



Crl.O.P(MD)No.9653 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 13.04.2023

CORAM:

THE HON'BLE MR JUSTICE K.K.RAMAKRISHNAN

Crl.O.P(MD)No.9653 of 2021

and

Crl.M.P(MD)No.4945 of 2021

1.T.Magesh

2.Chithra

.. Petitioners/Accused Nos.1&2

Vs.

1.State represented by
The Inspector of Police,
ST Kulam Police Station,
Kanyakumari District.
(Crime.No.95/2021)

.. Respondent/Complainant

2.R.Satheesh Swaminathan

.. Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertains to Crime No.95 of 2021 dated 27.04.2021 on the file of the Inspector of Police, ST Kulam

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Police Station, Kanyakumari District and quash the same.

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For Petitioner : Mr.T.Senthil Kumar
For R1 : Mr.M.Muthumanikkam
Government Advocate(Criminal side)
For R2 : Mr.C.Kishore

ORDER

The petitioners/A1&A2 have filed this petition to quash the Crime No.95 of 2021, dated 27.04.2021 on the file of the Inspector of Police, ST Kulam Police Station, Kanyakumari District, wherein they are said to have committed the offence under sections 447, 294(b), 427 and 506(ii) IPC.

2. The case of the prosecution is that the petitioners are brothers and they have 3½ cents of land comprised in survey No.500/2 in Thenthamarikulam village, Kanyakumari District, which is exclusively and jointly belongs to the petitioners. The adjacent land for an extent of two acres and 33 cents comprised in survey Nos.497/19 and 501/19 B are exclusively belongs to one Mohammed Ismail. The second respondent

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herein, who is doing the real estate business in that area was trying to convert the above said agricultural land belongs to the said Ismail into house plots. For that purpose, the 2nd respondent herein has attempted to encroach the petitioners' land for widening the pathway to enter the above set Ismail's land. Thereafter, on 18.03.2021 the 2nd respondent and his men were illegally removed the survey stones which were already exist in between the lands belongs to the petitioners and the above said Ismail and tried to lay fencing stone by encroaching the petitioners' land to a vast extent.

3. When the above said act of the 2nd respondent was questioned by the 1st petitioner, the 2nd respondent and his men were tried to assault the first petitioner with deadly weapons. For the said incident, the first petitioner lodged a complaint. At the same time, the 2nd respondent also lodged a complaint for the same occurrence on 18.03.2021. In respect of the complaint given by the 2nd Respondent, a complaint receipt has been issued in CSR No.104 of 2021 and for the complaint given by the Petitioner, CSR No.187 of 2021 has been issued by the 1st Respondent



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Police.
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4. On the same day, ie, on 18.03.2021, the first respondent police has conducted an inquiry based upon both complaints. During enquiry, the 2nd respondent had given a statement that he is ready to dissolve the above dispute and demarcate the boundaries by conducting a proper survey and also withdraw his complaint for the above said purpose. After that, the first respondent has closed the complaint of either parties through his report dated 19.03.2021. After the closure of the complaints, the second respondent did not take any steps to survey the above said land. But all of a sudden, the first respondent registered a case in Crime No.95 of 2021 against the petitioners on 27.04.2021 for the above said alleged offence for the same complaint given on 18.03.2021, which has already been closed based on the withdrawal of the 2nd respondent. Hence this petition.

5. When the matter is taken up for hearing, the learned Government Advocate (Criminal side) submitted that after completion of



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investigation, charge sheet has been filed before the learned Judicial Magistrate No.III, Nagercoil, and the same is yet to be taken on file.

6. Recording the submission made by the learned Government Advocate (Criminal side), this Criminal Original Petition stands closed with liberty to work out their remedy in the manner known to law. Consequently, connected miscellaneous petition is closed.

13.04.2023

NCC : Yes/No
Internet: Yes/No
Index : Yes/No
PJJ

To

1.The Inspector of Police,
ST Kulam Police Station,
Kanyakumari District.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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K.K.RAMAKRISHNAN,J.

PJL

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