



Crl.OP(MD)No.5777 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 12/06/2023

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

Crl.OP(MD)No.5777 of 2023

and

Crl.MP(MD)Nos.5030 and 5031 of 2023

1.Panjabikesan
2.Kumaravadivelu
3.Balamurugan
4.Neelavathi
5.Selvi

: Petitioners/
A1 to A3, A5 and A6

Vs.

1.The State rep. through
Inspector of Police,
Patteeswaram Police Station,
Thanjavur.
(Crime No.72 of 2019)

: R1/Complainant

2.Gurunathan

: R2/De-facto Complainant

PRAYER:-Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records relating to CC No.26 of 2021 on the file of the Judicial Magistrate Court No.II, Kumbakonam and to quash the same as illegal.

For Petitioners : M/s.P.Yasmin Begam

For 1st Respondent : Mr.S.Manikandan
Government Advocate
(Criminal side)



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O R D E R

WEB COPY This criminal original petition has been filed seeking quashment of the case in CC No.26 of 2021 on the file of the Judicial Magistrate No.II, Kumbakonam.

2.The case of the prosecution in brief:-

On 11/05/2019 at about 06.30 pm, when the de-facto complainant and another witness were in their house, A1 pushed one Dharakeswari out of the house and caused assault with hands, in which, the other accused persons also joined, abused her in filthy language. A2 assaulted on the chest region by kicking. A3 caused criminal intimidation with aruval. Based upon the occurrence, a case in Crime No.72 of 2019 was registered for the offences under sections 147, 294(b), 323, 342, 506(ii) IPC and section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002. After completing the process of investigation, charge sheet has been filed and it was taken cognizance in CC No.26 of 2021 by the Judicial Magistrate No.II, Kumbakonam.



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3.Now seeking quashment of the same, this petition has been filed on the ground that 5th petitioner is the sister of the de-facto complainant; the petitioners 2 and 3 are the brothers of the de-facto complainant; 4th petitioner is the mother of the de-facto complainant; the 1st petitioner is the son of the 5th petitioner; There was a property dispute between the 4th petitioner and the de-facto complainant; The house property bearing Door No.3/557, Middle Street, Thenampadugai, Kumbakonam was purchased by the 4th petitioner; There were totally six children; The 2nd respondent/de-facto complainant is the elder son; After the marriage, they separated from the joint family and living separately with the wife and children; After the death of the father, the second respondent came to the house after 17 years and demanded partition of the properties, which was objected by the mother, who is the 4th petitioner; She also initiated proceedings before the Revenue Divisional Officer, Kumbakonam under the provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 2007; She also filed a suit in O.S No.219 of 2019 for injunction and temporary injunction was also granted, on 11/05/2019; At about 05.00 pm, summon was served upon the de-facto complainant by the District Court Staff in the above said



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suit; At that time, he picked up quarrel and caused assault; the petitioners 4 and 5 sustained injuries and admitted in the hospital; To escape from the above said case, the present complaint has been falsely given; Based upon the complaint given by the 4th petitioner, a case in Crime No.73 of 2019 was registered against the de-facto complainant; Similarly, cases in Crime Nos.149 of 2019 and 41 of 2020 were registered against him; The second respondent was also directed to evict from the property as per the order of the Revenue Divisional Officer, on 25/04/2022; Against which, appeal was preferred and that was also dismissed; Challenging the above said, he has filed WP(MD)No.12354 of 2020; That was partly allowed by recording the undertaking given by the second respondent.

4.These are the factual grounds. Apart from that, it is also stated that the 3rd petitioner is a Government Staff working as Senior Regional Manager at Tamil Nadu Civil Supplies Corporation and the second petitioner is working in a private Company in Bangalore, since 2015. According to them, there is no possibility for the above said occurrence said to have been taken place.



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5. Heard both sides. The second respondent was not served with any notice. The matter is taken up for final disposal by hearing the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal side).

6. It is a long standing property issue between the second respondent and the 4th petitioner, who is the mother and others are close blood relatives of the second respondent. In respect of the above said property issue, several litigations occurred. Similarly, several criminal cases have also been registered against each parties. The present complaint is filed against the petitioners and several cases have been registered against the second respondent/de-facto complainant. Not only that, writ petition has also been filed to resolve the issue. In spite of the above said civil and criminal litigations, it appears that so far, it is not settled between the parties. Prolongation of the above said litigations, both civil and criminal will not have any effect upon the issue. They ought to have sorted out the issue amicably. The mother is aged 73. Now she has been dragged to the criminal proceedings. This is the background.



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7. But the question, which arises for the consideration is whether the factual ground that has been mentioned in the petition is sufficient enough to quash the criminal proceedings.

8. As mentioned earlier, there is a specific allegation of assault, abuse, criminal intimidation, etc. When an allegation of assault has been made and during the course of investigation, the Doctor, who treated the injured is examined and his statement has also been recorded, I am of the considered view that the trial must be taken in its logical conclusion. A case of assault cannot be decided by exercising the power under section 482 Cr.P.C.

9. After passing the above said observation, CD file has been produced and on perusal of the CD file, it is seen that it is the case and counter cases.

10. Before we go into the factual aspect, the preliminary point, which arises for consideration is whether proper procedure was followed by the Investigating Officer, while investigation.



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11.As stated by the petitioners, it is a case and counter. So the learned Government Advocate (Criminal side) was required to produce the case diary in both the matters. He has also produced, which shows that so far as this case is concerned, the complainant name is mentioned as Gurunathan, who is the second respondent herein.

12.It is seen that counter party has also given a complaint, which was registered in Crime No.73 of 2019. Without properly following the procedure as set out in PSO-588A, charge sheet has been filed in respect of the complaint given by the second respondent, who is the de-facto complainant. In the counter case, after completing the investigation, final report was filed, taken cognizance in STC No.242 of 2020. The Investigating Officer has not followed the procedure enunciated in PSO-588A. The final reports have been filed in both matters. On that sole ground, the entire prosecution is liable to be quashed.

13.In the result, this criminal original petition stands **allowed**. The case in CC No.26 of 2021 on the file of the Judicial Magistrate No.II, Kumabakonam is quashed not only against the petitioners, but also against the



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other co-accused. Consequently, connected Miscellaneous
Petitions are closed.

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Index:Yes/No
Internet:Yes/No

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To,

- 1.The Judicial Magistrate No.II,
Kumbakonam,
Thanjavur District.
- 2.The Inspector of Police,
Patteswaram Police Station,
Thanjavur district.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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