

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2020

CORAM

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

Crl.O.P.No.7413 of 2018
and Crl.M.P.Nos.3855 & 3856 of 2018

- 1.Rajan
- 2.Vardharajan
- 3.Kaliappan
- 4.Kamaraj
- 5.Arunachallam
- 6.Natesan
- 7.Kandhasami
- 8.Arapulli
- 9.Kalliappan
- 10.Raja
- 11.Vellaiyan
- 12.Thangaraj
- 13.Annamalai
- 14.Selvam
- 15.Gunasekaran
- 16.Chinnapayan
- 17.Kuppusami
- 18.Arapulli
- 19.Elumalai
- 20.Kuppahgounder
- 21.Vadivel
- 22.Kalliammal
- 23.Thangam
- 24.Chitra
- 25.Pusammal
- 26.Kuppai
- 27.Thangammal
- 28.Uma
- 29.Palaniammal
- 30.Kuppaye
- 31.Kalliammal
- 32.Rajathi
- 33.Easwari
- 34.Papathi
- 35.Selvam
- 36.Chinnakalliammal
- 37.Selvi
- 38.Megala
- 39.Kanika
- 40.Selvaraj
- 41.Kalliammal

42.Easwari
43.Chinnasami
44.Kali

... Petitioners/Accused Nos.1 to 44

Vs.

1.The State of Tamil Nadu rep by
The Inspector of Police,
Karipatti Police Station.
Salem District.

... 1st Respondent/complainant

2.M.Illangovan
Village Administrative Officer,
Periyagoundapuram Group,
Valapadi Taluk,
Salem District.

... 2nd Respondent/de facto
complainant

Criminal Original Petition filed under Section 482
Cr.P.C. seeking to call for the records in C.C.No.200 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 the second respondent/Village Administrative Officer, the Police registered a case in Crime No.48 of 2015 dated 20.01.2015 and after completing the investigation, filed a final report in C.C.No.200 of 2016 in the Court of the Judicial Magistrate No.II, Salem, for the offences under Sections 341, 294(b), 353, 397 and 506(ii) of IPC against the petitioners/accused herein (numbering 44 accused).

3. It is the case of the prosecution that the petitioners/accused belong to Malayala Gounder Community and they wanted to carry a dead body through the patta land of one Ganesan on 19.01.2015. When Ganesan objected to it, the petitioners formed an unlawful assembly, armed with deadly weapons in violation of prohibitory orders issued by the

Police under Section 30(2) of the Police Act, 1861. Challenging the prosecution, the petitioners have filed the present quash petition.

4. Heard Mr.K.S.Karthik Raja, learned counsel for the petitioners/accused, Mrs.P.Kritika Kamal, learned Government Advocate (CrI.Side) appearing for the first respondent/State and Mr.C.S.Saravanan, learned counsel for the second respondent.

5. The petitioners have filed an affidavit dated 15.08.2020 which reads as follows :-

"1. We state that we have filed the above Criminal Original Petition to quash the proceedings in CC No.200 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.200 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."

6. On instructions, the learned Government Advocate (CrI.Side) submitted that at present, peace is prevailing in that area and that the petitioners are using the public road and not the patta land of Ganesan.

7. 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 the patta land of Ganesan but they have not stated that they will not use the patta land of Ganesan as public pathway.

8. 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 Ganesan as their pathway and would use the public road.

9. 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.

10. In fine, this Criminal Original Petition is allowed and the proceedings in C.C.No.200 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 Ganesan. 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 Maigstrate,
Salem.

3.The Inspector of Police,
Karipatti Police Station,
Salem District.

4.The Public Prosecutor,
Madras High Court,
Chennai - 600104.

+1cc to Mr.K.S.Karthik Raja, Advocate SR.31807

Cr1.O.P.No.7413 of 2018

SV(CO)

CB(10/11/2020)