

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.16076 of 2014

and

Crl.M.P.No.1 & 2 of 2014

- 1.Ramasamy
- 2.Mani
- 3.Vasu
- 4.Jayapal
- 5.Thangadurai
- 6.Ayyanar
- 7.Jayaraj
- 8.Venkatajalam
- 9.Palanisamy
- 10.Selvam
- 11.Mani
- 12.Kunjupaiyan
- 13.Mani @ D.Driver Mani
- 14.Kandan
- 15.Samivel
- 16.Raja
- 17.Sekar
- 18.Paramasivam
- 19.Allimuthu
- 20.Nagaraj
- 21.Gopalakannan
- 22.Ravi
- 23.Thalaiyappan
- 24.Kumar
- 25.Krishnan
- 26.Elumalai
- 27.Velu
- 28.Kaveri
- 29.Devendiran
- 30.Kumar
- 31.Murugesan
- 32.Balu
- 33.Sakthi Murugan
- 34.Kumar
- 35.Ellappan
- 36.Perumal
- 37.Murugan

38.Mani
39.Appadurai
40.Govindaraj
41.Venkatesh
42.Renganathan
43.Pootha Gounder
44.Subramani
45.Thangavel
46.Raja
47.Kanapathy
48.Kanniappan

...Petitioners

Vs.

1.State represented by
The Inspekor of Police,
Tholasampatti Police Station,
Salem District.
(Crime No.102/2006).

2.V.P.Ramu
(Impleaded the 2nd respondent as
per the order of this Court dated
08.07.2014 in M.P.No.2/2014.)

...Respondents

Prayer: Petition filed under Section 482 of Cr.P.C., seeking to call for the records in P.R.C.No.22/2007 on the file of the learned District Munsiff cum Judicial Magistrate, Omalur and quash the same.

For Petitioners	:	Mr.R.Sankarasubbu
For R1	:	Mr.C.Iyyaparaj Additional Public Prosecutor
For R2	:	Mr.M.R.Jothimanian

O R D E R

This criminal original petition has been filed seeking to call for the records in P.R.C.No.22/2007 on the file of the learned District Munsiff cum Judicial Magistrate, Omalur and quash the same.

2. It appears that due to election dispute, there was attack and counter attack and a case was registered in Crime No.102 of 2006 dated 19.10.2006 against the petitioners for the offence under Sections 147, 148, 452, 323, 324, 307 of I.P.C. and 3 of PPD Act in P.R.C.No.22 of 2007 on the file of learned District

Munsiff Court cum Judicial Magistrate, Omalur.

3.Mr.M.R.Jothimanian, learned counsel appearing for the 2nd respondent would submit that the petitioners and the defacto complainant hail from the same village and in order to maintain the peace and tranquillity, the residents of the villagers and the petitioners and defacto complainant have decided to bury their disputes and thereby, the petitioners and the defacto complainant entered into a compromise and to that effect, a joint memorandum of compromise has also been filed. Therefore, he would submit that in view of the compromise, the criminal proceedings in PRC No.22 of 2007 on the file of District Munsif cum Judicial Magistrate Omalur pending against the petitioners, may be quashed.

4.The learned Additional Public Prosecutor would submit that in order to identify the parties, both the parties have appeared and on confirmation of the compromise, he reported no objection.

5. In the case of Damodar S. Prabhu Vs. Syed Babalal H., reported in [2010 (5) SCC 663], the Full Bench of the Hon'ble Supreme Court has held that where the offences are essentially of a private nature and relatively not quite serious, the Code considers it expedient to recognise some of them as compoundable offences and some others are compoundable only with the permission of the Court. In this regard, it is useful to extract hereunder paragraphs 16 and 17:

'16. It is evident that the permissibility of the compounding of an offence is linked to the perceived seriousness of the offence and the nature of the remedy provided. On this point we can refer to the following extracts from an academic commentary [cited from : K.N.C. Pillai, R.V.Kelkar's Criminal Procedure, Fifth Edn. (Lucknow: Eastern Book Company, 2008) at p.444]

'17.2. Compounding of offences .-- A crime is essentially a wrong against the society and the State. Therefore any compromise between the accused person and the individual victim of the crime should not absolve the accused from criminal responsibility. However, where the offences are essentially of a private nature and relatively not quite serious, the Code considers it expedient to recognise some of them as compoundable offences and some others as compoundable only with the permission of the Court.'

17. In a recently published commentary, the following observations have been made with regard to the offence punishable under Section 138 of the Act [cited from : Arun Mohan, some thoughts towards law reforms on the topic of Section 138, Negotiable Instruments Act - Trackling an avalanche of cases (New Delhi: Universal Law Publishing Co. Pvt. Ltd., 2009) at p.5]:

'...Unlike that for other forms of crime, the punishment here (insofar as the complainant is concerned) is not a means of seeking retribution, but is more a means to ensure payment of money. The complainant's interest lies primarily in recovering the money rather than seeking the drawer of the cheque in jail. The threat of jail is only a mode to ensure recovery. As against the accused who is willing to undergo a jail term, there is little available as remedy for the holder of the cheque.'

6. Therefore, in view of the compromise entered between the petitioners and the defacto complainant, this Court is of the view that there would be no prejudice being caused to the defacto complainant if the criminal proceedings pending against the petitioners are quashed since the defacto complainant/2nd respondent herein on whose complaint, the criminal proceedings were initiated against the petitioners, is also a signatory to the joint memo filed before this Court, wherein it is urged that after recording the compromise, the petitioners may be discharged.

7. Accordingly, this Criminal Original Petition is allowed and the criminal proceedings pending against the petitioners in P.R.C.No.22/2007 on the file of the learned District Munsiff cum Judicial Magistrate, Omalur are hereby quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gbi

To

- 1.The Inspekor of Police,
Tholasampatti Police Station,
Salem District.
 - 2.The District Munsiff cum Judicial Magistrate,
Omalur.
 - 3.The Public Prosecutor,
High Court of Madras,
Chennai 600 104.
- +1cc to Mr.R.Sankara Subbu, Advocate, S.R.No.15605

Crl.O.P.No.16076 of 2014
and Crl.M.P.No.1 & 2 of 2014

RSK(CO)
RN(30/05/2020)