



Crl.O.P(MD).No.3735 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On: 14.03.2023

Delivered On : 17.04.2023

CORAM:

THE HONOURABLE MRS. JUSTICE R.THARANI

Crl.O.P(MD).No.3735 of 2020

and

Crl.M.P.(MD)Nos.2030 and 2031 of 2020

1.Thangabai
2.Thangabai

...Petitioners

Vs

Simila

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the records relating to the C.C.No1438 of 2018 on the file of learned Judicial Magistrate Court No.II, Padmanabhapuram, Kanyakumari District and quash the same as illegal, in so far as it relates to the petitioners concerned.

For Petitioners : Mr.K.Sivabalan
For Respondent : Mr.Sreenivasan

ORDER

This petition is filed to quash the proceedings in C.C.No.1438 of 2018 on the file of the learned Judicial Magistrate No.II, Padmanabhapuram, Kanyakumari District.



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2.The allegation against the petitioners is that the respondent and petitioners are neighbours and relatives. Due to pathway dispute, the petitioners pulled out the boundary stones from the house of the defacto complainant and when the same was questioned, the accused persons attacked the defacto complaint with stick and broom stick. The defacto complainant sustained injuries and due to the influence of the petitioners, the police failed to take action. Hence, the defacto complainant lodged a private complaint before the learned Judicial Magistrate No.II, Padmanabhapuram and the case was taken on file as C.C.No.1438 of 2018.

3.On the side of the petitioners, it is stated that there was no specific allegation against the petitioners. There is no overt act contributed against the petitioners and that there is no prima facie case made out. The averments does not contribute any offence under Sections 147, 323, 324, 294(b), 354 and 506(i) of IPC. The private complaint is an abuse of law. No material objects was produced on the side of defacto complainant. There was no life threat for the defacto complainant. The specific words used by the petitioners were not mentioned in the FIR. The offence under Section 294(b) of IPC is not made out. No averment as to outraging of the modesty was not mentioned in the complaint. Hence, the case under Section 354 of IPC is not made out. The alleged pathway is public pathway. Only with a motive to encroach the public



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pathway, the defacto complainant has come forward with this complaint. It was the defacto complainant and others who damaged the public pathway compound wall, interlock stones and a case in Crime No.352 of 2019 dated 31.10.2019 was registered against the complainant and others and prayed the FIR to be quashed.

4.On the side of the respondent, it is stated that the petitioners tried to form a road in the property of the respondent by using force. They brutal attacked the defacto complainant. Both in the first complaint and in the second complaint, the same persons were mentioned as accused. The defacto complainant was admitted and took treatment as 'inpatient' for seven days and a wound certificate was also filed. The police official were influenced by the petitioners and they refused to register an FIR. The statement of the defacto complainant and statement of the witness reveals that there is specific overt act against the petitioners.

5.On the side of the petitioners, it is stated that in the first complaint, seven persons were shown as accused. In the second complaint, some improvement were made in the case. The pathway belong to the Government. A criminal case is pending against the respondent for damaging the pathway.

In that complaint, it was stated that the occurrence has taken place on



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31.08.2018 at about 07.00 a.m. But in the wound certificate, the time of the injury was mentioned as 31.08.2018 at 07.00 a.m, to 11.00 a.m. The defacto complainant was admitted only at 01.45 p.m., which will clearly reveals that there was no such occurrence.

6.A perusal of the records reveals that in the complaint, it is mentioned that the occurrence has taken place on 31.08.2018 at 07.00 a.m., and the same time was mentioned in the wound certificate and in addition to that, another time was mentioned in the wound certificate. It is seen that the defacto complainant took treatment as 'in patient' from 31.08.2018 till 06.09.2018.

7.Considering the wound certificate and considering that there is some prima facie case made out against the petitioners, which requires a trial, this Criminal Original Petition is **dismissed**. Consequently, connected miscellaneous petitions are closed.

17.04.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
Mrn



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To

- 1.The Judicial Magistrate No.II,
Padmanabhapuram, Kanyakumari District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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R. THARANI,J.

Mrn

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