



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE :16.06.2021

CORAM

The Hon'ble Justice **Mr.G. ILANGO VAN**

Crl.O.P.(MD).No.11468 of 2017

and

Crl.MP(MD)No.7877 & 7878 of 2017

S.Ahamed Rafeesyed Isamily Gori ... Petitioner/Accused No.1

Vs.

1.State represented by Inspector of Police,

Palani Police Station,

Palani District,

Dindigul District.

... 1st Respondent/Complainant

(Crime No.165 of 2015)

2.S.K.K.K.Hakeem

... 1st Respondent No.2/Defacto

Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records pertaining to the Charge Sheet in C.C.No.406 of 2015 on the file of the learned Judicial Magistrate, Palani, Dindigul District in Crime No.165 of 2015, dated 14.02.20215, on the file of the first respondent and quash the same as illegal as against this petitioner.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.M.Ganesan for R1

Government Advocate (Crl. Side)

ORDER

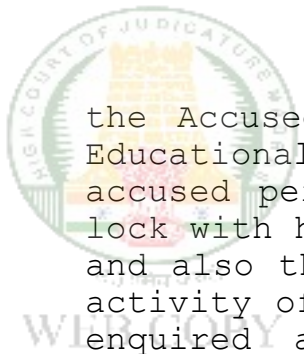
This petition has been filed to quash the Charge Sheet in C.C.No.406 of 2015 on the file of the learned Judicial Magistrate, Palani, Dindigul District, in Crime No.165 of 2015, dated 14.02.20215, on the file of the first respondent.

2.The brief facts are as follows:

The second respondent is the defacto complainant before the first respondent. He made a complaint on 09.12.2014 with the following allegations:-

He is running a Madhina Masjid Educational Institute for Muslim Children. There was a dispute between the defacto complainant and

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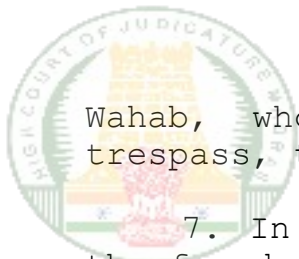
the Accused Nos.1 to 14 regarding the administration of the said Educational Institute. On 09.12.2014, at about 08.00 p.m., all the accused persons had trespassed into the Office and broke open the lock with hammer and by using the dangerous weapon, stolen the money and also threatened the defacto complainant, when he questioned the activity of the accused person. When the complaint was not properly enquired and investigated by the first respondent police, he approached this Court by way of filing Crl.O.P(MD) No.23436 of 2014 for a direction and by an order dated 25.12.2014, this Court directed the first respondent to register a complaint and investigate the same. On that basis, the complaint was registered on 14.02.2015, in Crime No.165 of 2015 for the offence under Sections 147, 148, 457, 380 and 506(i) of IPC. Based upon the complaint given by the second respondent, investigation was undertaken by the first respondent and he recorded the statement of the witnesses and collected the materials. After concluding the investigation, he filed a final report stating that all the accused persons have committed the offence punishable under Sections 147, 148, 427 and 5069 (i) of IPC.

3. Seeking quashment of the final report, the accused No.1 is before this Court by way of filing this quash petition on the ground that the dispute arose between the members of the Jamath and the defacto complainant, since they changed the Masjid into waqf land for the purpose of securing the private person intervention into the Masjid. The defacto complainant was also one of the private intervener in that Masjid and his intention is to occupy the Masjid into his own property and later it was converted into waqf property. So he had vengeance to wreak upon the accused persons.

4. At the time of alleged occurrence, the petitioner was attending Ramjan festival. So, he was not at all present in the alleged place of occurrence. Further, the complaint was registered, after two months of the alleged occurrence. One of the accused is the Muthavalli of Madhina Masjid. So, the question of trespass into his own land, does not arise. There is no *prima facie* ground for proceeding the trial and WOP.No.2 of 2015 is pending before the Sub Court, Dindigul District. One Abdul wahab is the Muthavalli in that mosque till now and he is in a possession and performing the day-to-day affairs of the Masjid.

5. Here both sides.

6. One point that was urged by the learned counsel for the petitioner at the time of argument is that on the date of alleged occurrence namely, 09.12.2014, the second respondent, who is the defacto complainant herein, was not in a possession of the Madhina Masjid. But, he was in possession of the management of one M.Abdul



Wahab, who was appointed as Muthavalli. So, the question of trespass, theft and criminal intimidation will not arise.

7. In the complaint, the second respondent stated that he was the founder of Madhina Masjid Arabic Pada Salai and was managing the affairs. Due to the personal enmity, the accused persons interfered with the affairs and W.O.P.No.2/2014 was filed by the petitioner before the Sub Court, Dindigul District, wherein, interim injunction was also granted. Against the injunction order, the accused persons damaged the compound wall and inscription boards. In respect of which, a case in Crime No.712 of 2014 for the offences under Sections 147, 148, 427, 380 and 506 (i) of IPC was registered and it was pending investigation. During the pendency of this criminal case, he requested some of the persons namely, M.S.Mohammed Ali, Y.Basheer Ahemed, Nasartheen and Mohammed Kani to make compromise. He also kept various registers in the room used by Imam. He also kept Rs.45,000/- and those things were stolen on 09.12.2014, by the accused persons by broke open the lock.

8. The learned counsel for the petitioner would draw the attention of this Court with regard to the order passed by the District Revenue Officer/Chief Executive Officer, Tamil Nadu Waqf Board, Chennai, dated 02.08.2014 in R.C.No.9420/14/E3/CC recognizing and registering the Madhina Masjid Arabic Pada Salai in the Waqf Registry by the Reg No.319/Mdu. On 25.06.2014, the name of the Muthavalli is mentioned as Janab M.Abdul Wahab, Thiru Nagar, Palani. The properties are mentioned as S.Nos.152/4, & 152/5 measuring 6450 sq.ft situated in Sivagiripatti Village, Dindigul Taluk.

9. The above said documents clearly show that the disputed Pada Salai was registered as a Waqf Property and Muthavalli was one Janab M.Abdul Wahab. So, on the date of the alleged occurrence namely, 09.12.2014, it appears that the property was in possession of the Waqf represented by the Muthavalli, namely, Janab M.Abdul Wahab. So, the question of trespass and theft of the property will not arise.

10. For that purpose, the learned counsel for the petitioner would rely upon the judgment of this Court in **Sterling Holiday Resorts (India) Limited and Others Vs. Mr.Murli Khemchand In Crl.OP.No.26938 of 2012 & MP.Nos.1 & 3 2012**, wherein, a similar issue also arose. Admittedly, the disputed property was not in a possession of the defacto complainant. So, when that was being so, the question of trespass and theft of the property did not arise and so, no offence was made out against the accused in that case. So, when we apply this principle to the facts of the case, it is clear that on the date of alleged occurrence namely, 09.12.2014, the Madhina Masjid Arabic Pada Salai was not in a possession of the defacto complainant. So, the question of trespass and theft of property as mentioned earlier will not arise.



11. Another aspect is that the interim ex-parte order granted by the Waqf Tribunal namely, the Sub Judge, Dindigul, in I.A.No.57 of 2014 in WOP.No.2 of 2014, came to be vacated, subsequently, when the respondent in that petition, appeared before the Court and made objection with regard to the maintainability of the petitioner. So, the defacto complainant, cannot be permitted to say that on the date of the alleged occurrence, his possession was protected by the competent Civil Court. It appears that by supressing these material facts, the defacto complainant appears to have filed the above said WOP.No.2 of 2014. On 03.07.2014, Janab M.Abdul Wahab has sent a petition to the District Revenue Officer/Chief Executive Officer, Tamil Nadu Waqf Board, Chennai for registering the Madhina Masjid Arabic Pada Salai as a Waqf property. WOP.No.2 of 2014 has been filed on 11.07.2014, and the order was vacated subsequently.

12. Next point is that with regard to the offence under Section 506 (i) IPC, no ingredients are mentioned in the complaint. It has been vaguely stated that the accused persons are threatening him. Where, when and how the criminal intimidation was committed, is not mentioned. So, mere verbal utterances will not attract an offence under Section 506 (i) IPC. Similarly, the offences under Sections 147 and 148 will not also attract. The discharge application filed by the petitioner was dismissed at the hands of the Trial Court, since the points which have raised in this petition were not argued before the Trial Court. So, dismissal of the application may not stand in the way of considering this petition filed under Section 482 Cr.P.C.

13. So, for the reason stated above, I am of the considered view that this is a clear case of abuse of process of the Court and so, the final report in C.C.No.406 of 2015, pending on the file of the learned Judicial Magistrate, Palani, is liable to be quashed. Even though the eleventh accused has preferred this petition, I am of the considered view that the entire final report is liable to be quashed and the same is quashed.

14. In the result, the Criminal Original Petition stands allowed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

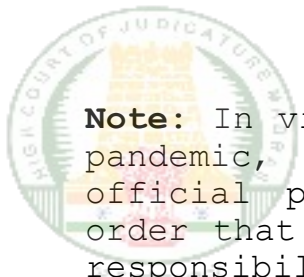
Assistant Registrar (CSII)

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/ /2021

Sub Assistant Registrar(CS)

dss/cp



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To

- 1.The Judicial Magistrate, Palani,
Dindigul District.
- 2.The Inspector of Police,
Palani Police Station,
Palani District,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD) .No.11468 of 2017
and
Crl.MP (MD) No.7877 & 7878 of 2017
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