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Crl.O.P.No.13374 of 2016



IN THE HIGH COURT OF JUDICATURE AT MADURAI

Reserved on : 14.10.2022

Pronounced on : 28.07.2023

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.13374 of 2016

and

Crl.M.P.No.6872 of 2016

Dr.M.Venkatesan

... Petitioner / Accused

Vs.

1.The Inspector of Police,
R-8 Vadapalani Police Station,
Vadapalanai,
Chennai – 26.

... 1st Respondent / Complainant

2.S.Y.Eswaran

... 2nd Respondent / Defacto
Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.2361 of 2016, dated 01.06.2016, on the file of XVII Metropolitan Magistrate, Saidapet, and quash the same.

For Petitioner : Mr. Manuraj.

For Respondent-1 : Mr.L.Baskaran
Government Advocate (crl.side)

For Respondent-2 : Mr.S.Y.Eswaran
(Party-in-person)



ORDER

This Criminal Original Petition has been filed to call for the records in C.C.No.2361 of 2016, dated 01.06.2016, on the file of XVII Metropolitan Magistrate, Saidapet and quash the same.

2. The facts leading to filing of the present Criminal Original Petition are as follows:-

(i) The Petitioner's step mother Uththarani Ammal purchased the property at Door No.2/15, Andavar Nagar 2nd Street, Kodambakkam, Chennai, including the right to use common pathway, under Sale Deed, dated 19.8.1977, in Document No.1131/1977. She was in absolute possession and enjoyment of the same and also using the common pathway. She settled the said Property along with common pathway to the petitioner under Settlement Deed, dated 9.4.2007, in Document No.1423/2007, on the file of Sub Registrar Office, Kodambakkam.

(ii) The 2nd Respondent filed a Suit in O.S.No.6630 of 2011, for declaration and injunction over the common pathway, against the Petitioner herein and others, claiming exclusive right over the said property namely, the pathway. The Petitioner filed the written statement along with his step mother Uththarani, since she settled the



Property in favour of the Petitioner on 09.04.2007. Thereafter the said Uththarani due to misunderstanding with the Petitioners unilaterally cancelled the settlement deed, on 17.02.2011 and settled the said property infavour of the Petitioner's younger brother's daughter Saranya by Doc.No.555 of 2011. The Petitioner came to know about the said cancellation recently after his younger brother's death. The Petitioner is no more owner of the Property settled by his step mother Uththarani Ammal, including the common pathway, and hence, the Petitioner have no right whatsoever on the said property.

(iii). The Petitioner submit that the 2nd Respondent, who is a practicing advocate, regularly filing complaints from the year 2008, dispute despite Civil in nature. The Police authorities advised the 2nd respondent to work out his remedy before the Civil Court and he filed a suit in O.S.No.6630 of 2011, before the learned XV Assistant City Civil Court, Chennai. During pendency of the civil suit, the 2nd respondent continuously complaints before the Police in order to pressurize the Petitioner and others, who are defendants in the said Suit, to yield to his illegal claim. The Petitioner's step mother died on 22.6.2013, but the alleged occurrence is on 17.07.2013, in which, the name of the deceased Uththarani Ammal included. The 2 Respondent filed Crl.O.P.No.20645 of 2014, before this Court to register a F.I.R., for his



complaint, dated 17.07.2013, F.I.R was registered on 11.02.2014, for offence under Sections 269, 294(b), and 506(i) IPC., and charge sheet filed before the learned XVII Metropolitan Magistrate, Saidapet, Chennai, in C.C.No.2361 of 2016.

3. Mr.S.Manuraj, the learned Counsel appearing for the petitioner would submit that the compliant, dated 17.07.2013, by the 2nd Respondent, against the Petitioner and dead person Uththarani Ammal, is nothing but a threat and coercive act of the 2nd Respondent to keep them away from the common pathway and to strengthen his civil Suit, in other words, the Civil dispute is given criminal colour. The complaint, registration of F.I.R, filing of charge sheet against the Petitioner by giving series of complaints and filing of Suit in O.S.No.6630 of 2011 by the defacto complaint, is a clear case of personal vengeance, for personal gain, which amounts to abuse of process of law, against the guideline of the Hon'ble Supreme Court in **Bhajan Lal's** Case. The Present compliant is manifestly attended by the 2nd Respondent with *mala fide* intention to institute malicious and baseless case with an ulterior motive, for wreaking vengeance on the petitioner. The allegations made in the compliant do not disclose cognizable offence.



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4. It is further submitted that the contents made in the present compliant resulting in filing of charge sheet, is clear abuse of process, 2nd respondent's earlier complaints were closed as mistake of fact, the above case is nothing but coercion and threat to the Petitioner. The Petitioner has no right over the suit Property, since his step mother Uththarani Ammal already cancelled the settlement deed, settled the said property in favour of S.Saranya, the petitioner's brother's daughter. The Petitioner filed an application in I.A.No:6881 of 2015 in O.S No:6630 of 2011 to strike off his name and the same was allowed by the civil Court by order dated 29.04.2015, petitioner has no reason to visit the properties and commit the alleged offence. The Compliant and case is nothing but to gain something in the Civil Court. The witnesses cited in the charge sheet Nos.4 to 8 lodged a complaint against the complainant herein for the same pathway and the same was closed as civil in nature, on the contrary, on the complainant of the 2nd respondent, a case in Crime No.630 of 2021 registered against northern side neighbours, a police complaint dated 02.09.2021 lodged against southern side neighbours. The above case against the petitioner is nothing but an abuse of process of law and therefore, the learned counsel prays for quashing the charge sheet. In support of his submission, the learned counsel for the petitioner, relied on the Judgment of the Apex Court in



Pawan Kumar Vs. State of Haryana & Ors reported in **(1996) 4 SCC 17**; **Manik Taneja Vs. State of Karnataka** reported in **2015 7 SCC 423** and in **Vikram Johar Vs. The State of Uttar Pradesh and Anr** reported in **2019 14 SCC 207** and the Judgment of this Court in **N.Karthick Vs. State & Ors** made in Crl.O.P.No.9556 of 2022. Adding further, the petitioner submitted that the Judgment delivered in O.S.No.6630 of 2011, on 03.04.2018, decreeing the pathway as common passage.

5. Mr.L.Baskaran, the learned Government Advocate (crl.side) appearing for the 1st respondent would submit that pursuant to the direction of this Court, an FIR was registered against the petitioner, investigation conducted, on completion of investigation, charge sheet filed before the learned XVII Metropolitan Magistrate, Saidapet, which was taken on file in C.C.No.2361 of 2016. He further submits that now, the case is ripe for trial and if the petitioner wants to produce documents in support of his defence, the same can be done at the time of trial. At this stage, the petitioner is not entitled to any relief prayed for in the present petition. No interference be called for, while exercising the inherent jurisdiction of this Court under Section 482 of the Cr.P.C. The learned Government Advocate(crl.side), therefore, contended that the present Criminal Original Petition is required to be dismissed by



directing the learned Magistrate, to proceed with the trial and decide it expeditiously.

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6. The 2nd respondent Mr.S.Y.Eswaran, appeared as part-in-person would further submit that he is a practicing advocate. He filed written submission contending interalia that his vendor Vedalingam purchased a house property to an extent of 1,091 sqft., including 5ft pathway with ingress and egress from Andavar Nagar 2nd Street from one Jayalakshmi Ammal,, on 22.09.1992. The above said 5ft pathway is registered in the sale deed of his vendor, which is situated on the northern side, of Vedalingam property. His vendor Vedalingam, after purchase of above said property, constructed a house, using 5ft pathway exclusively. The vendor to petitioner's mother Uthrani, purchased a portion of property on 19.08.1997, to an extent of 1,091sqft from same Jayalakshmi. The said Kanniappan, after purchasing the house property, constructed a house and he had entrance from the front side of Andavar Nagar 2nd Street. The said Jayalakshmi/vendor no-where stated that the said 5ft pathway is common pathway, hence, the 2nd respondent alone having exclusive right over the pathway. The said Utharani settled her house property to one Venkatesan, who is the petitioner/accused herein, by way of settlement deed, dated 09.04.2007.



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7. It is further submitted that in the month of May 2008, when he and his family members entered away from home, the said Utharani and Venkatesan, without any right, opened one entrance and erected drainage pipes in his pathway illegally. Hence, he filed a suit in O.S.No.6630 of 2011 on the file of the City Civil Court, Chennai. In the said suit, the said Utharani and Venkatesan (D1 and D2 in the Suit) jointly filed written statement stating that Utharani purchased the house property with pathway right from the said Kanniappan, thereafter, settled the property to the said Venkatesan, who is the absolute owner of said house property. In the suit, civil Court ordered appointment of Advocate Commissioner, who inspected the suit pathway, noted down the entrance on the Andavar Nagar 2nd Street and newly opened entrance in 2nd respondent pathway, other obstacles and filed report. Thereafter, the above said Utharani and Venkatesan closed their entrance on Andavar Nagar 2nd street. The 2nd respondent again filed application praying to re-issue warrant to the same Advocate Commissioner to record the atrocious acts of above said Utharani and Venkatesan. Trial court ordered re-issue warrant to the same Advocate Commissioner, who inspected again found the closure of entrance on Andavar Nagar 2nd Street recorded and filed report before the civil Court.



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8. It is further submitted that on 17.07.2013, to wreck vengeance and harass the 2nd respondent and his family members, the petitioner Venkatesan, and his henchmen took drainage from the chambers and poured on the pathway to obstruct the 2nd respondent and his family members from using the pathway. The whole pathway from his house entrance, they poured drainage with human excrements. When the 2nd respondent questioned, Venkaesan, who came with goondas, attempted to attack, used abusive, vulgar and cruel words and threatened with dire consequences. Prior to this incident, the said Venkatesan kept his cycle tied to the drainage pipe illegally put up on the pathway as shield and to obstruct the the 2nd respondent and his family members from using pathway, the 2nd respondent and his family were detained inside the house by the said act of Venkatesan.

9. It is his further contention that narrating all the facts, on 17.07.2013, the 2nd respondent lodged a complaint to the first respondent with proof, though CSR issued, no FIR registered. Hence, he filed a petition before this Court in Crl.O.P.No.20615 of 2014, to register a case, obtained direction by order dated 07.08.2014, thereafter, the present case registered against the accused for the offences under Sections 269, 294(b) and 506 (1) of IPC., and filed charge



sheet before the learned XVII Metropolitan Magistrate Court, Saidapet, Chennai. Further, after the death of the said Utharani, the petitioner filed a petition in I.A.No.6881 of 2015 under Order 1 Rule 10(2) CPC., to strike off his name, since Utharani cancelled the earlier settlement and she executed a settlement deed in favour of one Saranya. Unfortunately, said petition was allowed by trial court, against the said order, the 2nd respondent filed a Review Petition in I.A.No.16273 of 2017, on the ground that when the cause of action is particularly subsisting upon said Venkatesan, allowing that petition is illegal, miscarriage of justice and opposed to law. The trial court allowed the Review Petition, and ordered him to implead said Saranya. Subsequent to that order, he impleaded the said Saranya made defendant.

10. He further submitted that the present petition to quash the proceedings is filed on the ground that the petitioner is not liable for his act done on pathway, primarily on the ground that he is not having any interest over the property, after cancellation of Settlement Deed and after Saranya impleaded in the Suit, and the name of the petitioner deleted. The petitioner and his counsel totally suppressed the above said facts, not approached this Court with clean hands. The petitioner has no-where demurred his criminal act committed in the pathway. He is the person, who committed the criminal act on 17.07.2003, now cannot



escape by filing the present petition of quash that his name is deleted in the suit and hence he is not responsible for said crime. He is personally responsible for his criminal act done on the pathway with goondas. After getting order of dispense with his personal appearance before this Court, he has not produced the same before trial court. The trial court issued non-bailable warrant against the petitioner/accused for his non appearance in trial court, such warrant is still pending from the date of filing charge sheet. Neither he produced the order passed by this Court dispensing with his personal appearance, nor filed any petition to recall the non-bailable warrant issued against him so far. Even after filing the quash petition before this Court, he is continuing his criminal act in the pathway through his tenants.

11. It is further submitted that only to divert cause of action in the suit filed by the 2nd respondent, the petitioner filed a petition before the civil Court to delete his name and the name of Saranya to be added. The facts stated in suit and in police complaint are different, date of occurrences and date of cause of action are also different. The incidences upon which the suit filed and the incidences upon which complaint lodged for his criminal act entirely different. The petitioner simultaneously filing striking of petition in the suit and quash petition cannot be adopted. Though the petitioner stated in the quash petition



that the pathway is common passage, he has not filed his predecessors Title Deeds to support his contention that pathway is common.

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12. It is his further contention that the standard of proof in a criminal case and in a civil suit are completely different. In the criminal case, the proof must be beyond all reasonable doubt; whereas in a civil proceedings, the same can be decided by preponderance of probabilities. The standard of proof required in the two proceedings are entirely different. Findings recorded in one proceedings may not be treated as final or binding in the other, as both the cases have to be decided independently on its own merits. The petitioner has to face trial for his willful criminal act done in the pathway and he is dragging the proceedings of trial by filing the present quash petition.

13. The 2nd respondent – defacto complainant filed additional written submission contenting interalia that in the complaint, dated 17.07.2013, the past occurrences and obstructions of Utharani from the year 2008, is mentioned to show the conduct and reasons. As regards petitioner, he specifically stated in the complaint that the petitioner along with goondas committed the criminal act of pouring off drainage water on the pathway and the petitioner placing a cycle tied to the



drainage pipe on 07/07/2013, thereby, obstructing the pathway, causing obstructions, abusing and threatening the 2nd respondent and his family members.

14. It is further submitted that Utharani name included, for her past conduct, in the subsequent statement to the police, the death of Utharani, who died on 22.06.2013 recorded. This being so, now the petitioner wantonly with an intention to confuse and divert this Court projecting that after death of his step mother, a complaint given against her. For narration of facts reference to Utharani made, which cannot be termed as malafide action. The act of Utharani lead to filing of the civil suit. On recording of Statements and collection of materials, chargesheet filed, against Venkatesan. The grounds raised by the petitioner are disputed facts, regarding the pathway, which can be decided only in the trial. Hence, the 2nd respondent – defacto complainant prays for dismissal of the petition.

15. I have heard the learned counsel appearing on either side and perused the materials available on record.

16. The case of the petitioner is that the petitioner's step mother Uththarani Ammal purchased the property, at Door No.2/15, Andavar



Nagar 2nd Street, Kodambakkam, Chennai, under Sale Deed in Document No.1131/1977, dated 19.8.1977. She was in absolute possession and enjoyment of the same and also using the common pathway for the past 35 years. She settled the said Property with all rights to the petitioner by Settlement Deed, Document No.1423/2007, dated 09.04.2007, on the file of Sub Registrar Office, Kodambakkam. It is the further case of the petitioner that the defacto complainant filed a Suit in O.S.No.6630 of 2011, for declaration and injunction over the common pathway, claiming the 2nd Respondent got exclusive right over the said property. Later, the defacto complainant lodged a complaint on 17.07.2013, treated as CSR No.233/CSR/R8PS/2013, dated 18.07.2013, thereafter, filed a petition before this Court in Crl.O.P.No.20645 of 2014 and F.I.R registered on 11.02.2014, by the 1st respondent, on completion of investigation, filed charge sheet.

17. The case of the 2nd respondent – defacto complainant is that his vendor Vedalingam purchased a house property to an extent of 1,091 sqft., including 5ft pathway having ingress and egress to and from Andavar Nagar 2nd Street from one Jayalakshmi. One Kanniappan Chettiar purchased another portion of property to an extent of 1,091sqft from same vendor viz., Jayalakshmi, facing Andavar Nagar 2nd Street. The said Kanniappan Chettiar, after purchasing the house property,



constructed a house and he had entrance from Andavar Nagar 2nd Street.

On 19.08.1997 The said Utharani purchased the said house property from the said Kanniappan Chettiar. Jayalakshmi/vendor of Kanniappan Chettiar not stated in earlier documents about 5ft pathway, as common passage.

18. It is the further case of the 2nd respondent that in May 2008, when he and his family members were away from home, gone to native, the said Utharani and Venkatesan, without any right opened one entrance facing the pathway and laid drainage pipes in the pathway illegally. Therefore, he filed a suit in O.S.No.6630 of 2011 on the file of the City Civil Court, Chennai. The petitioner Venkatesan and his henchmen on 17.07.2013, drawn drainage from chambers and poured in pathway to obstruct the 2nd respondent and his family members using the pathway. When the 2nd respondent questioned, Venkaesan, who came with goondas, attempted to attack, used abusive, vulgar and harsh words and threatened with dire consequences. Hence, he filed a complaint before the 1st respondent, since no action taken on the complaint, the 2nd respondent filed a petition before this Court in Crl.O.P.No.20615 of 2014, pursuant to the direction of this Court, the 1st respondent registered the case against the petitioner, for the offence under Sections 269, 294(b) and 506 (1) of IPC., and filed charge sheet



before the learned XVII Metropolitan Magistrate Court, Saidapet, Chennai.

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19. The undisputed fact is that the property measuring 2 grounds 10 sq.ft. was owned by G.Viswanatha Iyer, who purchased the same from one Parthasarathy, on 19.11.1941, Viswanatha Iyer sold the entire property to one Kesava Naicker on 13.07.1958. After demise of Kesava Naicker, his survivors namely, his wife Jayalaskhmi Ammal, his sons and daughter divided the said property into three portion, one portion sold to one Kamalanathan, one portion to Vedalingam and one portion to Kanniappa Chettiar. The petitioner's mother purchased the property from Kanniappa Chettiar, in Document No.1131/1977, dated 19.08.1977. The second respondent purchased the property form Vedalingam in Document No.5104 of 2005, dated 15.12.2005. The petitioner's mother Utharani and the second respondent are adjacent owners. The dispute is with regard to usage of 5 ft. passage. The questions to be decided in this matter are that;

1. Whether it is common passage for all the three purchasers, who purchased the property from Jeyalakshmi Ammal and for the subsequent purchasers, of the property.

2. Whether the 5 ft. passage exclusive right rest with Vedalingam, who is the vendor of the second respondent.



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20. This pathway dispute given rise to both civil litigation and criminal complaint and cases. The above case is one and them. As regards the civil case O.S.No.6630 of 2011, filed by the 2nd respondent, a suit for declaration, declaring exclusive entitlement to use the pathway, mandatory injunction to remove drainage pipes, close the gates etc., and restraining the defendants therein in anyway from interfering with the second respondent's peaceful possession and enjoyment of the property with absolute right over pathway.

21. The petitioner and his step mother Utharani are defendants 1 and 2 along with 5 others. Petitioner and his mother filed written statement in the suit, defending their claim and right over the pathway. Later, the petitioner filed I.A.No.6881 of 2015 to strike off his name in O.S.No.6630 of 2011, for the reason that though initially, the petitioner's step mother settled the property in favour of the petitioner by Settlement Deed, Document No.1423 of 2007, dated 09.04.2007, later, due to some reason, the settlement unilaterally cancelled by the step mother, by Document No.555 of 2011, dated 17.02.2007. The Civil Court by order dated 29.04.2015, struck down the name of the petitioner. Thereafter, the second respondent filed a review petition in I.A.No.16273 of 2015. By order dated 03.03.2017, the Civil Court



reviewed the order dated 29.04.2015, dismissing I.A.No.6881 of 2015.

Finally, the XV Assistant City Civil Court, by judgment dated 03.04.2018 in O.S.No.6630 of 2011, decreed and declared as follows:-

“1. It is declared that the suit passage measuring 90 x 5 feet is a common passage belonged to the plaintiffs and the defendants.

2. The defendants are directed to remove the open drainage pipes put u on the wall from the 1st floor of the defendants.

3.The defendants are injuncted from interfering into right of the plaintiffs in the common passage.

4.On other aspects, the suit is dismissed. “

Against this judgment, Appeal Suit in A.S.No.32 of 2019 filed by the second respondent before the Additional District Court, Chennai. It is for the civil court to adjudicate and decide the rights of respective parties as on date civil court declaration is that 5ft passage is a common passage.

22. Be that as it may, now, as regards the criminal cases, on the complaint of the second respondent, the above case registered, investigated and now charge sheet filed, pending trial in C.C.No.2361 of 2016 for the offences under Sections 269, 294(b) and 506(i) I.P.C. The



petitioner is the sole accused. The graveman of charge and the case is that on 17.07.2013 at about 10.00 a.m., the petitioner with his men drawn the sewage water poured on the pathway, obstructing and restraining the 2nd respondent and his family members using the pathway, usage of passage exclusively is with the 2nd respondent and his family. Likewise, earlier on 07.07.2013, the petitioner stationed a cycle on the pathway, strapped to the sewage pipe line, again causing obstruction to the pathway. When the same was questioned, the second respondent was abused and threatened. The 2nd respondent, his wife and a known person to 2nd respondent, are shown as P.W.1 to P.W.3, the prime witnesses. The other witnesses are neighbours, against whom, a similar complaint lodged by 2nd respondent and case in Crime No.630/2021, dated 08/07/2021, registered for the offences under Sections 269, 270, 271, 278, 294(b) and 506(i) of IPC., and Section 3 of Epidemic Diseases Act, who are neighbors on the northern side, the 2nd respondent given complaint against 7 persons, on 2.09.2021, who are neighbors on the southern side. The complaints against the petitioners and neighbours are pertain to laying of sewage pipe, having entrance to the respective properties from the passage, allowing of sewage water, leaving human excreta, having coconut tree, allowing its droppings to cause damage to the 2nd respondent's house and car. The entire neighborhoods are facing criminal cases, apart from the civil suit. There



is no material against the petitioner, except for the oral statements, utmost it is an empty threat. The apex court as well as this court is plethora of Judgements have held that in the absence of any harm followed by threat, no offence is made out.

23. It is not in dispute that petitioner's mother purchased the property in the year 1977, constructed a house and living or rented for more than 35 years. The 2nd respondent purchased the property much latter in the year 2005. The usage of pathway, whether it is exclusive or common, either by way of document or easementary right all to be decided in a Civil suit. The civil court in O.S.No.6630/2011, by Judgement dated 03/04/2018, declared the pathway as common passage. The other reliefs are ancillary.

24. No doubt, the civil Court Judgement is under Appeal in AS.No. 32 of 2019. Whatever may be the outcome, the sum and substance is that there is civil dispute between the 2nd respondent and his neighbours. Criminal complaints have been lodged periodically and one such complaint is the above case. All the complaints pertain to usage and obstructions to the common passage. The civil Court is seized of the dispute. The sum and substance in both cases are identical. At this juncture it is relevant to refer the Judgment of the Hon'ble Apex Court



in *G. Sagar Suri and another vs. State of U.P. and others*, reported

in *((2000) 2 SCC 636)*, wherein it has been held as follows:

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"8. Jurisdiction under [Section 482](#) of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a **civil nature**, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under [Section 482](#) of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

25. On considering the facts and circumstances of this case, and on perusal of entire materials, this Court is of the view that this is a fit case where power under [Section 482](#) is to be exercised, as criminal colour has been given to a civil dispute. No doubt, the opinion of the court would certainly depend on the factual matrix of each case. Though the instant dispute certainly involves determination of



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issues, which are of civil nature, as emphasized by the Apex Court in the Judgment reported in **(2000 (2) SCC 636)** *cited supra*. Therefore, this Court is of the view that continuation of proceedings is an abuse of process of the court and is liable to be quashed.

26. In fine, this Criminal Original Petition is allowed and the proceedings in C.C.No.2361 of 2016, on the file of the learned XVII Metropolitan Magistrate, Saidapet, stands quashed. Consequently, the connected miscellaneous petition is closed.

28.07.2023

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To

- 1.The XVII Metropolitan Magistrate,
Saidapet, Chennai.
- 1.The Inspector of Police,
R-8 Vadapalani Police Station,
Vadapalanai,
Chennai – 26.
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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