



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06/07/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P. (MD) Nos.14587 of 2018 and 16066 of 2019

(1)Crl.OP (MD) No.14587 of 2018:-

Mr.Duraichamy : Petitioner/Sole accused

Vs.

1.The Inspector of Police,
Thiruppachetti Police Station,
Manamadurai Taluk,
Sivagangai District,
Sivagangai.
(Crime No.46 of 2016)

2.Mr.N.Rajendran : Respondents/Complainants

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in CC No.10 of 2017 pending on the file of the Additional District Munsif-cum-Judicial Magistrate, Manamadurai and quash the same.

For Petitioners : Mr.T.Lajapathi Roy

For 1st Respondent : Mr.SS.Madhavan
Government Advocate
(Criminal side)

For 2nd Respondent : Mr.D.S.Haroon Rasheed



(2) CrI.OP (MD) No.16066 of 2019:-

1. Rajendran
2. Ashok Kumar
3. Devi

: Petitioners/A1 to A3

Vs.

1. The State rep. Through
The Inspector of Police,
Thiruppachetti Police Station,
Manamadurai Taluk,
Sivagangai District,
Sivagangai.
(Crime No.47 of 2016)

2. Duraisamy : Respondents/Complainants

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in CC No.99 of 2017 pending on the file of the Additional District Munsif-cum-Judicial Magistrate, Manamadurai and quash the same.

For Petitioners : Mr.D.S.Haroon Rasheed

For 1st Respondent : Mr.SS.Madhavan
Government Advocate
(Criminal side)

For 2nd Respondent : Mr.T.Lajapathi Roy

COMMON ORDER

These criminal original petition is filed seeking quashment of the case in CC Nos.10 of 2019 and 99 of 2017 on the file of the Additional District Munsif-cum-Judicial Magistrate, Manamadurai.



WEB COPY

2.The case of the prosecution in brief:-

On 22/02/2016 at about 6.00 pm, when the witnesses Rajendran and Ashok Kumar were clearing the adjacent site for parking their cars, the accused persons came there and picked up quarrel, abused in filthy language and also criminally intimidated. Based on the complaint given by the de-facto complainant, formalities of investigation was conducted and final report was filed making allegation against the petitioner namely Duraisamy as stated above.

3. Seeking quashment of the same, Cr1.OP(MD)No.14587 of 2018 is filed by the sole accused in this crime namely Duraichamy, wherein the de-facto complainant Rajendran is shown as 2nd respondent.

4. Similarly on the basis of the complaint given by this petitioner namely Duraichamy, a case in Crime No.47 of 2016 was registered. After completing the formalities of the investigation, final report was filed alleging that on 22/02/20216 at about 6.00 pm, when the de-facto complainant namely Duraichamy was returning to his house, the accused Rajendran caused assault with Aruval. But he escaped from that. A2 came to the place of occurrence with crow-bar and



criminally intimidated and tried to assault him with crow-bar. He escaped from that attempt also. On the basis of the above said complaint, the case was registered in crime No. 47 of 2019. After completing the formalities of investigation, final report has been filed in CC No.99 of 2017.

5. Seeking quashment of the same, A1 to A3 namely Rajendran, Ashok Kumar and Devi have filed CrI.OP(MD)No. 16066 of 2019.

6. Heard both sides.

7. It is a case and counter. Both were heard together and finding that, it is a dispute between the relatives. On perusal of the statement of the witnesses as well as the FIRs and the connected documents, this court is not in a position to know the correct relationship between the parties. But from the documents, it is seen that it is a dispute between the close relatives over the sharing of the properties. Because, we find reference in the final report to the effect that Duraichamy alleged to have demanded share in the property and tried to prevent Rajendran and others from cleaning the property. That was objected by



Rajendran and others stating that already the properties were divided and no further share can be allowed to him. Finding that the dispute between the close relatives, the matter was referred to the mediation for amicable settlement. But it could not be settled, because of difference of opinion between the parties. The matter was referred back to the court and it was heard on merits.

8.From the reading of the FIR in both the matters and final reports, it is seen that on the particular date I.e., 22/02/2016, trouble has arisen between two groups, over which the above said case and counter case has been registered. Both were alleged with the other party, criminal intimidation and abused in filthy language and also try to assault them. So this is the similarity between the rival complainants.

9.But in the grounds of petition in CrI.OP(MD)No.14587 of 2018, it has been stated by Duraichamy that the property under dispute only belong to Duraichamy, who is the petitioner's grand father and he died in 1975 and he had three sons namely Murugesan, Rajeshwaran and Nagalingam. Duraichamy is the son of the above said Murugesan, Rajeswharan is the son of above said Nagalingam. So the



WEB COPY

property under dispute is their ancestral property, in which Duraichamy as well as Rajendran got equal share. But against which, Rajendran vagaiyara tried to get the entire property. So from this, it is seen that it is a dispute between the close relatives with regard to the property.

10. When there is a mutual allegation against each others and in the facts and circumstances of the case, I am of the considered view that continuation of both the proceedings may not be fair in the interest of parties. Both parties have to work out their remedy through appropriate legal process by filing proper civil suit. Without resorting such a civilised way of resolving the dispute, it appears that both of them entered into petty quarrel and both of them exchanged abusive words and both of them also tried to criminally intimidate others. Who are the aggressors in this issue was not investigated by the Investigating Officer. He has simply filed the final reports charge sheeting both party. Both the parties charge sheeted in separate final reports which is not permissible under law. The Investigating Officer ought to have find out the aggressors and proceed against them. If at all he is not in a position to find out the aggressors, then he ought to have face the trial before the jurisdictional court for



WEB COPY

making a decision. But here, charge sheet of both the parties, filed separately, as mentioned earlier, is not permissible.

11.The learned counsel appearing for the parties relied upon a judgment of this court as well as the Hon'ble Supreme Court in the case of Nathi Lan and others Vs. State of U.P and another 1990(Supp) SCC 145 and in the case of Chandrasekar and others Vs. The Sub Inspector of Police, Ambagaruthur Out-Post Police Station, Thirunallur, Karaikal District, Puducherry State (Crl.OP No.26741 of 2018, dated 06/03/2019), wherein a similar problem has been discussed. This court, by following the PSO 588(A) as well as by relying upon, by considering the earlier judgments of this court, has concluded that the judgment rendered in the case of Thota Ramakrishnayya Vs. State (1954 MWN Cr. 9) has pointed that the Investigating Officer must find out that who is the aggressors and if they are not in a position to find out the same, they must get the opinion of the Public Prosecutor. But here, that sort of procedure has not been adopted by the Investigating Officer as mentioned earlier. Because of the non-observation of the proper procedure as well as the factual aspects, it is seen that it is an exaggerated version by both sides. A petty and civil issue has been given a criminal magnitude.



WEB COPY

12. Additional typed set of papers has been filed by the petitioner in CrI.OP(MD)No.14587 of 2018, enclosing the copy of the FIRs, which have been registered in respect of the dispute between the parties, wherein, we find that more than eight cases have been registered between the parties. This shows the attitude and behaviour of the parties. So, in the facts and circumstances of this case, I am of considered view that both the proceedings require to be quashed.

13. In the result, both the criminal original petitions are **allowed**. The impugned CC Nos.10 and 99 of 2017 on the file of the Additional District Munsif-cum-Judicial Magistrate, Manamadurai are hereby quashed. Consequently, connected Miscellaneous Petitions are closed.

06.07.2022

Internet:Yes/No
Index:Yes/No
er



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.



WEB COPY



G. ILANGO VAN, J. ,

er

Cr1.O.P.(MD)Nos.14587 of 2018 and 16066 of 2019

06/07/2022