



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2022

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD)No.15372 of 2021

&

Crl.M.P. (MD)No.8258 of 2021

WEB COPY

1. P.Ganesan

2. P.Veeranan

3. N.Shanthi

4. M.Prabhu

5. M.Fazil

...Petitioners/

Accused Nos.1,2 and 4 to 6

Vs.

1. The Inspector of Police,
Sellur Police Station,
Madurai District.

... Respondent No.1 / Complainant

2. B.Gandhi
The Sub Inspector of Police,
Sellur Police Station,
Madurai District.

... 2nd Respondent/ Defacto Complainant

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C.to quash the First Information Report in Crime No.225 of 2018 on the file of the Respondent No.1 Police Station dated 15.02.2018.

For Petitioner : Mr.M.M.Iqbal

For Respondents : Mr.B.Thanga Aravindh
Government Advocate (Criminal Side)

ORDER

This Criminal Original Petition has been filed to quash the First Information Report in Crime No. 255 of 2018, on the file of the 1st Respondent.

2.On the complaint lodged by the second respondent, the first respondent registered a case in Crime No.255 of 2018, under Section 160 IPC, as against the petitioners. The allegation is that due to family dispute, accused 1 to 4 grouped as 'A party', A5 grouped as 'B party', quarrelled with each other, by pelting stones. Thereby,



the accused persons disturbed the public peace and public transportation, without following the instructions of warning issued by the respondents, to stop the quarrel.

3.The learned counsel for the petitioner to submit that now all the parties compromised their issue and they also undertake not to indulge in any kind of similar offence in future.

4.It is also relevant to extract the main ingredients of Affray is as follows:

"(i). To constitute an affray there must be a fight, and it is not a fight when one side is aggressive and the other side is passive. Fighting connotes necessarily a contest or struggle for mastery between two contestants against each other.

(ii)A struggle or a contest necessarily implies that there are two sides, each of which is trying to obtain the mastery over the other. Where members of one party beat member of another party and the latter do not retaliate or make any attempt to retaliate, but remain passive, the offence of affray cannot be said to have been committed because there is no fight in such a case though there may an assault. It may be noted that a fight is bilateral in which both the parties should participate.

(iii)A public place is a place where the public go, no matter whether they have a right to go or not. The place where the public are actually in the habit of going must be deemed to be public place for the purpose of the offence of affray.

(iv)Instances are railway platforms, theatre halt and open spaces resorted to by the public for purposes of recreating, amusement, etc. An open field with no compound wall is a public place. A private chabutra adjoining a public thoroughfare, a railway station and platform at a time when no train is due except a goods train and a private garden are not public places.

(v)To constitute an affray, there must be not only fighting, by the fighting must cause a disturbance of the public peace. There should be a terror to the public. The presence of a large number of the people at the time of the disturbance show that the members of the public must have been alarmed by reason of the disturbance and that there is sufficient breaking of the public place"

5.Admittedly, in the case on hand, the occurrence took place in the house of the petitioner, which is not a public place. That apart, there was no quarrel of pelting stones among themselves. Moreover, now the dispute has been compromised between the petitioners and counter parties. As such, pendency of proceedings, in the present case, in the Crime No.255 of 2018 would not serve any purpose.



6.The learned Additional Public Prosecutor would submit that, after the completion of investigation, charge sheet has been filed as early as on 16.02.2018, before the learned Judicial Magistrate, No.II, Madurai.

7.In view of the above, this Criminal Original Petition is allowed and the entire proceedings in Crime No.255 of 2018 on the file of the first respondent, is hereby quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS I)

/TRUE COPY/

/ /2022
Sub Assistant Registrar(CS)

PNM

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 Judicial Magistrate No.II,
Madurai
- 2.The Inspector of Police,
Sellur Police Station,
Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.M.M.IQBAL, Advocate (SR-11602[F] dated 11/03/2022)

ORDER IN
Crl.O.P. (MD)No.15372 of 2021
&Crl.M.P. (MD)No.8258 of 2021
11.03.2022

MK/28.03.2022/3P/4C