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CRL.O.P.(MD)NO. 8849 OF 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.01.2020

CORAM

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

Crl.O.P.(MD)No. 8849 of 2016 and  
CRL.M.P.(MD)Nos.4327 & 4328 of 2016

Muthukumar

...Petitioner/Accused

Vs.

1. State rep. by,  
The Inspector of Police,  
Shencottai police station,  
Tirunelveli District.  
(Crime No.246 of 2013)

2. Jabar Ali

...Respondents/Complainants

**Prayer:** Criminal Original petition is filed under Section 482 of Cr.P.C, to admit this quash petition on file, to call for the records in C.C.No.86 of 2016 on the file of the District Munsif-cum-Judicial Magistrate, Shencottai, Tirunelveli District and quash the same.

|                |                                                     |
|----------------|-----------------------------------------------------|
| For Petitioner | : Mr.K.Prabhu                                       |
| For R-1        | : Mr.A.Robinson,<br>Government Advocate(Crl. Side). |

### **O R D E R**

The petitioner is figuring as an accused in C.C.No.86 of 2016 on the file of the District Munsif-cum-Judicial Magistrate, Shencottai, for the offences under Sections 153(A)(1)(a) of I.P.C.

2. The case of the prosecution is that in a Kabaddi tournament, the team belonging to the Muslim community had won and that gave rise to the feeling of enmity among the two groups of students studying in S.M.S.S. Government Boys Higher Secondary school, Shencottai on 28.11.2013. There arose a tense situation among the two groups of students. This also broke out into fight. The defacto complainant states that on hearing the same, he rushed to the school in question. He overheard the petitioner calling his associates over mobile phone to come to the school in question. Based on the complaint of the second respondent herein, Crime No.246 of 2013 was registered on the file of Shencottai police station. The matter was investigated and sanction was also duly accorded by the State Government. Thereafter, final report was filed before the jurisdictional Magistrate. Cognizance of the offence was taken and the case was taken on file in C.C.No.86 of 2016. To quash the same, this criminal original petition has been filed.



3. The second respondent herein has been served, but there is no appearance on his behalf.

4. Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate(Crl. Side) appearing for the first respondent.

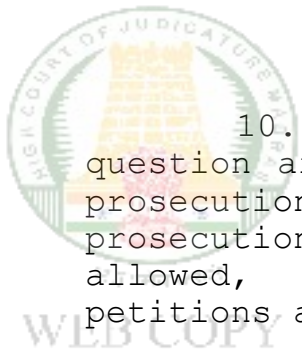
5. The learned Government Advocate(Crl. Side) submitted that the prosecution has complied with all the statutory formalities and that the essential ingredients set out under Section 153(A)(1)(a) of I.P.C. are also present in this case. He also submitted that the inherent powers of this Court are not to be exercised in this case. He also drew my attention to the fact that even though the mobile phone of the petitioner was not recovered, it has been brought out that the petitioner had called one Varma @ Thagaraj, at the time indicated in the First Information Report. The said Thangaraj has also been examined.

6. It is not in dispute that there arose a severe quarrel between two groups of students belonging to two religious communities. On 28.11.2013 at about 11.15 a.m., there arose a fight among the two groups. The defacto complainant Jabar Ali is the President of the local Islamiya Association. According to him, his relatives are studying in the said school and that is why he rushed to the said school. When he reached the school, the students were standing in groups and the petitioner herein was standing outside the gate and calling his party colleague.

7. A careful reading of the allegation levelled by the defacto complainant only indicates that the petitioner had only called upon the party colleague to rush to the school as students belonging to his group faced threat. When the defacto complainant rushed to the school in question to rescue his relatives, no exception can be taken to what the petitioner did. There cannot be one yardstick for the defacto complainant and a different one for the petitioner. The reason that impelled the complainant to rush to the spot also impelled the petitioner to do likewise.

8. It is not the case of the prosecution that some untoward incident happened, thereafter.

9. As rightly contended by the learned counsel appearing for the petitioner, the offence in question will be attracted only if the accused by words, either spoken or written, or by signs or by visible representations or otherwise attempts to promote enmity between two groups. In this case, the intention of the petitioner is only to rescue the students belonging to his community. Therefore the petitioner's aim is not to promote enmity, but rather to save his community men.



10. I hold that the essential ingredients of the offence in question are not made out. Therefore, continuance of the impugned prosecution will amount to an abuse of legal process. The impugned prosecution stands quashed. The criminal original petition stands allowed, accordingly. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

pmu

**To:**

1. The District Munsif-cum-Judicial Magistrate,  
Shenkottai, Tirunelveli District.
2. The Inspector of Police,  
Shencottai police station,  
Tirunelveli District.
3. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.K.PRABHU, Advocate ( SR-3640[F] dated 29/01/2020 )

Crl.O.P. (MD)No.8849 of 2016  
27.01.2020

KB(11.06.2020) 3P 5C