



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.11.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

Cr1 OP (MD) No. 4624 of 2021

and

Cr1 MP (MD) No. 2587 of 2021

WEB COPY

BeemaRav

... Petitioner/Accused No.1

v.

1. The Inspector of Police,
Sivagiri Police Station,
Tirunelveli.

... 1st Respondent/Complainant

2. Antony Raj

... 2nd Respondent/Defacto complainant

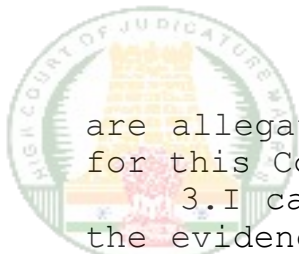
PRAYER : Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the records of Crime No.90 of 2016 on the file of the Sivagiri Police Station, Tenkasi District (formerly Tirunelveli District) and quash the same.

For Petitioner	: Mr.M.Karthikeyavenkatachalapathy
For R1	: Mr.T.Senthilkumar, Additional Public Prosecutor for R1
For R2	: Mr.S.Muniyandi for R2

ORDER

The petitioner is figuring as accused No.1 in Crime No.90 of 2016 on the file of the Sivagiri Police Station, Tenkasi District. The second respondent is the defacto complainant. To quash the said FIR, this criminal original petition has been filed.

2. The learned counsel appearing for the petitioner reiterated all the contentions set out in the memorandum of grounds and called upon this Court to quash the impugned FIR. Per contra, the learned Government Counsel submitted that final report was filed in this case against the petitioner and others as early as on 28.08.2016. However, the said final report was not taken on file till date. Since such a submission was made on the earlier occasion, this Court called for report from the jurisdictional court. The learned magistrate has submitted his report stating that no final report has been filed by the respondent police in Crime No.90 of 2016 till date. This report was submitted by the Judicial Magistrate, Sivagiri on 04.10.2021. The learned Government counsel as well as the counsel for the defacto complainant submitted that since there



are allegations against the petitioner, it would not be appropriate for this Court to quash the impugned prosecution.

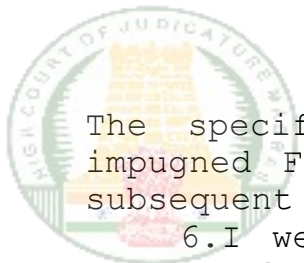
3.I carefully considered the rival contentions and went through the evidence on record. This Criminal Original Petition has been filed recently for quashing the impugned FIR. Though a stand is taken that final report was already filed on 28.08.2016, the jurisdictional magistrate has submitted a report on 04.10.2021 stating that no such final report was ever filed. I wanted to know from the government counsel as to whether the first respondent is having any proof for having filed the final report. No such proof is forthcoming. Hence, I have to necessarily proceed on the footing that final report has not been filed till date.

4.The offences set out in the FIR are Sections 147, 341, 294 (b), 427, 506(1) IPC. They entail the following punishments :

Offence	Punishment
147 IPC	two years
341 IPC	one month
294 (b) IPC	three months
427 IPC	two years
506(1) IPC	two years

Since all these offences are punishable with imprisonment for a period of less than three years, no court can take cognizance of the final report if it is filed after the expiry of the limitation period. In this case, the limitation period expired in the year 2019 itself. Therefore, on the face of it, the bar under Section 468 of Cr.PC will kick in. Of course, the said limitation period can be extended provided sufficient cause is shown. No such cause is shown. The stand of the investigation officer is that final report was already filed. But such a stand could not be substantiated on account of want of proof. Vide order dated 16.04.2019 in CrI.O.P.No.26713 of 2017 (R.Moorthi vs. The Inspector of Police, Gudiyattam Town Police Station, Gudiyattam and another), a learned Judge had held that if the final report has not been filed within the limitation period and no reason for the delay is forthcoming, the FIR itself cannot be sustained any further. The said decision is squarely applicable to the facts of the case.

5.It is seen that the petitioner belongs to Hindu Adi Dravida community. On 28.05.2016 at about 09.30 P.M, there was a local church function involving pulling of the holy chariot. A minor quarrel arose. The community elders of the Hindus had gone to the spot to pacify. It is alleged that the Christians outnumbered the Hindus and that in the ensuing clash, persons belonging to Hindu SC community were beaten up leading to their hospitalization. One Jaigurusamy lodged complaint leading to registration of Crime No.89 of 2016 against as many as 26 persons. The said case was investigated and final report was filed and cognizance was taken in C.C.No.34 of 2019 on the file of the Judicial Magistrate, Sivagiri.



The specific contention raised by the petitioner is that the impugned FIR was given as a counter blast. The impugned FIR is subsequent in point of time.

6.I went through the contents of the impugned FIR. It only states that in connection with the church function, a group of persons indulged in whistling and quarrelling and that lights were broken and that they could not carry on with the function. Eleven persons were named as accused. The petitioner is figuring as the first accused.

7.I note that not one person has been injured on the complainant's side. The fact remains that persons belonging to Hindus had suffered injuries and they had been hospitalized and Crime No.89 of 2016 was registered. I can easily come to the conclusion that Crime No.90 of 2016 has been given only as a counter blast.

8.If the court can come to the conclusion based on available materials that the prosecution is attended by malafide and has been instituted to wreak vengeance, it can be quashed (vide **1992 Supp (1) SCC 335 (State of Haryana vs. Bhajan Lal)**). Cr.No.90 of 2016 which is the impugned FIR was registered as a counter blast to Cr.No.89 of 2016. As already noted, Section 468 of Cr.PC would come into play. Therefore, the impugned FIR is quashed and the criminal original petition is allowed. The benefit of this order will also enure in favour of the non-petitioning accused. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

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To

1.The Inspector of Police,
Sivagiri Police Station, Tirunelveli District.

2.The Judicial Magistrate,Sivagiri.

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

+1 CC to M/s.M.KARTHIKEYAVENKITACHALAPATHY, Advocate (SR-33978[F]
dated 10/11/2021)

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