



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.04.2021

Delivered on : 21.05.2021

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THE HONOURABLE MR.JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.15034 of 2017

and

Crl.MP(MD)Nos.10000 and 10001 of 2017

1.A.Selvam @ Michael Sahayam
2.C.Kasmir Raj @ Raja
3.M.Sait @ Chinnappa Alangaram
4.C.Rajan
5.P.Antonymuthu
6.J.Prabhu
7.R.James Benedict
8.A.Paul Gunasekaran @ Gunasekaran
9.A.Kani @ Alphonse Raja Kani
10.L.Micheal Dyson
11.C.Paulkumar
12.A.Vino Paul
13.M.Nickson @ Nickson Antony
14.M.Paul Selvaraj @ Selvaraj
15.P.Sahaya Vinoth @ Sahaya Antony Vinoth .. Petitioners

vs.

1.The State through
The Deputy Superintendent of Police,
Cheranmahadevi, Tirunelveli District.
(Crime No.175 of 2013)
2.The Sub-Inspector of Police,
Mokoodal Police Station,
Thirunelveli District.
Crime No.175 of 2013.

3.Perumal Sait .. Respondents

Prayer: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in S.C.No.61 of 2017 on the file of the II Additional Sessions Judge, Tirunelveli (PCR Court) and quash the same.

For Petitioners : Mr.C.Dhanaseelan
For R1 and R2 : Mr.R.Anandharaj
Additional Public Prosecutor
: Mr.R.Krishnan



ORDER

This Criminal Original Petition is filed seeking to quash the proceedings in S.C.No.61 of 2017 pending on the file of the II Additional Sessions Judge, Tirunelveli (PCR Court).

2.The case of the prosecution before the trial Court is that the third respondent herein, who is the defacto complainant, had lodged a complaint with the first respondent herein, on 19.09.2013, making the following allegations: -

2.1. On 18.09.2013 in the evening hours, one Muthammal, W/o. Mookan, died. He was a Village Head, at that time and he made all the arrangements for burial. On the date, at about 03.45 p.m, under his head, one Elavarasan, Mariappan, Manikanda Prabu, Selvaraj and numbering about 100 persons took the body of the deceased for burial. At about 04.00 p.m, they were nearing the place of occurrence and at that time, the accused persons, namely, Selvam and others numbering about 19 prevented them from proceeding further. They questioned the accused about their act and in turn, the accused persons abused the de-facto complainant and others by calling their caste name and abused them in filthy language and they also prevented the body to be buried in that place. At that time, the de-facto complainant informed the accused that during the year 2010, the Sub-Collector of Cheranmahadevi allotted 1.18 acres for burying dead bodies, belonging to their community. But they refused to hear them and they have also criminally intimidated them and later, disbursed.

2.2.Based upon the complaint given by the de-facto complainant, a case in Crime No.175 of 2013 for the offences punishable under Sections 147, 341, 294(b), 297 and 506(ii) I.P.C. and under Sections 3(i)(x) and 3(i)(xiv) of SC/ST (POA) Act, 1989, was registered by the first respondent police. The first respondent, who is the competent person, took up the investigation and recorded the statements of witnesses, collected materials and finally, filed the final report before the Committal Court, making allegation against these petitioners that they have committed the offences punishable under the above said provisions of law. Later, the case was committed to the II Additional Sessions Court, Tirunelveli (PCR Court).

3.Now, Challenging, the final report and seeking quashment of the same, this petition is filed by the petitioners / Accused Nos. 1, 2, 4 to 16 on the ground that the burial ground, which is now claimed by the defacto complainant belongs to them and separate burial ground was allotted to the defacto complainant's community people and instead of using the same, they tried to bury the body in the burial ground, which belongs to the petitioners community and



complaint took place as stated above, as mentioned in the final report.

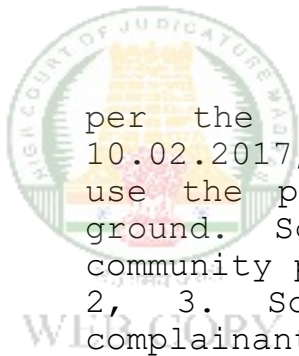
4. Heard both sides.

5. On hearing all the parties and on perusal of the records, it is seen that there is a trouble and dispute over the burial ground. According to the petitioners, the property in New Natham Survey No.1174/11, which is a part of old Survey No.576 of Ariyanayagipuram Part I Village, belongs to their community people and they are using the same as the burial ground. The defacto complainant's community people have a separate burial ground in Survey No.1174/2 (old Survey Nos.576/13 & 14) measuring at about 1.78 acres of Ariyanayagi Puram Part I Village. That land was classified as a burial ground, which was also allotted to Harijan Community people also, entered in the revenue records also. A portion of the property was encroached by a member of the defacto complainant's community measuring 68 cents. He instigated the other community people to use the burial ground with the present community people. Later, that encroachment was ordered to be removed. But, that was not removed by the Tahsildar, Cheranmahadevi. During the year 2013 also, the defacto complainant's community people trespassed into the burial ground in Survey No.1174/11 for burring a dead body, which was prevented by the revenue officials, but, the case was registered against the petitioners' community people in Crime No.175 of 2013, which is the present complaint herein.

This fact is heavily disputed by the defacto complainant. Originally, the case was heard and reserved for judgment. So, in the light of the rival submission made by the parties, the matter was reopened for clarification and the learned counsel for the petitioners submitted that thereafter, there is no problem between two community people and are living peacefully and on a specific query asto the burial ground, the learned counsel for the petitioners submitted that the defacto complainant's community people are burring the dead bodies in their own burial ground, namely, in New Natham Survey No.1174/2, but, whereas, the learned counsel for the third respondent / defacto complainant submitted that they are burring the dead body in Survey No.1174/2. So, it appears that the dispute is not over, even after several steps taken by the revenue officials and also by filing this case.

6. In respect of the dispute, the petitioners also filed a suit in O.S.No.106 of 2013 before the Sub Court, Ambasamudhiram, for declaration that the burial ground in Survey No.1174/11, belongs to the petitioners' community people.

7. A writ petition was filed in W.P.(MD)No.12806 of 2014, before this Court, seeking for writ of Mandamus, directing the Tahsildar, Ambasamudram, to implement the order passed by the Sub-Collector, Cherasaram, on 09.11.2010 and that petition was allowed and as

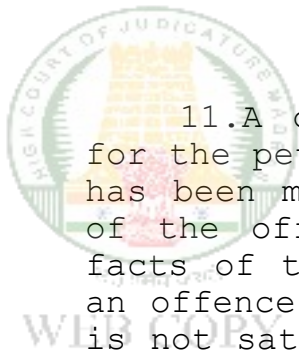


per the order, the Tahsildar passed the final order, dated 10.02.2017, directing the defacto complainant's community people to use the property in new Natham Survey No.1174/2A as the burial ground. So, according to the petitioners, the defacto complainant's community people have no right to bury the body in Survey No.1174/1, 2, 3. So, according to the petitioners, only the defacto complainant's parties are the aggressors and when the civil suit is pending, a false case has been foisted. But, I am unable to agree with the arguments advanced by the learned counsel for the petitioners, to the effect that since a civil suit is pending, there is no *prima facie* case, to proceed.

8.The learned counsel for the petitioners made an elaborate submission with regard to the entire proceedings and as well as the Commissioner Report filed in O.S.No.106 of 2013. But, those factual aspects cannot be gone into in this petition, where the burial ground of the petitioners and the defacto complainant's community people lies. That cannot be made as a point for discussion in this petition. Whatever may be the dispute regarding the burial ground, that can be decided only in the appropriate civil proceedings, which is pending before the Sub Court, Ambasamudhiram. So, this Court cannot go into those facts, which are disputed facts in the civil suit.

9.Whether the occurrence as stated in the complaint as well as in the final report took place or not, can be decided only in the course of trial. Reading of the complaint as well as the materials collected and the statements recorded by the police, during the course of investigation would show that *prima facie* materials are available against these petitioners to face the trial. Elaborate written arguments submitted by the learned counsel for the petitioners, would show that he is mainly depending upon the facts and circumstances. According to him, when the disputed property belonging to them, the question of wrongful restraintment and insulting the feeling of other person or insulting the community of other persons or indignity to human caste, the ingredients of the offence under Section 3(1)(x) of SC / ST (POA) Act are not attracted, cannot be accepted at this stage.

10.Admittedly, some trouble arose between the defacto complainant community people on one side and the petitioners community people on the other side, regarding the burial. It is the case of the petitioners that they tried to bury the dead body in the burial ground belongs to these petitioners. This is objected by them and the police for the purpose of showing some sympathy to the defacto complainant's community people, registered this case. But, as I mentioned earlier, per contra, it is the case of the defacto complainant that they have every right to bury the dead body in the property claimed by the petitioners as their own.



11.A detailed argument has been filed by the learned counsel for the petitioners setting out various facts. The first point that has been mentioned in the written argument is that the ingredients of the offence under Section 147 I.P.C is not attracted, to the facts of the present case. According to him, unlawful assembly is an offence under Section 147 I.P.C., wherein, the main requirement is not satisfied. According to him, the petitioners have assembled in the place of occurrence only for the purpose of enforcing their right over the burial ground dispute and so, no question of mis-chief or criminal trespass was committed. But, however, the main dispute between the parties is with regard to the location of the burial ground.

12.The next point that has been urged in the written argument is that no offence was committed as defined under Section 147 I.P.C, since even in the F.I.R, it has been specifically mentioned that when they shouted at the petitioners, they went back. So, no question of mis-chief or criminal act have been committed. Even as per the Observation Mahazer, no trace of commission of any offence is mentioned. The next point is that the ingredients of the offence under Section 341 I.P.C, is not attracted, since the defacto complainant has no right to bury the dead body in that place, which they claim as their own. So, the question of obstruction does not arise. Similarly, according to the petitioners, the offence under Section 297 I.P.C is not attracted. For that purpose, he would rely upon the judgments of the Hon'ble Supreme Court reported in **2013 (3) SCC 330 [Rajiv Thapar and others Vs. Madan Lal Kapoor]** and **2013 (9) SCC 393 [Prashant Bharti Vs. State (NCT of Delhi)]**.

13.The point which, urged by the learned counsel for the petitioners is that in view of the order passed by the Sub-Collector and the Surveyor Report and the Commissioner Report can be relied upon. But, I am unable to agree with the line of argument for the simple reason that already they have filed suit by the petitioners for declaration over the dispute. That got to be decided only in the pending suit. Any observation made in this petition will amount to improper assumption of jurisdiction. So, as mentioned in the final report, whether the occurrence took place or not can be a matter for trial as mentioned earlier.

14.The next argument is that the offence under Section 3(1)(x) of SC and ST Act is not attracted. According to the learned counsel for the petitioners, there was no intention on the part of the petitioners to insult the defacto complainant and others by calling their caste. For that purpose, they would rely upon the judgment of the Hon'ble High Court of Kerala reported in 2004 (2) Criminal 469 [Mohammed Kutty Vs. State of Kerala]. The point which the learned counsel for the petitioners tries to impress is that the alleged words uttered by the petitioners are referring only to the dispute of burial ground. Moreover, it is not stated by the witness that



the occurrence happened in the presence of general public and in their view. For that purpose, he would rely upon the judgment of the Hon'ble Supreme Court reported in **2008 (12) SCC 531 [Gorige Pentaiah Vs. State of A.P. and others]** and **2002 (1) MLJ Criminal 202 [Victor Paul and another Vs. State]**. But, whether there was an intention on the part of the petitioners to insult the defacto complainant and others by calling their caste or not can only a matter for trial. sitting in the jurisdiction or exercising the power under Section 482 Cr.P.C., may not be proper on the part of this Court, to discuss whether there was any intention on the part of the petitioners or not without any evidence. So, this also a matter for consideration by the trial Court during evidence.

15.The next contention is that even the First Information Report alleged to have been lodged on the basis of particulars furnished by the others, who were present in the place of occurrence, any information given in the First Information Report, without the first hand information will amount to hearsay and has no evidentiary value. But, this also a matter for consideration during evidence. The evidentiary value of the First Information Report and its contents with regard to the occurrence and identification of the persons can be decided only during the course of trial and this Court cannot exercise the pre-trial method, to discuss this point. Similarly, the non-examination of independent witnesses during the course of investigation also cannot be taken into account in this petition.

16.Quashing of 149 I.P.C. due to the pendency of a civil dispute is not a matter for consideration in this petition. Similarly, whether the petitioners have exercised the right of private defence cannot be considered in this petition and this this is a matter for trial. The last point which has urged by the petitioners is that the alleged offence is of the year 2013 and sever years have lapsed. So, because of long delay, no purpose is going to be served and the liberty is also affected, cannot be accepted, as the ground for quashing the entire proceedings.

17.So, I am of the considered view that none of the grounds raised by the petitioners can be considered in this petition. Those factual aspects have to be tried by the trial Court. So, I am not convinced that this is a fit case to quash the criminal proceedings.

18.Even though the case is of the year 2013 and eight years passed that cannot be a ground for quashing the criminal proceedings. So, this petition deserves to be dismissed and accordingly, the same is dismissed. The trial Court, namely, the II Additional Sessions Judge, Tirunelveli, is hereby directed to complete the trial proceedings within a period of six months from the date of receipt of a copy of this order and compliance report may be submitted to the Registry.



19. With this direction, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar (CSIII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The II Additional Sessions Judge,
(PCR Court), Tirunelveli.
2. The Deputy Superintendent of Police,
Cheranmahadevi,
Tirunelveli District.
3. The Sub-Inspector of Police,
Mokoodal Police Station,
Thirunelveli District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

The Registrar (Judicial),
Madurai Bench of Madras High Court,
Madurai.

Pre-Delivery Order Made In
Crl.O.P. (MD)No.15034 of 2017
21.05.2021

KB(16.06.2021) 7P 6C