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Crl OP No.33821 / 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : **03.04.2023**
PRONOUNCED ON : **12.04.2023**

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No. 33821 of 2019
and
Crl.M.P. No. 18658 of 2019

1. Kaleelur Rahman
2. Shaik Mohammed ... Petitioners

Versus

1. The State Rep., Inspector of Police,
S-7 Madipakkam Police Station,
Kilkattalai, Chennai – 117.
2. S. Sanakara Gomathi ... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records and quash all proceedings in F.I.R. No.287 of 2019 on the file of S-7 Madipakkam Police Station, Kilkattalai, Chennai – 11.

For Petitioners : Mr. N.A. Nissar Ahmed.

For Respondents : Mr. S. Balaji,
Government Advocate (Crl. Side) for R1.

No appearance for R2.



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ORDER

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2.It is alleged in the impugned First Information Report that on 27.07.2019 at about 12 noon, when the second respondent and his assistant went to the place of occurrence, they found that six persons were involved in the construction of a mosque and; that they came to know that the persons incharge of the construction were Khaleelur Rahman and his son Shaik Mohammed; that the Tahsildar had issued an order on 30.05.2014 that any construction made in S.No.10/10A should be subject to the permission granted by the authorities; that the accused by constructing the mosque were promoting enmity between different groups on the ground of religion; that because of this act of the petitioners, there is a likelihood of disturbance to public tranquility; Hence, the petitioners were charged for the offence under Sections 153A and 506 (i) of the Indian Penal Code.



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3.The learned counsel for the petitioners would submit that the first petitioner is the Mutawalli of the Wakf. The Tamil Nadu Wakf Board has granted permission to put up construction in the said property. In fact, a Suit in O.S. No. 740 of 2006 was filed by some persons for injunction restraining the petitioners from constructing the mosque and the same was dismissed by Judgment and decree dated 17.09.2013 on the file of the Additional District Munsif Court, Alandur. Further, the proceedings of the Tahsildar were impugned in a Writ Petition and the same is pending. That apart, by a communication dated 03.10.2019, the Principal Secretary to Government has written a letter to the Member Secretary, Chennai Metropolitan Development Authority with regard to an appeal preferred by the petitioners challenging the refusal of grant of planning permission. In the said letter, the Principal Secretary had allowed the petitioners to carry out the rectifications and then seek planning permission. He submitted that for all the above reasons, the impugned complaint is an abuse of process of law.

4.The learned Additional Public Prosecutor appearing for the first respondent submitted that the land on which the construction was made belongs to the petitioners. The First Information Report shows that the



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Tahsildar had passed a memo on 27.05.2014 stating that construction in the subject land has to be put up only after obtaining planning permission from the authorities concerned. Therefore, the learned Additional Public Prosecutor submitted that the quash petition has to be dismissed.

5.Though notice has been served on the second respondent, none has entered appearance on her behalf.

6.This Court on perusal of the impugned final report and the submissions made on either side, finds that the petitioners are constructing a Madarasa as well as a Mosque in the land. They had applied for the planning permission and the same was rejected by the Chennai Metropolitan Development Authority. They had appealed to the Government and the Government had passed the following order;

“2.The appeal of Tvl.S.M. Khaleelur Rahman & K.A. Farook Ali was placed before the Appeal Committee meeting held on 26.08.2019 and the Appeal Committee have recommended as follows:-

“The Appeal Committee went through the records and contention of the appellant in respect of refusal of Planning Permission for the regularization



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of Ground Floor construction and proposed first floor building for Madarasa Hall at Plot No.6B, Raghava Nagar, 12th Street, in S.No.10/10 of Moovarasanpet Village.

The Appellant appeared in person and informed the Committee that the building is used as “Madarasa” as well as “Mosque”. The Committee resolved to remit back the issue to Greater Chennai Corporation in order to advise the appellant about the rectifications required to be carried out for obtaining planning permission.”

3.Accordingly, the appeal of Tvl.S.M. Khaleelur Rahman & K.A. Farook Ali is remitted back to the Greater Chennai Corporation in order to advise the appellant about the rectifications required to be carried out for obtaining Planning Permission.”

Thus, it could be seen that the construction put up by the petitioners was in their private land and that they have applied for planning permission and the appellate authority has passed an order as extracted above. While so, the act of the petitioners can by no means be termed as an act of promoting enmity between two groups on the ground of religion so as to disturb the public tranquility. Hence, the offence under Section 153 A



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of the Indian Penal Code is not made out. However, if the second respondent or any other person is aggrieved by the fact that the construction is unauthorised, it is open to them to take such action in accordance with law.

7.As regards the offence under Section 506 (i) of the Indian Penal Code, there is nothing in the impugned First Information Report to show as to what were the alleged words of threat made by the petitioners in order to invoke the said offence. Therefore, this Court is of the view that the impugned First Information Report is liable to be quashed and hence, quashed.

8.Accordingly, this Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petition is closed.

12.04.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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To

1. The Inspector of Police,
S-7 Madipakkam Police Station,
Kilkattalai, Chennai – 117.
2. The Additional Public Prosecutor,
High Court of Madras,
Chennai.



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SUNDER MOHAN, J

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Dated: 12.04.2023