



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 31.01.2022
PRONOUNCED ON: 18.04.2022
CORAM
THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

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Crl.O.P.(MD)No.879 of 2019
and
Crl.M.P.(MD)No.378 of 2019

1.Balanamasivayam @ Namasivayam Bharathi

2.Balakrishnan : Petitioners/Accused Nos.1 and 2
Vs.

1.State through,
The Inspector of Police,
Chathrakudi Police Station,
Ramanathapuram District,
In Crime No.59 of 2015. : 1st Respondent / Complainant's

2.Muruganandham : 2nd Respondent/Defacto complainant

PRAYER : Criminal Original Petition has been filed under Section 482 Cr.P.C, to call for the records in F.I.R., in Crime No.59 of 2015, on the file of the first respondent, dated 18.04.2015 and quash the same as illegal with respect to the petitioners.

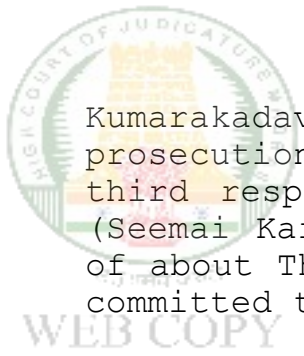
For Petitioners: Mr.N.Anantha Padmanabhan

For Respondents: Mr.R.Meenakshi Sundaram
Additional Public Prosecutor for R.1
: No Appearance for R.2

ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records pertaining to the F.I.R., in Cr.No.59 of 2015, pending on the file of the first respondent and quash the same.

2. The petitioners are the accused 1 and 2 in Cr.No.59 of 2015, on the file of the Chathrakudi Police Station, Ramanathapuram District. On the basis of the complaint lodged by the second respondent, F.I.R came to be registered in Cr.No.59 of 2015 on 18.04.2015 for the offence under Section 379 NH I.P.C., against three named persons including the petitioners and 20 persons. The Executive Officer, in-charge of Karuppalai Madam and



Kumarakadavul Temple is the defacto complainant. The case of the prosecution is that the petitioners 1 and 2 in collusion with the third respondent made arrangements to cut and remove Babul Trees (Seemai Karuvella trees) spread over two acres of land to the value of about Thirty Lakhs to Fifty Lakhs of Rupees and thereby they had committed the offence of theft.

3. The case of the petitioners is that they are the owners of the property situated in different Survey Numbers in Vallanadu Village, Muthukulathoor Taluk, Ramanathapuram District, measuring about 64.09.50 hectares, that the property was originally owned by Karuppapillai, paternal fore-father of the petitioners, that there were several wills executed in 19th and 20th century with regard to disposition of the properties, that the three ladies by name Muthathal, Kannathal and Nagathal became the owners of the property around the year 1913, that they had jointly made a disposition of property, in which they had stated the proceeds of certain properties belonging to them should be utilised for the maintenance and management of Karupanapillai Samathi, that three branches had expanded with several legal heirs and descendants and as a result of which, there were several quarrels between the members of the various branches with regard to administration of the property meant for maintenance of Samadhi, that a deity of Subramania Swamy was also established in the Samadhi and the same was named as Kumarakadavul, and from then onwards it was called as Karuppapillai Madam, that the elders of the families used to conduct a festival in the temple every year, that from out of the income, the pooja practices gained importance and regularised and that they have been celebrating the remembrance day.

4. It is their further case that in the year 1962, one of the member of a branch filed a petition before the Joint Commissioner of HR&CE to frame a scheme and accordingly, a scheme was framed for the management of the temple, that the temple is a private temple and HR&CE has no control over the same by any stretch of imagination, that the first petitioner is the hereditary trustee appointed by HR&CE and has taken objections against the scheme as the temple itself is a private temple and the properties are private properties and that the Executive Officer in charge of the said Karuppapillai Madam and Kumarakadavul temple has lodged a false complaint and on that basis, the F.I.R. came to be registered.

5. Even according to the petitioners, one Thangachi pillai, who is an elderly member of their family in the branch of Muthathal was representing their branch till 2007 and as he was not performing in a diligent manner, the family members had passed resolution to remove him from the trusteeship and appoint the first petitioner in his place as a trustee representing Muthathal branch and that the said resolution was sent to HR&CE department for approval and was also approved on 24.07.2008.



6. It is further evident from the records that the said Thangachi Pillai claiming to be the trustee of the said Karuppapillai Madam and Sri Kumarakadavul temple, has filed a suit in O.S.No.36 of 2007, on the file of the District Munsif Court, Muthukulathur against the first petitioner and others, to declare that Sri Kumarakadavul Trust and Karuppapillai Madam having registration No.30 of 2006 started by the defendants therein is null and void and for permanent injunction restraining the defendants and their men from interfering with the plaintiffs' management in the Karuppapillai Madam and temple and that after trial, the learned District Munsif, by observing that there existed disputes between Thangachi Pillai and the first petitioner and his team regarding appointment of trustees, that since HR&CE department alone is having powers under Section 49 of HR&CE Act for appointment of trustees, the said Thangachi Pillai is not entitled to claim any reliefs, dismissed the suit vide decree and judgment dated 27.01.2015.

7. It is further evident from the records that another criminal case in Cr.No.9 of 2015, on the file of the Chathirakudi Police Station for the offences under Sections 406 and 379 I.P.C., came to be registered against the first petitioner and that the first petitioner has filed a petition in Crl.O.P.(MD)No.7578 of 2015 seeking anticipatory bail and during the pendency of the above petition, this Court has appointed an Advocate Commissioner to inspect the property and note down the alleged cutting of karuvelam trees in Survey Nos.352 and 345/1 at Arulmigu Kumarakadavul @ Subramaniaswamy Temple Karuppa Pillai Madam, Valanadu Village, Ramanathapuram District.

8. It is further evident that the learned Advocate Commissioner, after issuing notice to the parties concerned, has visited the property on 26.04.2015 and filed a report dated 28.04.2015 wherein he has stated that he has verified S.No.352 to the extent of 24.3 Hectares and it is more than 60 acres, that out of the total extent, Karuvelam trees were cut at about one acre and some of the Karuvelam trees wooden logs were stored at that place, that the Survey No.352 is having total extent of 10 Hectares and it comes to 25 acres, that approximately 3 acres of Karuvelam trees were already cut before three months and at the time of visiting, Karuvelam trees are grooming.

9. No doubt, as rightly pointed out by the learned Counsel for the petitioners, the first petitioner was appointed as a trustee in the place of Thangachami Pillai and the same was approved by the HR&CE department, vide order dated 24.07.2008, but even thereafter, there existed dispute between two groups. It is not in dispute that the Assistant Commissioner of HR&CE, Paramakudi has issued a notice dated 23.04.2015 as to why a Fit Person cannot be appointed to the temple in dispute, since the administration was not proceeded as per the administrative plan, that they have not disclosed the source for



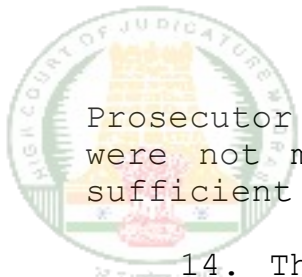
obtained any permission for Kumbabishegam and other festivals. Thereafter, the HR&CE Department has passed an order dated 25.04.2015 appointing the Executive Officer of Arulmighu Vettudaiyar Kaliyamman Thirukovil, Kollangudi, as Fit Person and directed the management to get permission and in pursuance of the order, the Fit Person has also taken charge of the said post, as evident from his letter dated 06.05.2015.

10. No doubt, the first petitioner has filed a writ of Certiorarified Mandamus or any other order or direction calling for the records of proceedings of the office of the Assistant Commissioner, dated 24.04.2015 and quash the same and also for consequential order directing the respondents therein not to interfere with the management and administration of the temple and the same is pending. Moreover, the first petitioner also filed a suit against the said Thangachi Pillai and other officials of HR&CE to declare that the suit properties are the family properties of the complainant's family and to declare that the samathies of Karuppa Pillai and Nagalingam Pillai and Kumarakadavul temple are private temple belonging to the plaintiff's temple and for permanent injunction restraining the department officials from interfering with the worship and management of the plaintiff's family and that the same is pending.

11. As rightly contended by the learned Additional Public Prosecutor appearing for the first respondent, the petitioners have themselves admitted the formation of the scheme by the HR&CE department and it is not the case of the petitioners that they have challenged the formation of scheme before the competent authority or the Court. As already pointed out, considering the mismanagement, the Fit Person was also appointed and the same was challenged by the petitioners and the same is now pending before this Court. Considering the above, whether the temple in dispute is a private temple or denominational temple as claimed by the petitioners and whether they are entitled to manage the temple and the properties of the temple and that whether HR&CE department has power or authority to interfere with the affairs of the temple in dispute are the aspects that cannot be gone into in the petition, filed under Section 482 Cr.P.C.

12. The learned Counsel for the petitioners would submit that in the F.I.R., they have not mentioned any particulars, how many trees were standing in the two acres, girth and the age of the trees and then what is the tonnage that will come if the trees are cut, market value of one ton of cut wood, that the entire complaint is vague and has no material worthy of consideration and that therefore, the F.I.R. is liable to be quashed.

13. It is pertinent to note that F.I.R. is not an encyclopedia, and is not expected to contain all the details of the prosecution



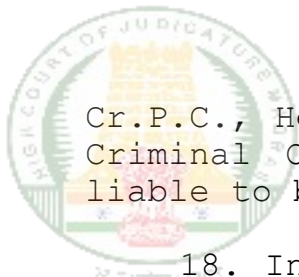
Prosecutor appearing for the State, just because certain particulars were not mentioned in the F.I.R. that by itself is not a ground sufficient enough to quash the F.I.R.

14. The learned Counsel for the petitioners would submit that the Joint Commissioner has also permitted cutting and removing of Karuvelam trees standing to an extent of 170 Acres for a mere Rs.21,00,000/-, which makes it clear that each acre may contain Karuvelam trees worth of Rs.12,000/- to Rs.15,000/- only, that the value quoted by HR&CE Inspector in the F.I.R., now under challenge is 64 times larger than the price that was fixed in the auction conducted by the Joint Commissioner and that therefore, the value shown in the complaint resulting in the registration of F.I.R., is nothing but illegal and incomprehensible. No doubt, in the complaint, it has been alleged that the value was about Rupees Thirty to Fifty Lakhs. But according to the petitioners, the complainant has given exaggerated amount purposely and wantonly and that the same can be proved from the evidence already available with regard to auction conducted by the Joint Commissioner.

15. It is pertinent to note that what is the quantum of trees that were cut and what is the value of those trees and whether the defacto complainant has given exaggerated amount are the matter for further investigation and this Court is not expected to go into those questions and decide the same and that too in the present petition filed under Section 482 Cr.P.C.

16. It is pertinent to mention that the Hon'ble Supreme Court in **Dhruvaram Murlidhar Sonar vs The State Of Maharashtra** reported in **2019(18) SCC 191**, after considering the decision of the Hon'ble Supreme Court in **State of Haryana and Ors. v. Bhajan Lal and Others**, reported in **1992 Supp (1) SCC 335**, has specifically held that exercise of powers under Section 482 Cr.P.C., to quash the proceedings is an exception and not a rule and that inherent jurisdiction under Section 482 Cr.P.C., though wide, has to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in Section itself. It is also settled law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 Cr.P.C., for quashing the criminal proceedings.

17. It is settled law that this Court in exercising jurisdiction under Section 482 Cr.P.C., cannot go into truth or otherwise of allegations made in the complaint or delve into the disputed question of facts. Upon considering the facts and circumstances of the case and also the arguments advanced by both sides, this Court is of the clear view that all the submissions made by the petitioners are directed towards the disputed question of facts, which cannot be adjudicated by this Court under Section 482



Cr.P.C., Hence, this Court has no hesitation to hold that the above Criminal Original Petition is devoid of merits and the same is liable to be dismissed.

18. In the result, the Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous Petition is also dismissed. The first respondent police is directed to complete the investigation and file a final report before the jurisdictional Magistrate within a period of three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (RTI)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

SSL

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 Inspector of Police,
Chathrakudi Police Station,
Ramanathapuram District.

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

Crl.O.P. (MD) No.879 of 2019
18.04.2022

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