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CRL.O.P.(MD)NO.7490 OF 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.01.2020

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

Crl.O.P. (MD)No.7490 of 2016 and

Crl.M.P. (MD)Nos.3782 & 3783 of 2016

1. Jegathalaprathaban

2. Nesamani

... Petitioners/Accused Nos.1 and 2

Vs.

1. State rep. by,

The Inspector of Police,
Kaliyakkavilai police station,
Kanyakumari District.

(Crime No.439 of 2015)

... Respondent/ Complainant

2. Ramadoss

... Respondent/Defacto Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the case in C.C.No.12 of 2016 on the file of the Judicial Magistrate No.1, Kuzhithurai and quash the same.

For Petitioners

: Mr.S.Ramasamy

For R-1

: Mr.K.K.Ramakrishnan,

Additional Public Prosecutor.

For R-2

: No appearance.

* * *

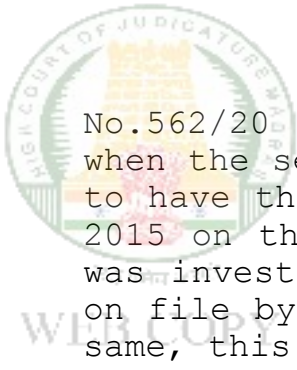
O R D E R

The petitioners are facing trial in C.C.No.12 of 2016 on the file of the Judicial Magistrate No.I, Kuzhithurai, for the offences under Sections 294(b), 427 and 506(ii) of I.P.C.

2. The second petitioner Nesamani is said to have passed away on 10.02.2019. The learned counsel appearing for the petitioners enclosed the Death Certificate. Therefore, the impugned proceedings have abated as regards the second petitioner.

3. Now the question that arises for consideration is whether the remaining accused is entitled to have the impugned proceedings quashed as far as he is concerned.

4. The defacto complainant in this case is the second respondent herein, namely, Ramadoss. His specific allegation is that the petitioners herein have cut the trees standing in survey



No.562/20 in Adhankodu Village, Kanyakumari District. But then, when the second respondent questioned the petitioners, they are said to have threatened him. That led to registration of Crime No.439 of 2015 on the file of the Kaliyakkavilai police station. The matter was investigated and final report was filed and the same was taken on file by the Judicial Magistrate No.I, Kuzhithurai. To quash the same, this criminal original petition has been filed.

5. The petitioners have enclosed a copy of the statutory proceedings issued by the District Forest Officer in favour of the second petitioner Nesamani. It can be seen therefrom that the permission to cut the trees have been given to the second petitioner. In the said column, it has been mentioned that the permission proceedings pertain to survey No.562/20. The occurrence had taken place on 20.09.2015. There are materials to indicate the ownership of Nesamani in respect of the said land.

6. Therefore, I am of the view that the petitioners cannot be saddled with the penal liability for cutting the trees that were standing on their own land. Of course, these findings are given only for the purpose of granting relief in this criminal original petition. The petitioners cannot take advantage of this observation or finding in any other collateral proceedings. Since the petitioners have produced the materials to indicate that they are the owners of the petition mentioned land, I am of the view that the continuance of the impugned prosecution against the petitioners is a clear abuse of legal process. In fact the very registration of this case appears to be not justified.

7. Therefore, the impugned prosecution stands quashed. The criminal original petition stands allowed, accordingly. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To:

1. The Judicial Magistrate No.1,
Kuzhithurai.
2. The Inspector of Police,
Kaliyakkavilai police station,
Kanyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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+1 CC to M/s.S.RAMASAMY, Advocate (SR-841[F] dated 08/01/2020)

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SPU (09.06.2020) 3P-5C