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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.25080 OF 2021

AND

CRL.M.P.NOS.13811 & 13815 OF 2021

1.Humayun Kabir  
2.Barakka  
3.Sahid Sulthan  
4.Salahuddeen  
5.Jalaludeen  
6.Sheik Usseth  
7.Syed Nasar Ahmed ...Petitioners / Accused Nos.1,3 to 8

Versus

1.State rep. by  
The Sub Inspector of Police,  
E-1 Police Station,  
Mylapore,  
Chennai - 600 004.  
(C.C.No.3659 of 2015)

2.Nazeefuddin Fakhri ...Respondents / Defacto Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records in C.C.No.3659 of 2015 on the file of the XVIII Metropolitan Magistrate Court, Saidapet, Chennai and quash the same.

For Petitioners : Mr.A.Ajimath Begum

For R1 : Mr.E.Raj Thilak  
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed to call for the records in C.C.No.3659 of 2015 on the file of the XVIII



Metropolitan Magistrate Court, Saidapet, Chennai and quash the same.

2.The contention of the petitioners is that the petitioners are being the Office bearers of the Mosque have been prosecuted. He further submitted that the defacto complainant had lodged a complaint as against the petitioner as such, they have trespassed and demolished the compound wall. The incident of restraining he illegal construction was happened on 10.07.2013 and after that the petitioners have gone to their routine work of managing the Mosque. He further submitted that they have no knowledge of the complaint given by the defacto complainant, after a lapse of three months from the date of alleged occurrence on 08.10.2013, the defacto complainant has lodged the complaint, which is nothing but a afterthought in order to harass the petitioners. The case has been kept pending from the year 2015 and the petitioners are undergone the ordeal of the pendency of the case.

3.The learned Additional Public Prosecutor submits that the trial has commenced on 22.11.2021 and three witnesses i.e. LW1, LW5 and LW6 have been examined as PW1 to PW3. The case is posted for further examination of witnesses on 14.02.2022. The petitioners are facing trial for offence under sections 147, 447, 427, 506(i) IPC. Totally there are only 10 witnesses in this case, already three witnesses have been examined. The rest of the witnesses are can be examined within four months, from the normal functioning of the Court.

4.The learned counsel appearing for the petitioners submits that the petitioners are aged persons, further they are having health ailments. Hence their personal appearance to be exempted before the lower Court.

5.Considering the submissions and on perusal of materials, this Court directs the lower court to consider the petition filed by the petitioners under Section 317 Cr.P.C., or 205 Cr.P.C. after obtaining affidavit from the petitioners that they shall cooperate with the trial and shall not be a reason for any delay of the trial, shall not dispute the evidence recorded in their absence and no cross examination would be delayed. The petitioners counsel would continue with the trial without any delay and the petitioners shall not dispute their identity and the petitioners shall appear before the lower Court on the date of receiving the copies, charges framing, questioning under Section 313 Cr.P.C. and during Judgment. Further the petitioners shall appear before the trial Court as and when the presence of the petitioners are required.



6. Accordingly, this Criminal Original Petition stands dismissed. Consequently, the connected miscellaneous petitions are closed.

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Sd/-  
Assistant Registrar (CS-IX)

// True Copy //

Sub Assistant Registrar

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To

1. The learned XVIII Metropolitan Magistrate,  
Saidapet, Chennai.
2. (do through) The Chief Metropolitan Magistrate,  
Egmore, Chennai.
3. The Sub Inspector of Police,  
E-1 Police Station,  
Mylapore,  
Chennai - 600 004.
4. The Public Prosecutor,  
High Court, Madras.

CRL.O.P.No.25080 of 2021  
and Crl.M.P.Nos.13811 & 13815 of 2021

NMI (CO)  
RVM(09/02/2022)