



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.12.2020

CORAM:

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THE HONOURABLE MRS. JUSTICE J.NISHA BANU

Crl.O.P. (MD).No.13230 of 2020

and

Crl.M.P. (MD) Nos.6066 and 6067 of 2020

1.Muruganantham

2.Vijayalakshmi

.. Petitioners/Accused 1 & 2

vs.

1. The Inspector of Police

Kayathar Police Station

Thoothukudi District

(Crime No.220 of 2019)

.. 1st Respondent/Complainant

2. Senthil Kumar

.. 2nd Respondent/Defacto Complainant

PRAYER: This Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for records relating to C.C.No.39 of 2020 on the file of the Judicial Magistrate No.II, Kovilpatti and quash the same.

For Petitioners : Mr.M.Prabu

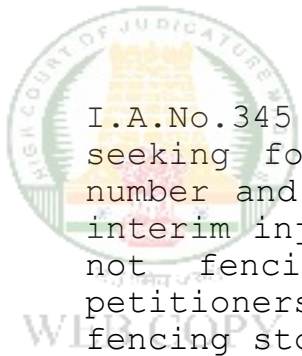
For R1 : Mrs.S.E.Veronica Vincent

Government Advocate (Crl.Side)

O R D E R

This Criminal Original Petition has been filed to call for records relating to C.C.No.39 of 2020 on the file of the learned Judicial Magistrate No.II, Kovilpatti and quash the same.

2.The learned counsel appearing for the petitioners reiterated the contentions set out in the original petition. Due to pathway dispute pending between the petitioners and the second respondent, the brother of the second respondent has approached this Court in W.P(MD).No.8135 of 2019 seeking for surveying the land with police protection. As per order of this Court, the land in dispute was surveyed with the help of the Revenue Officials and the first respondent police. Thereafter, the petitioners filed a suit in O.S.No.97 of 2019 against the brother of the second respondent and his wife seeking for declaration and injunction with regard to using the pathway in S.F.No.228A/1B. Subsequently, the petitioners filed



I.A.No.345 of 2019 before the District Munsif Court, Kovilpatti seeking for an interim injunction in respect of the said survey number and the said I.A was allowed on 09.09.2019. As per order of interim injunction, the second respondent and his family members are not fencing the disputed land. In this circumstances, the petitioners are illegally trespassed in the said land, damaged the fencing stone and they have also threatened the second respondent by using filthy language. Hence, the case has been registered in Crime No.220 of 2019 for the offence under Sections 294(b), 427 and 506 (ii) I.P.C. After investigation, the respondent police filed a charge sheet before the learned Judicial Magistrate No.II, Kovilpatti and the same was taken on file in C.C.No.39 of 2020. The present petition has been filed to quash the proceedings initiated in the said C.C as illegal.

3.Heard the learned counsel for the petitioners and the learned Government Advocate (Crl.Side) appearing for the first respondent and perused the materials available on record. Since no adverse order is going to be passed, notice to the second respondent is not necessary.

4.The Hon'ble Supreme Court by judgment dated 02.12.2019 in **Crl.A.No.1817 of 2019 in the case of M.Jayanthi vs. K.R.Meenakshi and another** has held as follows:-

'9.It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.'

5.There is no allegation in the present case that the prerequisite for taking cognizance has violated and therefore, the grounds raised in this petition can be gone into only in a full-fledged trial. However, the personal appearance of the second petitioner/Accused No.2 before the trial Court is dispensed with except during the dates on which, the learned Judicial Magistrate insists her appearance if it is necessary. Considering the facts and circumstance of the case, the learned Judicial Magistrate No.II, Kovilpatti, is directed to conclude the entire trial proceedings in C.C.No. 39 of 2020, within a period of six months from the date of receipt of a copy of this order.



6.With the above direction, this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (CS-III)

/ /2021

Sub Assistant Registrar(CS)

msa

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Judicial Magistrate No.II,
Kovilpatti.
2. The Inspector of Police,
Kayathar Police Station,
Thoothukudi District.
3. he Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.M.Prabu, Advocate, SR.No.23580.

ORDER MADE IN
Crl.O.P. (MD) .No.13230 of 2020
and
Crl.M.P. (MD) Nos.6066 and 6067 of 2020
01.12.2020

CK(CO)
CS(08.01.2021) 3P 5C