



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.02.2020

CORAM:

WEB COPY

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

Crl.O.P(MD)Nos.8479, 15778 and 16457 of 2016  
and  
Crl.M.P.(MD)Nos.4114, 4115, 7525, 7526,  
8069 and 8114 of 2016

B.William ... Petitioner in Crl.O.P.(MD)No.8479 of 2016

A.Yesurajan ... Petitioner in Crl.O.P.(MD)No.15778 of 2016

1.P.Ponnuswamy

2.J.Marypushpam

3.P.M.Basil

4.P.M.Boris ... Petitioners in Crl.O.P.(MD)No.16457 of 2016

Vs.

1.State rep. by  
The Inspector of Police,  
Anjugramam Police Station,  
Suseendram Circle,  
Kanyakumari District.  
(Crime No.467 of 2013)

2.K.Gobinath ... Respondents in all Crl.O.Ps.

3.S.Sreethar ... 3<sup>rd</sup> Respondent in Crl.O.P.(MD)No.16457 of 2016

Prayer in CRL OP(MD). 8479 of 2016 :

Petition filed under Section 482 Code of Criminal Procedure, to call for the records pertaining to the case in S.C.No.122 of 2016 on the file of the learned I Additional Sub Judge, Nagercoil, Kanyakumari District and quash the same.

Prayer in CRL OP(MD). 16457/ 2016 :

To call for the records relating to the charge sheet in P.R.C.No. 14 of 2016 on the file Learned Judicial Magistrate Court No. III, Nagercoil and quash the same as illegal.



Prayer in CRL OP(MD). 15778/ 2016 :

To call for the records pertaining to the case in S.C.No. 122 of 2016 on the file of I Additional Sub Judge, Nagercoil, Kanyakumari District and quash the same as illegal.

For Petitioners : No appearance  
(in Crl.O.P. (MD)Nos.8479  
and 15778 of 2016)

For Petitioners : Mr.Ajmal Khan  
(in Crl.O.P. (MD)No.16457  
of 2016)

For R1 : Mr.A.Robinson  
Government Advocate (Crl.side)

For R2 : Mr.C.Jeganathan

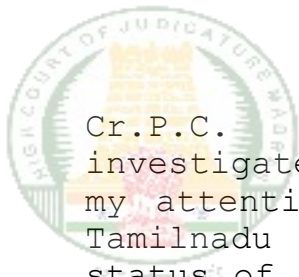
**COMMON ORDER**

These criminal original petitions have been filed for quashing the proceedings in S.C.No.122 of 2016 on the file of the First Additional Sub Judge, Nagercoil.

2.The defacto complainant is one Gopinath. He lodged a complaint before the Anjunagarm Police Station on 13.07.2013 alleging commission of acts of trespass and damage to private property by the accused herein. The same was registered as Crime No.356 of 2013 for the offences under Sections 341, 294(b), 323, 506 (2) of IPC. The case was investigated and final report was filed. It was taken on file and cognizance of the offences was taken and committed to the Sessions Court in P.R.C.No.14 of 2016 by the Judicial Magistrate No.3, Nagercoil. The Sessions Court made over the case to the First Additional Sub Judge in S.C.No.122 of 2016. To quash the same, the accused have filed these original petitions under Section 482 of Cr.P.C

3.None appears for the petitioners in Crl.O.P. (MD)No.15778 of 2016 and Crl.O.P. (MD)No.8479 of 2016. Hence, these criminal original petitions are dismissed as regards the petitioners in Crl.O.P. (MD)Nos.15778 and 8497 of 2016.

4.However, the learned counsel appearing for the petitioners in Crl.O.P. (MD)No.16457 of 2016 submitted that the case on hand deserves to be quashed for the simple reason that there was an infraction of the statutory mandate set out in Section 173(8) of



Cr.P.C. His pointed contention is that the case was duly investigated and thereafter, closed as 'Mistake of fact'. He drew my attention to the printout issued by the citizen portal of the Tamilnadu Police. The extract from the said portal refers to the status of the case referred as 'Mistake of Fact'. The petitioner's counsel drew my attention to Section 173(8) of Cr.P.C., and contended that when once final report has been filed, if the police wants to conduct further investigation, they must get permission from the jurisdictional Magistrate. In this case, no such permission was obtained. Therefore, he wanted this Court to set aside all the subsequent proceedings.

5.I am unable to agree with the said submission of the petitioner's counsel.

6.As rightly pointed out by the learned Government Advocate (CrI.side), the mandate set out in Section 173(8) of Cr.P.C will kick in, only if the final report had been forwarded to the Magistrate. In this case, there is nothing on record to indicate that the final report was actually filed before the jurisdictional Magistrate. It is quite possible that the Investigation Officer had concluded the investigation and prepared the report closing the case as 'Mistake of Fact'. But he appears to have kept the final report in the file and entered the details in the citizen portal. If that be so, it was certainly open to the Superior Officer to give a direction to the Investigation Officer to conduct further investigation. Section 173(8) of Cr.P.C., will not apply in such a case.

7.It is fairly admitted by the petitioners' counsel that when they filed a copy application, it was returned on the ground that the final report referred to in the copy application was not filed before the Court concerned. The returned copy application has been enclosed by the petitioners at Page Nos.71 and 72 of their typed set. Therefore, I have hesitation to negative this contention urged by the petitioner's counsel.

8.The petitioner's counsel would thereupon contend that none of the ingredients set out in Section 147, 447, 427 of IPC and 3(1) of TNPPDL Act, 1992 are present in this case.

9.I carefully went through the statements recorded under Section 161 of Cr.P.C., It is seen that the dispute was primarily between the first petitioner P.Ponnuswamy and the deceased Dr.S.D.Subbiah. Litigation was going on between them for quite a few decades.

10.The second petitioner is none other than the wife of the first petitioner. In the statements recorded under Section 161 of Cr.P.C, the second petitioner has also been included, while



levelling allegations against all the accused. A person cannot be fastened with liability merely on the strength of general, sweeping and omni bus allegations. The second petitioner-J.Mary Pushpam is aged about 64 years. I am of the view that she has also been roped in only because, she happens to be the wife of the first petitioner. There are serious allegations against all the other accused. Therefore, the impugned proceedings stand quashed only as regards the second petitioner -J.Mary Pushpam. CrI.O.P.(MD)No.16457 of 2016 is allowed as regards the second petitioner. CrI.O.P.(MD)No.16457 of 2016 is dismissed as far as the petitioners 1, 3 and 4 are concerned. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar (co)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1.1<sup>st</sup> Additional Sub Judge, Nagercoil, Kanyakumari District.

2.The Judicial Magistrate, No.III, Nagercoil.

3.The Inspector of Police,  
Anjugramam Police Station,  
Suseendram Circle,  
Kanyakumari District.

4.The Additional Public Prosecutor,  
Madruai Bench of Madras High Court,  
Madurai.

• 1CC to Mr.C.JEGANATHAN, Advocate ( SR-8808[F] dated 27/02/2020 )

+1cc to M/s. Veera Associates, Sr.No.8809

+1cc to M/s. Ajmal Associates, Sr.No.8676

CrI.O.P(MD)Nos.8479, 15778 and 16457 of 2016  
and

CrI.M.P. (MD)Nos.4114, 4115, 7525, 7526,  
8069 and 8114 of 2016  
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VB(23.03.2020) 4P 8C