



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on 03.01.2022

Pronounced on : 21.02.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P.(MD)No.17148 of 2021

and

Crl MP(MD)No.9305 & 9306 of 2021

1.Pandiammal

2.Pothum Ponnu

3.Alagammal

4.Chandra

5.Muthumani

6.Thirumalai

7.Jeya Lakshmi

... Petitioners/

Accused Nos.6 to 10, 12, 13

Vs.

1.The State of Tamil Nadu,
Rep.by the Deputy Superintendent of Police,
Melur, Madurai District.

2.The Sub Inspector of Police,
Melavalavu Police Station,
Melur Taluk, Madurai District.
(Crime No.39 of 2020)

...1st and 2nd respondents/
complainants

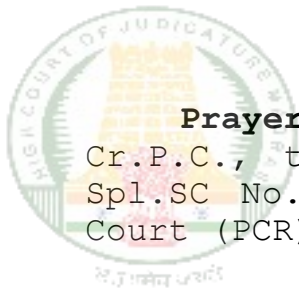
3.Lakshmanan

...3rd respondent/defacto complainant

4.D.Suresh

...4th respondent

(4th respondent was impleaded as per Court
order dated 03.12.2021)



Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the proceedings in Spl.SC No.25 of 2021 on the file of the III Additional District Court (PCR), Madurai and quash the same against the petitioners.

For Petitioners : Mr.N.Dilip Kumar
For Respondents : Mr.T.Senthil Kumar,
Additional Public Prosecutor for R1 & R2

Mr.T.Sakthikumaran for R3

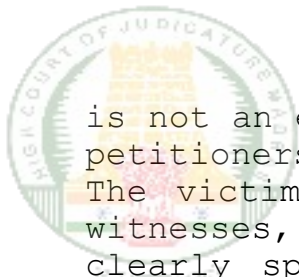
Mr.M.Jerin Mathew for R4

ORDER

This petition has been filed by some of the accused in Spl SC No.25 of 2021 on the file of the III Additional District Court (PCR), Madurai to quash the proceedings as far as they are concerned. The defacto complainant is the third respondent while the fourth respondent is an injured witness. On 24.02.2020, the third respondent as well as the fourth respondent got their lands surveyed and boundaries marked. With the help of the police, they also fenced their properties.

2.According to the private respondents, at about 05.30 P.M after the officials left, the accused came to the spot and attacked Suresh and his father causing them severe injuries. The defacto complainant photographed the occurrence as it unfolded on his mobile phone and attempted to rescue the fourth respondent and his father. The defacto complainant belongs to Scheduled Caste. The accused abused him by referring to his community and also attacked him. The defacto complainant suffered severe injuries. The injured were taken to hospital. The statement of the defacto complainant was taken and based on the same, Crime No.39 of 2020 was registered for various offences. Since the defacto complainant was in severe pain, he could not mention the names of all the accused. On 26.02.2020, the names of all the persons were informed to the police. Alteration report was filed on 09.11.2020 by arraying the petitioners herein as additional accused. Final report was filed on 09.03.2021 against all the accused. It was taken on file by the Special Court and summons were issued to all the accused to appear on 20.05.2021.

3.The learned counsel appearing for the petitioners reiterated all the contentions set out in the memorandum of grounds and called upon this Court to allow this petition. Per contra, the learned Additional Public Prosecutor as well as the learned counsel appearing for the private respondents submitted that no case for quashing has been made out. The respondents would contend that FIR



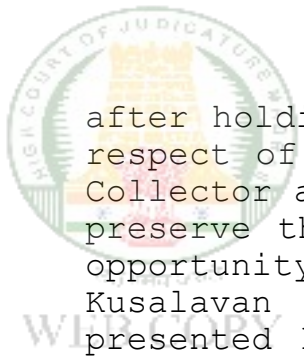
is not an encyclopedia and that omission to mention the names of the petitioners herein will not in any way vitiate the prosecution. The victims, namely, Lakshmanan, Suresh and Dharmaraj and the eye witnesses, namely, Parvathi, Pasumpon, Machakalai and Uthiran have clearly spoken about the involvement of the petitioners in their statements recorded under Section 161 of Cr.PC. Specific overt acts have been attributed to each of the petitioners herein. Relying on a catena of decisions of the Hon'ble Supreme Court, the learned counsel submitted that exercise of inherent powers under Section 482 of Cr.Pc in favour of the petitioners will be impermissible. In particular, they contended that the reliability or otherwise of the statements under Section 161 of Cr.PC cannot be gone into at this stage. The learned counsel for the private respondents as well as the Additional Public Prosecutor wanted this Court to bear in mind the propositions laid down in **State of Odisha v. Pratima Mohanty etc (2021 SCC Online SC 1222)**, **Saranya v. Bharathi & another (2021) 8 SCC 583**, **State of Bihar v. P.P.Sharma & anr (AIR 1991 SC 1260)**, **Parkash Singh Badal v. State of Punjab (AIR 2007 SC 1274)** and **State of A.P v. Goloconda Linga Swamy (AIR 2004 SC 3967)**. They called upon this Court to dismiss this petition.

4.I carefully considered the rival contentions and went through the materials on record. From the certified copy of the final report, one can note that cognizance of the offences was taken in the following terms :

"Taken on file under Sections 147, 148, 149, 447, 341, 294(b), 325, 324, 307, 379 of IPC and Section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Issue summon to accused A1 to A13."

Though the order taking cognizance does not contain any reason, still no exception can be taken because in the final report, the names of the petitioners herein are mentioned. The FIR mentions the names of Gopalakrishnan, Karmegham, Malaikolunthu, Malaisamy and Veerannan. The names are followed by the expression "and others belonging to Sambiranipatti". It is now taken as an axiomatic proposition that an FIR is not an encyclopedia and that minute details are not required to be mentioned therein. Names originally left out or omitted to be mentioned can be supplied later. The primary question that falls for consideration in this case is whether the non-implication of the petitioners herein in the FIR can be taken into account for granting relief in this petition.

5.The first accused Gopalakrishnan and Kusalavan, the father in law of the defacto complainant hail from the same village. Gopalakrishnan alleged that Kusalavan had encroached the water bodies. He filed WP(MD)No.8286 of 2012 seeking their retrieval. The Hon'ble Division Bench of the Madurai Bench of the Madras High Court vide order dated 06.08.2014 allowed the said writ petition

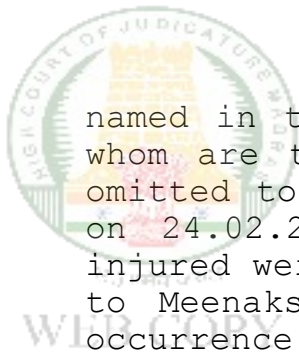


after holding that patta had been granted in favour of Kusalavan in respect of some water bodies and that they are void. The District Collector and other revenue authorities were directed to protect and preserve the tanks in question after issuing notices and giving an opportunity of hearing to the persons who are in possession thereof. Kusalavan filed WP(MD)No.21219 of 2016 alleging that sale deeds presented by him in respect of properties not falling within the water bodies are not being registered. The said writ petition was allowed on 29.10.2018 and the Sub Registrar, Melur Taluk was directed to register the petition mentioned sale deeds. Interestingly, Gopalakrishnan was not made a party to the writ petition. Instead of filing a third party writ appeal, Gopalakrishnan filed another Public Interest Litigation in WP(MD) No.22360 of 2018. Interim order was granted originally but later vacated on 29.03.2019. However, the revenue authorities were directed to clear the encroachments in Nayakkankulam Kanmoi and the channel flowing in the village. The battle between the two appears to be going on.

6. Apart from this issue, the parties are at loggerheads over the conferment of honours in a village festival. Writ petitions and criminal original petitions have been filed almost every year since 2015. Some of the order copies have also been enclosed in the typed set of papers.

7. It is in this background, the occurrence in question had taken place. Pandiammal, the first petitioner herein is the mother of Gopalakrishnan. She is aged about 75 years. The third petitioner Azhagammal is the wife of the second accused Karmegam. The seventh petitioner Jeyalakshmi is the wife of the fourth accused Malaichamy. The petitioners 2, 4 and 5 are also womenfolk and are close relatives of the first accused. Kusalavan belongs to Pillaimar community. The petitioners would assert that they never knew that the defacto complainant Lakshmanan, son-in-law of Kusalavan belongs to Scheduled Caste. According to them, the son-in-law has been projected to be in the forefront so as to invoke the provisions of the SC&ST Act and to prevent Gopalakrishnan from retrieving the water bodies of the village for public welfare.

8. The occurrence had taken place on 24.02.2020. Two persons have suffered grievous injuries. There was also a counter complaint from Gopalakrishnan. That the occurrence took place admits of no doubt. The only question is whether the present petitioners were parties to the occurrence. The seventh petitioner Jeyalakshmi is not referred to in any of the statements recorded under Section 161 of Cr.PC. The sixth petitioner Thirumalai is referred to only in the statements of Machakalai and Uthiran (LW.8 and LW.9). But the injured witnesses, namely, Lakshmanan, Suresh and Dharmaraj do not implicate him. Since there is a bitter rivalry between Gopalakrishnan and Kusalavan since 2012, if the petitioners herein were parties to the occurrence, certainly, they would have been



named in the FIR itself. The presence of the womenfolk, three of whom are the wives of the respective accused could not have been omitted to be noticed. The occurrence had taken place at 17.30 hrs on 24.02.2020. The FIR was registered only at 21.45 hrs. The injured were taken to the Government Hospital and thereafter shifted to Meenakshi Mission Hospital, a famous medical institution. The occurrence had taken place on the day of survey. Certainly, Kusalavan and other relatives would have been present, when the police recorded the statement of the defacto complainant. The expression ' and others ' has been employed after naming five specific individuals only for the purpose of implicating all the family members. If the womenfolk had also participated in the crime, their presence would be too glaring to be ignored or omitted. If a crime had taken place suddenly and information is lodged in the aftermath, certainly omission of names and particulars would in no way affect the prosecution case. But that is not the case here. Atleast three writ petitions and four criminal original petitions involving Gopalakrishnan / Kusalavan were filed before the Madurai Bench of the Madras High Court alone.

9. The Hon'ble Supreme Court in State of **Haryana V. Bhajanlal (1992) Suppl. (1) SCC 335** held that a criminal prosecution can be quashed, inter-alia, in the following circumstances:-

" (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused ...

... (7) Where a criminal proceeding is manifestly attended with mala fide and / or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge ... "

The above parameters are clearly applicable to the case on hand. The role attributed to Pandiammal, 75 year old mother of Gopalakrishnan is inherently improbable. The parties are well known to each other. There is no way the names of the petitioners could have been omitted, if they had also attacked the victims along with the named accused. I am more than satisfied that the petitioners have been implicated out of sheer *mala fides* and to wreck vengeance on Gopalakrishnan. The continuance of the prosecution is not warranted. The impugned proceedings are quashed as far as the petitioners are concerned. The named accused 1 to 5 will not take advantage of this order. They have to contest the trial entirely on merits. They cannot place any reliance on this order. Accused No.1 to 5 have filed memo dated 15.12.2021 to this effect. Likewise accused No.11 Ajithbalan has also filed memo on the same lines. Under certain circumstances, non-implication in the FIR can enure in favour of the person later added as an accused. The settled principle that the FIR is not an encyclopedia cannot apply in such cases. The case on hand is one such.



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10. With this observation and clarification, this criminal original petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

skm

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 III Additional District Judge(PCR),
Madurai.
2. The Deputy Superintendent of Police,
Melur, Madurai District.
- 3.The Sub Inspector of Police,
Melavalavu Police Station,
Melur Taluk, Madurai District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.A.THIRUMURTHY, Advocate (SR-7561[F] dated 21/02/2022)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-7922[F] dated 22/02/2022)

+1 CC to M/s.M.JERIN MATHEW, Advocate (SR-8188[F] dated
23/02/2022)

Cr1.O.P.(MD)No.17148 of 2021
and
Cr1 MP(MD)No.9305 & 9306 of 2021
21.02.2022

MGJ(05.03.2022) 6P 8C