filing necessary application before this Court, obtained an order for police protection and constructed a compound wall with the help of the police. The accused party have demolished this compound wall and therefore, on the complaint of the second respondent / defacto complainant, a case was registered in Crime No.135 of 2015 as against the petitioners and twenty others for the offence under Sections 147, 148, 497, 294(b), 506(ii) IPC and under Section 3 of TNPPDL Act r/w Section 120(b) IPC. The investigation agency, in conclusion of the investigation, has also filed the final report before the concerned Court and the same was taken on file by the learned Additional District Judge II, Tuticorin in S.C.No.43 of 2017.

3. In support of the petition, Mr.T.Lajapathi Roy, the learned Counsel for the petitioners would submit that there is no specific overtact made as against the petitioners and the case was registered on a vague complaint made by the second respondent. The case has been foisted against them out of the civil dispute and it has been maliciously foisted to wreck vengeance against the petitioners.

4. Per contra, Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the first respondent would submit that the occurrence was taken place in the presence of the witnesses and during investigation, they have also examined several witnesses and after concluding the investigation, they have also filed a final report as against the petitioners and others. He would further submit that there are enough materials that these petitioners were present in the place of occurrence along with the other accused and have committed the offence.

5. Mr.J.Bharathan, learned Counsel for the second respondent / defacto complainant would submit that with regard to the pathway issue, a civil suit was filed in the year 1995 and after a very long civil battle, they succeed in the second appeal and the issue has been settled in their favour. Thereafter, they filed an application in Crl.O.P.(MD)No.8087 of 2010 before this Court and obtained an order for police protection to construct the compound wall and accordingly, in the presence of police, the compound wall was also constructed. He would further submit that the Sangam has spent a sum of Rs.50,00,000/- for police protection alone. While so, in utter



disregard to the orders of this Court, the petitioners along with other accused have demolished the compound wall. According to him, even though 200 persons have witnessed the occurrence, the respondent Police has cited 20 eye witnesses to the occurrence and it is a matter for trial and it can only be adjudged during trial. Therefore, he prays for dismissal.

6. Heard the learned Counsel appearing for the respective parties and also perused the documents.

7. It is the specific case of the second respondent / defacto complainant that they have constructed the compound wall, with police protection, pursuant to the civil Court decree. But, with utter disregard to the orders of this Court, the accused persons have demolished the compound wall and the same was witnessed by several persons.

8. In the considered opinion of this Court, the points raised by the petitioners before this Court, are a matter for trial and therefore, this Court is not inclined to entertain this petition. At this juncture, the learned Counsel for the petitioners intervened and submitted that the first accused is an Army Man, working in New Delhi and on the particular date, he was in duty and therefore, the learned Counsel disputed his presence on the alleged date of occurrence. Be that as it may, as stated supra, disputed question of fact require evidence and it is a matter for trial. As an alternative prayer, the learned Counsel, in view of the working condition of the first accused, sought for dispensing with his personal appearance before the trial Court. In the opinion of this Court, this cannot be a ground for dispensing with the personal appearance. However, he is at liberty to file an application under Section 317 Cr.P.C before the trial Court and if any such application is filed, the trial Court can consider the same and pass appropriate orders.

9. Considering the fact that the charge sheet has been filed as early as in the year 2017, the learned Additional District Judge II, Tuticorin District is directed to expedite the trial and conclude the same as expeditiously as possible.

10. In the result, both the criminal original petitions are disposed of. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

Sub Assistant Registrar(CS)



To

1.The Additional District Judge II,
Tuticorin District.

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

Copy to:

The Section Officer, Criminal Section, (2 Copies)
Madurai Bench of Madras High Court,
Madurai.

+2 CC to M/s.T.LAJAPATHIROY, Advocate (SR-103346 & 103347[F] dated
04/12/2019)

+1cc to Mr.T.R.Jeyapalam,Advocate, SR.No.103178

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