



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.01.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P. (MD) Nos.17757 & 16739 of 2021

and

Cr.M.P. (MD) Nos.9052 & 9691 of 2021

Crl.O.P. (MD) No.17757 of 2021:

1.R.Kannan
2.M.Varatharajan

... Petitioners/
Accused Nos.1 & 2

Vs.

1.The State represented by
The Inspector of Police,
Usilampatti Taluk Police Station,
Madurai District.
(Crime No.3 of 2021)

... 1st Respondent/Complainant

2.Chandrasekaran

... 2nd Respondent/
Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records relating to the proceedings in Crime No.3 of 2021 on the file of first respondent police and quash the same insofar as the petitioners are concerned.

For Petitioners : Mr.M.S.Mohamed Ayub

For Respondents : Mr.M.Sakthi Kumar
Government Advocate (Crl.Side) for R.1

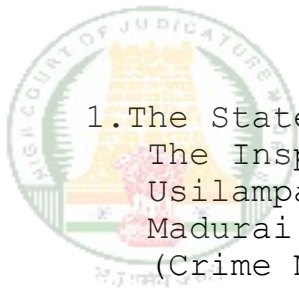
Mr.Isaac Mohanlal
Senior Counsel for M/s.Isaac Chambers for R.2

Crl.O.P. (MD) No.16739 of 2021:

V.Kannan

... Petitioner/
Accused No.5

Vs.



1.The State represented by
The Inspector of Police,
Usilampatti Taluk Police Station,
Madurai District.
(Crime No.3 of 2021)

... 1st Respondent/Complainant

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2.Chandrasekaran

... 2nd Respondent/
Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records relating to the proceedings in Crime No.3 of 2021 on the file of first respondent police and quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.C.Jeganathan
For Respondents : Mr.M.Sakthi Kumar
Government Advocate (Crl.Side) for R.1

Mr.Isaac Mohanlal
Senior Counsel for M/s.Isaac Chambers for R.2

COMMON ORDER

Heard the learned counsel appearing for the petitioners, the learned Government Advocate (Criminal Side) appearing for the first respondent and the learned Senior Counsel appearing for the defacto complainant.

2. The defacto complainant is running an Agricultural College, Thottappanaikkanur near Srirengapuram in Usilampatti Taluk, Madurai district. The defacto complainant alleges that on 18.11.2020, at about 08.00 a.m, the accused trespassed into the College campus by deploying JCB and destroyed the fence. In this regard, Crime No.3 of 2021 was registered against the petitioners for the offences under Sections 294(b), 447, 506(2) and 109 IPC and 3(1) of Tamil Nadu Public Property (Prevention of Damage and Loss)Act, 1992.

3. According to the learned Senior Counsel, the averments set out in the complaint of the defacto complainant clearly constitute the offences in question. Therefore, the question of quashing the same may not really arise. However, it is seen that the second accused, namely, Varatharajan has filed a Writ Petition before the Hon'ble Division Bench alleging the encroachment of water bodies by the defacto complainant. The Hon'ble Division Bench had passed an order on 11.12.2020, directing the Revenue Authority to conduct the survey and submit a report. In this regard, the Tahsildar, Usilampatti, had submitted a report dated, 20.01.2021 stating that on 18.11.2020, the encroachments were identified and they were also removed.



4. The learned Senior Counsel would raise a point that this date appears to be incorrect because the direction of the Hon'ble Division Bench was passed only on 11.12.2020. In my view, it is not necessary to enter into any factual controversy. Even according to the Revenue Authority, the defacto complainant had committed encroachment on water bodies by putting up the fencing and that the same was removed by them. The FIR also was registered only on 02.01.2021. I find considerable force in the contentions of the petitioner's counsel that the impugned FIR has been given as a counter blast, since the second accused had filed a Public Interest Litigation against the defacto complainant. The Hon'ble Supreme Court in **State of Haryana and others Vs. Bhajan Lal and others [1992 (1) Supp (SCC) 335]** has held that if registering an FIR is attended by *malafides*, then, it is a ground for quashing the prosecution itself.

5. The accused also give an undertaking before this Court that they will not trespass into the defacto complainant's College Campus and even if according to them, there are encroachments, they will only pursue legal remedies through official channel and they will not take the law in their own hands. Such an undertaking is given even while denying the prosecution case. The said undertaking given by the accused through the counsel is recorded. Continuance of the impugned prosecution is clearly unwarranted. The impugned FIR is quashed. These Criminal Original Petitions are allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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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,
Usilampatti Taluk Police Station,
Madurai District.



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

+1 CC to M/s.M.S.MOHAMED AYUB, Advocate (SR-1798[F] dated
19/01/2022)

+2 CC to M/s.ISAAC CHAMBERS, Advocate (SR-1946[F] dated
20/01/2022)

Crl.O.P. (MD)Nos.17757 &16739 of 2021 and
Cr.M.P. (MD)Nos.9052 & 9691 of 2021
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RD(07.02.2022) 4P 6C