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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.03.2022

Delivered on : 12.04.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

Crl.O.P.No.3687 of 2021

&

Crl.M.P.No.2199 of 2021

S.Shanmuga Pandian

...Petitioner / 1st Accused

Vs

1.State by
Inspector of Police
Kovilpalayam Police Station,
Coimbatore District,
(Crime No.819 of 2020)

...1st Respondent / Complainant

2.Ravikumar

...2nd Respondent / Defacto
Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Cr.PC to call for the records of FIR in Crime No.819 of 2020 dated 10.10.2020 on the file of the 1st respondent herein and quash the same.

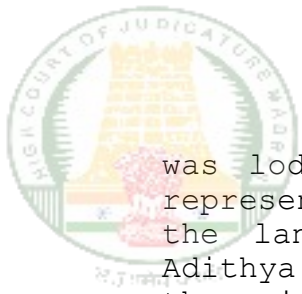
For Petitioner : Mr.N.Manoharan
for Mr.N.Ponraj

For Respondent 1 : Mr.S.Udayakumar
Government Advocate
(Criminal Side)

For Respondent 2 : Mr.K.S.Karthik Raja

ORDER

This Criminal Original Petition is filed to quash the FIR dated 10.10.2020 in Crime No.819 of 2020 on the file of the 1st respondent Police registered on the basis of the complaint given by the 2nd respondent, the defacto complainant. The complaint



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was lodged by the defacto complainant claiming to be a legal representative of one T.K.Rajeswari. It is his contention that the lands comprised in S.F.No.598, are situate opposite the Adithya Engineering College, near Kumaran Nagar and managed by the said T.K.Rajeswari.

2. It is the grievance of the defacto complainant that one Kowsalya had filed a suit O.S.No.442 of 2020 against the said T.K.Rajeswari in respect of the land measuring an extent of 0.14 acres in the above Survey number. While the suit is pending before the Civil Court and when there was an injunction granted by this Court, on 10.10.2020 around 3 AM in the early hours, Kowsalya, her father Shanmuga Pandian along with about 20 people had entered into the suit property and removed the barbed wire fence and destroyed the pillars which had been put up several years ago and had illegally trespassed into the said land.

3. It is the defacto complainant's contention that he had been informed about this incident at around 8.30 in the morning and immediately he had rushed to the spot. At that point, he found that the petitioner was attempting to put a fence and the defacto complainant had stopped the petitioner and his people from putting the fence. The said incident was immediately informed to the 1st respondent herein. However, without listening to the defacto complainant and ignoring the right of the defacto complainant to the property, they had continued with the task of putting the fence.

4. When the defacto complainant attempted to stop Shanmuga Pandian, the petitioner herein, the said Shanmuga Pandian and his people abused him using obscene words and asked him to get out stating as follows "nghlh ehna". The defacto complainant informed them that he would not leave and thereafter the said Shanmuga Pandian and others threatened him as follows "unless you leave the place immediately we shall beat you to death and bury you in this very place". Therefore, the complaint.

5. The defacto complainant had stated that while the Civil suit was pending, the petitioner along with his henchmen had illegally trespassed into the property and removed the fence and pillars put up by the defacto complainant. Therefore, he sought for an investigation.

6. The petitioner has now filed this Criminal Original Petition to quash the FIR in Crime No.819 of 2020 dated 10.10.2020.

7. The FIR has been taken on file for offences under Section 147, 447, 427, 294 (b) and 506 (i) of the Indian Penal Code, hereinafter called the IPC against the petitioner and others.



The petitioner has filed this petition seeking to quash the FIR on the following grounds:

(a) The registration of FIR without any enquiry is an abuse of process of law.

(b) The Civil dispute is sought to be given a criminal colour and the 1st respondent has mechanically registered the same, particularly when the FIR is based on vague allegations.

(c) The FIR has been lodged with the oblique motive of arm twisting the petitioner and his daughter into settling the Civil dispute.

(d) Since the complaint is based on false and frivolous facts, it has to be necessarily nipped in the bud as set out in the Judgement of the Hon'ble Supreme Court reported in 1992 Supp.(1) SCC 335 = 1992 AIR 604 - State of Haryana Vs. Bhajan Lal.

(d) The complaint taken as a whole does not make out commission of any offence by the petitioner.

8. Mr.N.Manoharan, learned counsel appearing on behalf of the petitioner has made the following submission. He has at the outset questioned the authority / locus standi of the defacto complainant to lodge the complaint. He would submit that the defacto complainant has described himself as the legal representative of the said T.K.Rajeswari. However, his relationship to the said Rajeswari has not been spelt out though he claims to be the legal representative of the said Rajeswari. The defacto complainant has also not produced any power of attorney which authorised him to make such a complaint.

9. The learned counsel would further submit that the defacto complainant has lodged the FIR on the basis of the letter dated 10.10.2020 said to have been issued by T.K.Rajeswari to the Inspector of Police, Kovilpalayam Police Station, Coimbatore, the 1st respondent. Even in this letter, what has been stated is that the petitioner herein was trying to encroach into the land and disturb her possession and since she is unable to lodge a complaint on account of her health conditions, she has authorised the defacto complainant to lodge the police complaint against the petitioner herein.

10. According to the learned counsel for the petitioner, the letter which is issued on 10.10.2020, which is the alleged date of the occurrence of the offence and which is issued for the purpose of lodging a complaint only states that the petitioner



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(i) 1996 (1) CTC 470 - K. Jayaramanujam Vs. Janakaram & another.

(ii) 2010 2 MLJ (Cr) 12 - R. Ramesh Vs. State by Inspector of Police Kachirapalayam P.S. Villupuram District.

(iii) 2020 (3) MWN (Cr.) 79 - S.P. Raja Vs. Inspector of Police, Tirunelveli Taluk Police Station.

16. It is the argument of the learned counsel that all these Judgements had laid down the ingredients that are required for constituting an offence under Section 294 (b) of the IPC and these Judgements have also considered the ingredients of Section 506 (i) of the IPC, which is also one of the offences under which the FIR has been registered.

17. The learned counsel would answer the issue of maintainability raised by the defacto complainant by contending that the provisions of Section 482 of the Criminal Procedure Code can be invoked for quashing the FIR. The learned counsel would submit that the Judgement that still holds the field in this regard is the Judgement reported in 1992 Supp. (1) SCC 335 = 1992 AIR 604 - State of Haryana Vs. Bhajan Lal. In that case though the application was turned down however, the Hon'ble Supreme Court had laid down the broad principles which a High Court should consider when exercising the Jurisdiction under Section 482 of the Criminal Procedure Code to quash the proceedings. He would therefore submit that the instant case is a classic case where a Civil suit is sought to be converted into a criminal proceedings and in order to achieve that end, a colour of criminality is sought to be made through this FIR.

18. Mr. S. Udayakumar, learned Government Advocate would submit that the FIR clearly makes out all the ingredients for the offence for which it has been laid. He would submit that the accused cannot rush to this Court to file a Section 482 petition since the case does not fall within the parameters for exercising the powers under Section 482 of the Criminal Procedure Code.

19. The learned Government Advocate would rely upon the Judgement reported in 2021 SCC OnLine 315 - Neeharika Infrastructure Pvt. Ltd., Vs. State of Maharashtra and others, where the Hon'ble Supreme Court has held that the power possessed by the High Court under Section 482 of the Code is vast and therefore plenitude of the power requires great caution in its exercise.

20. The learned Government Advocate would submit that the learned Judges in the said Judgement had held that the Courts by entertaining a petition under Section 482 of the Criminal



Procedure Code should not transgress into the investigating process and should leave it entirely to the discretion of the Investigating Agency. Therefore, he would contend that the FIR is only at the stage of investigation and at this stage, the petitioner cannot come before this Court and seek quashing of the FIR. In short he contended that the petition is premature.

21. Mr.K.S.Karthik Raja, learned counsel for the defacto complainant would add to the argument of the learned Government Advocate by stating that FIR is not akin to a plaint. In the case of a plaint it can be rejected on its pleadings. The FIR is only a preliminary stage of investigation. He would submit that the Judgements relied upon by the petitioner are all Judgements which are quash petitions filed at the stage of final report.

22. The learned counsel would rely upon the Judgement of the Hon'ble Supreme Court reported in 1995 (2) SCC 449 - State of Tamil Nadu Vs. Thirukkural Perumal, where the Hon'ble Supreme Court had observed that the Court cannot embark upon an enquiry as to the reliability or genuineness of the allegations contained in the FIR or the complaint on the basis of evidence collected during investigation while dealing with the petition under Section 482 of the Criminal Procedure Code seeking quash the FIR.

23. The learned counsel would also rely upon the Judgement reported in 2022 (2) SCC 129 - Mahendra K.C. Vs. State of Karnataka and Another, where the Hon'ble Supreme Court in paragraph No.21 of the said Judgement, referring the Bhajan Lal's case, once again held that the powers under Section 482 should be exercised to prevent abuse of process of any Court or to secure ends of Justice.

24. The learned counsel would further submit that the argument of the petitioner that some stranger has given a complaint is totally wrong in the light of the letter given by the said T.K.Rajeswari to the 1st respondent Police, where she has authorised the defacto complainant to lodge the complaint. Further, the delay in lodging the complaint in the instant case is not material as the same has been done as soon as the defacto complainant had come to the spot on hearing news about the commission of the offence.

25. Mr.N.Manoharan, by way of a reply would submit that the FIR is a fabricated one and not filed on 10.10.2020 as alleged for the simple reason that the same has been received by the Judicial Magistrate II, only on 14.10.2020. The learned counsel would further submit that the complicity of the 1st respondent Police and the defacto complainant is evident from the fact that



on 10.10.2020 at 9 AM the said T.K.Rajeswari along with her henchmen had illegally entered the property, the subject matter of the suit and had broken down the fence put up by the petitioner and attempted to enter the property. The petitioner had immediately approached the 1st respondent Police to lodge the complaint. However, since the said T.K.Rajeswari, who is running an Engineering College, had sufficient clout, the complaint was not taken on file.

26. Therefore, on 12.10.2020, the petitioner has made a complaint to the District Superintendent of Police through registered post, marking a copy to the 1st respondent Police. On 13.10.2020, only a CSR number was issued after the 1st respondent had received the complaint by registered post. However, no action was taken constraining the petitioner to move the Judicial Magistrate II, Coimbatore in C.M.P.No.3785 of 2020 to register his complaint under Section 148, 448, 427, 294 (b) and 506 (ii) of the IPC.

27. The learned counsel would further submit that after the complaint of the petitioner had been given a CSR number, a complaint appears to have been given by the defacto complainant on 14.10.2020 by ante-dating it which is evident from the fact that the Judicial Magistrate II, Coimbatore, has received the FIR only on 14.10.2020. The 1st respondent have enabled the defacto complainant to ante-date the complaint. He would once again contend that the FIR does not make out a case against the petitioner. The learned counsel would therefore submit that it is the fit case for the Court to exercise its power under Section 482 and quash the petition.

28. Before discussing the case on hand, it is necessary to first extract the provisions of the various Section under which the FIR has been registered against the petitioner and others.

Section - 147. Punishment for rioting.—Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section - 447. Punishment for criminal trespass.—Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, with fine or which may extend to five hundred rupees, or with both.

Section - 427. Mischief causing damage to the amount of fifty rupees.—Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either



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description for a term which may extend to two years, or with fine, or with both.

Section 294 (b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.]

Section 506. Punishment for criminal intimidation.—Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc.—And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or 1 [imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

29. Since the FIR is sought to be quashed under the provisions of Section 482 of the Criminal Procedure Code, there is a necessity to extract the said provision though it is oft-quoted and oft-referred in the Criminal Judicial Jargon:

Section - 482. Saving of inherent powers of High Court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

30. Coming to the case on hand, from the FIR that has been registered, the following factors emerge:

(a) The defacto complainant claims to be the legal representative of the alleged owner of the land. The term legal representative appears to have been loosely used considering the fact that T.K.Rajeswari is very much alive.

(b) There is a Civil Suit pending in respect of the property between the alleged owner of the land and the daughter of the petitioner herein.



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(c) In the early hours of 3 AM on 10.10.2020, the petitioner / 1st accused and about 20 people had come to the suit property, removed the fence and destroyed the pillars which had been put up several years ago by the alleged owner and trespassed into the land. At 8.30 AM, this incident was informed to the defacto complainant, who comes to the site all by himself.

(d) The defacto complainant informs the Police and he tried to stop the petitioner and the other accused from putting up a fresh fencing. The said persons used obscene words like "போடா நாயே".

(e) When the defacto complainant refused to leave, the petitioner and the others said the following words to him "நீ இப்போது வெளியே போகவில்லையென்றால் உன்னை இங்கேயே அடித்து கொன்று புதைத்து விடுவேன் என கூறி மிரட்டினார்கள் என்பதனை இதன் மூலம் தெரிவித்துக்கொள்கிறேன் "

31. On the basis of this complaint which is said to be filed on 10.10.2020, the FIR had been registered in Crime No.819 of 2020. A reading of the FIR would however show that the complaint has been lodged on 10.10.2020 on the date of the occurrence itself i.e., Saturday only at 20.30 Hrs. The place of occurrence is said to be 4 Kms away from the Police Station. This complaint was received at the Judicial Magistrate II, Coimbatore on 14.10.2020 at about 10.30 Hrs. Therefore, the FIR appears to have been despatched 3 days after the complaint is said to have been lodged. Another fact that has to be taken note is that in the complaint, the defacto complainant would state that he had come to the place of occurrence at 8.30 AM and had informed the 1st respondent immediately. However, the FIR would state that the complaint is lodged at 20.30 Hrs.

32. On the side of the petitioner, a petition in C.M.P.No.3785 of 2020 filed under Section 153 (3) of the Criminal Procedure Code has been enclosed. A reading of which would show that on 10.10.2020 around 9 AM the said T.K.Rajeswari and her henchmen had illegally entered into the petitioner's daughter's land and destroyed the fencing put therein and were attempting to put up new fencing. The petitioner attempted to stop the action. However, since they continued with their illegal act the petitioner had filed a complaint before the 1st respondent Police. However, since the said T.K.Rajeswari had considerable influence, the FIR was not registered. Therefore, the petitioner had forwarded the complaint by registered post dated 12.10.2020 to the District Superintendent of Police with a copy marked to the 1st respondent. Since no action was taken on



the complaint, the petition under Section 156 (3) was filed by the petitioner on 28.10.2020.

33. It is only on 14.10.2020, that the complaint of the defacto complainant has been received at the Judicial Magistrate Court II, Coimbatore at 10.30 Hrs. Therefore, it clearly shows that the complaint could not have been made on 10.10.2020 as alleged since Section 157 of the Criminal Procedure Code states that once the Officer In-charge of Police Station has received information about the commission of offence or he has reason to so suspect he should forthwith send a report of the same to the Judicial Magistrate, who is empowered to take cognizance of an offence and thereafter proceed in person or depute Subordinate Officer to investigate the facts and circumstances of the case. Infact, a reading of Section 157 would set out the sequence as follows:

(a) Complaint is received.

(b) Report is prepared and immediately despatched to the Magistrate.

(c) Thereafter, the officer either by himself or through his Subordinate Officer who he deposes should proceed to the said place to investigate the facts and circumstances of the case.

Therefore, even before coming to the spot where the offence is alleged to have been occurred, the report has to be forwarded to the Judicial Magistrate.

34. Therefore, the dates shown in the FIR and the date on which the FIR has been received by the Judicial Magistrate II, Coimbatore gives rise to a doubt about the genuineness of the very complaint. Despite this serious procedural lapse even if this Court were to consider the FIR, the first thing that stands out is that there is already a Civil Suit pending between the parties, which has been filed prior to June 2020.

35. The records would further indicate that by order dated 03.08.2020, the II Additional District Munsif, Coimbatore, before whom the suit O.S.No.442 of 2020 is pending, had appointed an Advocate Commissioner in I.A.No.1 of 2020 to measure the disputed portion of the petition mentioned property with the aid of the Taluk Surveyor and on the basis of the land documents and revenue documents. The Advocate Commissioner was directed to submit his report by 24.08.2020. The petitioner's daughter who is the plaintiff in the said suit had categorically contended that she is in possession of the property described in the plaint which was an extent of 14 cents in S.No.601/2C and 0.20 $\frac{1}{4}$ cents in S.No.601/2B, Sarkarsamakkulam Village, Annur Taluk. Coimbatore.



36. The learned counsel appearing for the said T.K.Rajeswari in the above suit has issued a letter dated 28.08.2020, in response to the letter given by the Advocate Commissioner informing the parties about his proposed visit, stating that since T.K.Rajeswari was ill and advised to stay back at home the visit was requested to be rescheduled after 10 days. Thereafter, the FIR has come to be filed.

37. The daughter of the petitioner has stated that she is in possession of the property and in these circumstances the offence under Section 447 Criminal Trespass has not been made out. Further, the FIR does not make out a case under Section 427 or under Section 147 since it is only a statement that at 3 Hrs on 10.10.2020, the petitioner along with about 20 people had illegally trespassed pull down the fencing and destroyed stone pillars in the property and attempting to re-install new fencing. It is rather strange that when the property was already fenced if the intent of the accused was to enter into the possession, he could have simply entered the property and remained there as there is no necessity for him to remove the fencing and once again re-fence it.

38. As regards the offence under Section 294 (b), the only allegation contained in the FIR is as follows:

“மேலும் மேற்படி நபர்கள் சட்ட விரோதமாக கம்பிவேலியிட முயற்சித்தார்கள்.
நான் சென்று தடுத்ததற்கு மேற்படி நபர்கள் என்னை காதில் கேட்க முடியாத கெட்ட
வார்த்தைகளால் திட்டி வெளியே போடா நாயே என கூறி அடிக்க முற்பட்டார்கள்.”

39. The defacto complainant has not elaborated upon the obscene words that had fallen from the mouth of 20 persons and the petitioner. In fact, with reference to this allegation, there is no reference individually to the petitioner. The FIR does not categorically contain the statement that the petitioner was using obscene words.

40. In the Judgement reported in 2010 (2) MLJ (Cr1) 12 - R.Ramesh Vs. State by Inspector of Police, Kachirapalayam, this Court relying on earlier Judgements of this Court in 1996 (1) CTC 470 - Jayaramanuj Vs. Janakaraj and Another and 1988 (1) MLJ (Cr1) 54 - Noble Mohandass Vs. State, has held as follows:

“A perusal of the complaint / FIR does not show that on hearing the obscene words which were uttered by the accused, the witnesses felt annoyed and in the statements of witnesses Ganesan and Ravi, they have not stated that on hearing the obscene words they felt annoyed and in the absence of legal evidence to show that the words uttered by the accused annoyed others, it cannot be said that the ingredients of the offence under Section 294 B IPC are made out. Therefore, the



contentions put forth by the learned counsel for the petitioner merits acceptance."

41. A similar view was taken in the Judgement reported in 2020 (3) MWN (Cr.) 79 - S.P.Raja Vs. Inspector of Police. The underlying ingredients in order to constitute an offence under Section 294 (b) of the IPC is that on hearing obscene words the person to whom the same was addressed should have been annoyed and this annoyance has to be incorporated in the complaint. This ingredient is absent in the FIR that has been filed in the instant case. Infact the FIR does not even name the petitioner as the person who has said the words.

42. Serious allegations that have been made against the petitioner is criminal intimidation which is punishable under Section 506 (i) of the IPC. The words that have been used to constitute this offence which translated from vernacular into the English language would be as follows "leave immediately from the place, otherwise you would be beaten to death here itself and buried". The complaint does not go on to state whether the use of these words had caused fear in the mind of the defacto complainant.

43. Another interesting fact while reading the FIR is that at 8.30 in the morning, when the defacto complainant had come to know about the alleged illegal trespass by the petitioner and 20 others into the property, where they were forcibly and illegally removing the existing fencing to put up a new fencing, the defacto complainant has come to the property all alone which only goes to show that he was not intimidated by these persons and the tenor of the complaint does not indicate that he has been intimidated. In the Judgement of the Hon'ble Supreme Court reported in 2019 2 MWN (Cr.) 504 - Vikram Johar Vs. State of Uttar Pradesh and others, the Hon'ble Supreme Court relying upon the earlier Judgement of the Hon'ble Supreme Court reported in 2015 (7) SCC 433 - Manik Taneja and another Vs. State of Karnataka and another, where the Hon'ble Supreme Court had observed as follows:

"A reading of the definition of "criminal intimidation" would indicate that there must be an act of threatening to another person, of causing an injury to the person, reputation, or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with the intent to cause alarm to the person threatened or it must be to do any act which he is not legally bound to do or omit to do an act which he is legally entitled to do.



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47. In the instant case a reading of the FIR does not make out an offence and the allegations if looked into clearly appears to be concocted particularly when the Civil Suit is pending between the parties. Further, the narration of the alleged offences appears to be quite improbable particularly the fact that the alleged incident is said to take place at 3 AM on 10.10.2020 but the defacto complainant is informed only at 8.30 AM. Further despite knowing that there were over 20 persons destroying the fence and refencing the area the defacto complainant arrives at the spot all alone.

48. In the Judgement in Neeharika Infrastructure Pvt. Ltd., Vs. State of Maharashtra and others, in paragraph no.60, the learned Judges have sought to distinguish between a genuine complaint and complaints which are nothing but an abuse of process of law. The learned Judges have observed as follows:

"As observed hereinabove, there may be some cases where the initiation of criminal proceedings may be an abuse of process of law. In such cases, and only in exceptional cases and where it is found that non interference would result into miscarriage of justice, the High Court, in exercise of its inherent powers under Section 482 Cr.P.C. and/or Article 226 of the Constitution of India, may quash the FIR/complaint/criminal proceedings and even may stay the further investigation. However, the High Court should be slow in interfering the criminal proceedings at the initial stage, i.e., quashing petition filed immediately after lodging the FIR/complaint and no sufficient time is given to the police to investigate into the allegations of the FIR/complaint, which is the statutory right/duty of the police under the provisions of the Code of Criminal Procedure. There is no denial of the fact that power under Section 482 Cr.P.C. is very wide, but as observed by this Court in catena of decisions, referred to hereinabove, conferment of wide power requires the court to be more cautious and it casts an onerous and more diligent duty on the court. Therefore, in exceptional cases, when the High Court deems it fit, regard being had to the parameters of quashing and the self-restraint imposed by law, may pass appropriate interim orders, as thought apposite in law, however, the High Court has to give brief reasons which will reflect the application of mind by the court to the relevant facts."



49. While laying down their conclusion, the Bench had held that where no cognizable offence or offence of any kind is disclosed in FIR the Court can step in and not permit an investigation to go on. The case on hand definitely falls within the above parameters. Therefore, the FIR dated 10.10.2020 in Crime No.819 of 2020 is quashed.

50. The Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(CS III)

/True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.II,
Coimbatore.
2. The Inspector of Police
Kovilpalayam Police Station,
Coimbatore District.
3. The Public Prosecutor
High Court, Madras - 104.

Cr1.O.P.No.3687 of 2021

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