



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22/02/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.17753 of 2018

and

Crl.MP (MD)Nos.7869 and 7870 of 2018

WEB COPY

1.Appar
2.Venkatesan

... Petitioners/A2 and A3

Vs.

1.Abdul Hakkim
2.Mohammed Masthan

... Respondents/De-facto Complainants

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to quash the case in PRC No.8 of 2008 on the file of the Judicial Magistrate No.III, Thanjavur.

For Petitioner : Mr.T.Sekar
For Respondents : No appearance

O R D E R

This petition has been filed seeking quashment of the case in PRC No.8 of 2008 on the file of the Judicial Magistrate No.III, Thanjavur.

2.The case of the prosecution in brief:-

The 2nd respondent has lodged a complaint with the following allegations:- During the relevant point of time, he was working as a Special Sub Inspector of Police, Taluk Police Station, Thanjavur. A1 is his elder brother. During their younger age, their father purchased the properties in Survey No.422/3 in his favour and one S.A.Jamal Mohammed and in the joint name of the de-facto complainant and A1. In the above said survey number, during their younger age, their father was maintaining the property. After attaining majority, they divided the property orally and in order to grab the property the accused 1 to 5 joined together, conspired and created a false document with the help of the A4 and A5 and executed a settlement deed by A1 in favour of A2 and registered before the Sub Registrar, Kottarain. So on the basis of the above said complaint given by the de-facto complainant, a case in Crime No.38 of 20008 was registered for the offence under section 447, 379, 427, 506(ii) IPC and after completing the investigation, filed report has been filed in PRC No.8 of 2008. Seeking quashment of the same, this petition has been filed by the petitioners.

<https://hcservices.ecourts.gov.in/hcservices/>



3.Heard both sides.

4.Straightway we will go to the order that has been passed by this court in Crl.OP(MD)No.9879 of 2009 in respect of A1 namely Devan, challenging the private complaint. During the course of passing the above said order, this court has observed that a civil dispute was pending between the respondents and one S.A.Jamal Mohammed and in respect of the civil dispute, trouble arose between the parties. Based upon the complaint given by the de-facto complainant, a case in Crime No. 36 of 2008 for the offence under sections 447, 379, 427, 506(ii) IPC was registered against the respondents herein and they absconding and later, they have filed petition seeking anticipatory bail and that was also granted to them. So in view of the above facts, this court was of the considered view that there was no possibility and probability for the petitioners to have arrested the respondents and put them in illegal custody from 08/10/2006 till late night. So according to this court, if really the respondents have been detained under the illegal custody, the relatives of the respondents immediately would have filed Habeas Corpus Petition. It is further observed that there is a long gap between the date of occurrence and the date of the complaint.

5.According to the respondents, the occurrence said to have been taken place on 18/02/2008, but the complaint has been filed only on 28/04/2008 and there was no proper explanation on the part of the respondents for the delay. So according to them, it is a clear case of after thought and on that ground, the petition filed by A1 came to be allowed by this court on the above said line. What applies to A1 equally applies to these petitioners also.

6.As observed by this court, absolutely there is no material to show that the respondents were illegally detained by the accused persons on the particular date. If really that was so, they ought to have moved the concerned court immediately. In the absence of any such steps on the part of the respondents, it is nothing, but abuse of process of court and law. On the basis of the private complaint, it appears that departmental enquiry has been undertaken as per the order of the Superintendent of Police, in C91/ADSP(C)/TAN/2008. During the course of the above said departmental enquiry, which was conducted by the Additional DSP, Orathanadu. It is seen that because of the above said civil dispute between the parties, a wrong complaint has been given against the police officials, as if they have illegally detained and this finding has been recorded on 04/06/2008. But before that, a private complaint has been filed. Now whatever may be, none of the provisions mentioned in the private complaint attract the specific allegation. The petitioners acted only in discharging their official capacity and beyond that, they have not personal grudge or motive against the respondents, since the case has been registered against the respondents, it appears that the above said persons have been implicated with an ulterior

<https://hcmvts.courts.goa.in/hcmvts/cases> and during the course of departmental enquiry,



absolutely there is no material to show that these petitioners along with others involved in illegal activities. So on that sole ground, this petition is liable to be allowed. With regard to the point of sanction under section 197 Cr.P.C, it may not be gone into.

7.In the result, this criminal original petition is **allowed**. The entire proceedings in PRC No.8 of 2008 on the file of the Judicial Magistrate No.III, Thanjavur is hereby quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

/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

The Judicial Magistrate No.III,
Thanjavur.

+1 CC to Mr.T.SEKAR, Advocate (SR-8466[F] dated 24/02/2022)

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22/02/2022

MK/08.03.2022/3P/3C