



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**Reserved on : 31.07.2020
Delivered on : 05.08.2020**

WEB COPY

CORAM:

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

**CRL OP(MD)No.7989 of 2020
and
Crl.M.P. (MD)No.3787 of 2020**

1.Sabarathinam, S/o.Manoharan
2.Muralidharan, S/o.Kunjappa
3.Ragupathy, S/o.Thangavelu
4.Bharathi, S/o.Natesan
5.Rahuvaran, S/o.Rathinam

... Petitioners

Vs.

1.State Rep. by
The Inspector of Police,
Ragunathapuram Police Station,
Pudukkottai District.
(Crime No.14 of 2019)

... 1st Respondent/
Complaint

2.Elavarasan, S/o.Veeramuthu

... 2nd Respondent/
Defacto Complaint

PRAYER: Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records relating to F.I.R. in Crime No.14 of 2019, dated 15.03.2019, on the file of the first respondent police and quash the same against the petitioners.

For Petitioners : Mr.M.Ramu

For R1 : Mr.S.Chandrasekar
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed by the petitioners seeking to quash the proceedings pending against them in Crime No.14 of 2019, dated 15.03.2019, on the file of the first respondent police, as illegal.

2.The case of the prosecution is that on 10.03.2019, the first accused viz., Manokaran, S/o.Palanivel, removed the wooden sticks, which were kept in front of the house of the second respondent/de-facto complainant. When the same was questioned by the second



respondent/de-facto complainant, the first accused abused him in filthy language and the other accused persons attacked the second respondent/de-facto complainant and his father, by using wooden sticks and caused injury.

3.The case of the petitioners is that the second respondent/de-facto complainant attempted to encroach the Government Poramboke land, by putting up the wooden sticks, which has caused inconvenience to the Public and therefore, the first accused informed him to remove the wooden sticks. Due to the said motive, the second respondent/de-facto complainant has preferred the false complaint against the first accused and the present petitioners.

4.The learned counsel appearing for the petitioners would submit that based on the complaint given by the second respondent/de-facto complainant, the first respondent police had registered a case in Crime No.14 of 2019, against the petitioners for the offences punishable under Sections 147, 294(b), 323 and 506 (i) of I.P.C.

5.The learned counsel appearing for the petitioners would further submit that due to vengeance and malice intension, the case has been registered against the petitioners and thereby, the same may be quashed.

6.In support of his submission, the learned counsel appearing for the petitioners relied on the order of this Court in **Crl.O.P.Nos.9414 and 12210 of 2019, dated 15.07.2019 [M.Selvageathan Vs. The Inspector of Police, Hasthampatty Police Station, Salem]**.

7.On going through the factual aspects of the case now referred by the learned counsel for the petitioners, it is seen that there is a case and case in counter. Further, in the above referred order, it was clearly observed that there was no specific allegation against the petitioner therein and thereby, this Court came to the conclusion that no useful purpose would be served in keeping the proceedings pending and accordingly, quashed the same.

8.The learned counsel appearing for the petitioners further relied on the judgment of our Hon'ble Apex Court in **Madhavrao Jiwaji Rao Scindia and another etc. Vs. Sambhajirao Chandrojirao Angre and others etc. [1988 AIR 709]**.

9.In the above referred case, our Hon'ble Apex Court has distinguished the difference between civil wrong and the criminal offence and held that a case of breach of trust may be both a civil wrong and criminal offence. But, there would be certain situations, where it would predominantly be a civil wrong and may or may not amount to criminal offence and therefore, keeping the proceedings pending is unnecessary.



10. But, here in this case, on going through the averments stated in the F.I.R., it is seen that a clear overt act has been attributed against the petitioners that at the time of occurrence, all the petitioners herein are assembled in the occurrence place and by using the wooden log, assaulted the second respondent/de-facto complainant and his father. Further, in the complaint given by the second respondent/de-facto complainant, he has clearly mentioned about the overt act and the injury sustained by him.

11. In this context, it is necessary to see the judgment of our Hon'ble Apex Court in the case of **Sau. Kamal Shivaji Pokarnekar Vs. The State of Maharashtra and others [Criminal Appeal No.255 of 2019, dated 12.02.2019]**, wherein it has been held as follows:-

'5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same.'

12. A perusal of the F.I.R. discloses *prima facie* offences made out against the petitioners. The correctness or otherwise of the allegation made against the petitioners has to be decided only during the trial.

13. It is settled position of law that if the F.I.R. discloses the commission of cognizable offence, it would not sound exercise of discretion to quash the same.

14. Therefore, applying the said principle to the case on hand, I am of the view that it is not a fit case to quash the F.I.R. Hence, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar(CS)

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To

- 1.The Inspector of Police,
Ragunathapuram Police Station,
Pudukkottai District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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SPU(12.08.2020) 4P 3C