

IN THE HIGH COURT OF JUDICATURE AT MADRAS

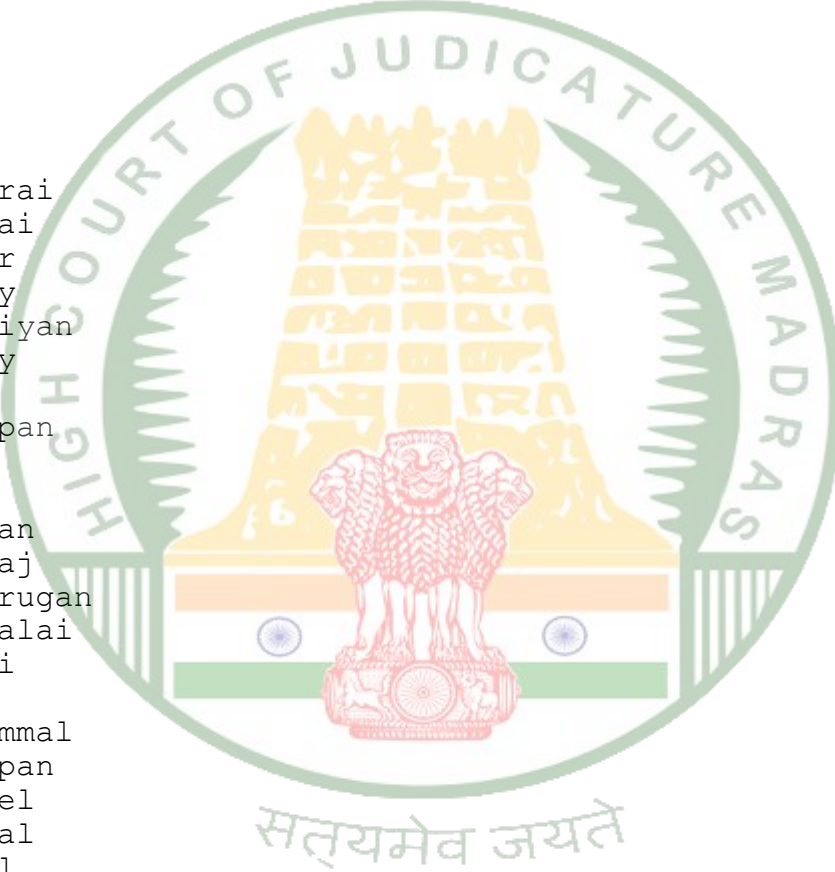
DATED : 28.09.2020

CORAM

THE HON'BLE Mr. JUSTICE P.N. PRAKASH

CrI.O.P.No.7411 of 2018
and CrI.M.P.Nos.3853 & 3854 of 2018

- 1.Selvaraj
- 2.Kannan
- 3.Thangadurai
- 4.Nainamalai
- 5.Sivakumar
- 6.Kuppusamy
- 7.Chinnapaiyan
- 8.Duraisamy
- 9.Arapulli
- 10.Kaliyappan
- 11.Kamaraj
- 12.Arapuli
- 13.Maharajan
- 14.Thangaraj
- 15.Thirumurugan
- 16.Manimegalai
- 17.Kuppaayi
- 18.Rajavel
- 19.Palaniammal
- 20.Kalliappan
- 21.Palanivel
- 22.Kaliammal
- 23.Jeyammal
- 24.Lakshmanan
- 25.Palaniammal
- 26.Rajathi
- 27.Easwari
- 28.Alamelu
- 29.Kanthasamy
- 30.Easwari
- 31.Pazhani
- 32.Thangam
- 33.Kumar
- 34.Mechanic Murugan @ Murugan



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... Petitioners/Accused Nos.1 to 34

Vs.

1.The State of Tamil Nadu rep by
The Inspector of Police,
Karipatti Police Station.
(Crime No.232 of 2015)

2.P.Ganesh

... Respondents

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for the records in C.C.No.173 of 2016 on the file of the Judicial Magistrate No.II, Salem and quash the same.

For Petitioners: Mr.K.S.Karthik Raja

For Respondent : Mrs.P.Kritika Kamal
Government Advocate
(Crl. Side) [R1]
Mr.C.S.Saravanan [R2]

ORDER

This case is taken up through video conferencing.

2. On the complaint lodged by P.Ganesh (de facto complainant/second respondent), the Police registered a case in Crime No.232 of 2015 dated 18.04.2015 and after completing the investigation filed a final report in C.C.No.173 of 2016 in the Court of the Judicial Magistrate No.II, Salem, for the offences under Sections 294(b), 353, 447 and 506(ii) IPC against the petitioners herein (numbering 34 accused).

3. It is the case of the prosecution that Ganesh, the de facto complainant belongs to Vellala Gounder community and he owns 2.64 cents of land in Survey No. 10/10 and Survey No.15/4 E in Periyagoundapuram Village, Vazhappadi Taluk, Salem District; that the accused belong to Malayala Gounder community; that on 17.04.2015 around 10 pm, the accused wanted to carry the dead body of one Arumugam through the patta land of the de facto complainant and when the de facto complainant resisted, the accused formed an unlawful assembly, threatened the de facto complainant and trespassed into his land. The accused had also prevented the Police from performing their duties. Challenging the prosecution, the accused have filed the present quash petition.

4. Heard Mr.K.S.Karthik Raja, learned counsel for the petitioner, Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) appearing for the first respondent and Mr.C.S.Saravanan, learned counsel for the de facto complainant/second respondent.

5. It is seen that after the said incident, the parties have now amicably settled their disputes, inasmuch as the accused are now using the public road and not the patta land of the de facto complainant.

6. The petitioners/accused have filed an affidavit dated 15.08.2020 signed by all of them wherein, they have stated as follows:-

"1. We state that we have filed the above Criminal Original Petition to quash the proceedings in CC No.173 of 2016 on the file of the Judicial Magistrate No.II, Salem. We state that while so, the suit filed by the land owners Sampooram and P.Ganesh for injunction in O.S.No.44 of 2018 on the file of the District Munsif cum Judicial Magistrate Court, Vazhapadi has been decreed on 20.11.2018. No appeal has been preferred against the judgment and it has become final. In light of the said judgment we undertake that we will not use the lands of Sampooram and P.Ganesh which is the subject land in the CC No.173 of 2016 on the file of the Judicial Magistrate No.II, Salem for the purpose of taking the dead bodies to the burial ground.

It is therefore prayed that this Hon'ble Court may be pleased to record the above undertaking and pass such or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice."

7. On instructions, the learned Government Advocate (Crl.Side) submitted that peace is prevailing in the area now and the accused are not using the patta land of the de facto complainant for their movement and they are using only the public road.

8. Mr.C.S.Saravanan, learned counsel for the de facto complainant submitted that in the affidavit sworn to by the accused, they have given undertaking that they will not carry the dead body through his patta land but they have not stated that they will not use his patta land as public pathway.

9. Mr.K.S.Karthik Raja, learned counsel for the petitioners/accused, on instructions submitted that since the case involved the carrying of dead body, the affidavit was so worded, nevertheless, the petitioners/accused will not use the

patta land of the de facto complainant as their pathway and would use the public road.

10. In the light of the above, this Court is of the view that interests of justice will be served, if the proceedings are quashed, so that the parties live peacefully and amicably without quarrelling with each other.

11. In fine, this Criminal Original Petition is allowed and the proceedings in C.C.No.173 of 2016 on the file of Judicial Magistrate No.II, Salem, against all the accused, is hereby quashed. It is always open to the Police to take fresh action if there is any transgression or violation of the right of enjoyment of the property by Ganesh. Connected criminal miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Judicial Magistrate No.II,
Salem.
- 2.-Do-Thro'The Chief Judicial Magistrate,
Salem.
- 3.The Inspector of Police,
Karipatti Police Station.
- 4.The Public Prosecutor,
Madras High Court,
Chennai - 600 104.

Cr1.O.P.No.7411 of 2018

SV(CO)

CB(10/11/2020)

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