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Crl.O.P.(MD) No.18532 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	23.11.2023
Pronounced on	22.12.2023

CORAM

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

Crl.O.P.(MD) No.18532 of 2019

and

Crl.M.P.(MD) Nos.10886 & 10888 of 2019

in

Crl.O.P.(MD) No.18532 of 2019

Dr.Thirumalai Ganesan

... Petitioner/
Accused No.1

Vs.

1.State represented by,
The Inspector of Police,
Vasudevanallur Police Station,
Tirunelveli District.
(Crime No.235 of 2017)

... 1st Respondent/
Complainant

2.Vijayaprakash

... 2nd Respondent/
Defacto Complainant

Prayer in Crl.O.P.(MD) No.18532 of 2019: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, 1973, to call for the records in S.C.No.242 of 2019 on the file of the learned I Additional District Judge, Tirunelveli, Tirunelveli District and quash the proceedings as against the petitioner herein.



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Prayer in Crl.M.P.(MD) No.10888 of 2019: Criminal Miscellaneous Petition filed under Section 482 of the Code of Criminal Procedure, 1973, to dispense with the personal appearance of the petitioner herein on future hearing dates in S.C.No.242 of 2019 on the file of learned I Additional District Judge, Tirunelveli, Tirunelveli District pending disposal of the main Criminal Original Petition.

For Petitioner : Mr.R.Ilayaraja
For R1 : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor
For R2 : Mr.C.Saravanakumar
for Mr.J.David Ganesan

ORDER

The petitioner has filed this Criminal Original Petition under Section 482 of 'The Criminal Procedure Code, 1973 (Act No.2 of 1974)' [henceforth 'Cr.P.C.' for the sake of brevity] praying praying to quash the proceedings in S.C.No.242 of 2019 on the file of the learned I Additional District Judge, Tirunelveli.

2. Mr.R.Ilayaraja, the learned counsel for the petitioner submitted that the petitioner is a Doctor by Profession and the petitioner and the



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second respondent are adjacent land owners. He further submitted that the case of the prosecution is that the petitioner and his men entered into the second respondent/defacto complainant's land and sprayed herbicide into his sugarcane field and thereby caused damage and mischief. Admittedly, there is a civil dispute pending between the petitioner and the second respondent. In order to wreak vengeance, the second respondent has given a complaint against the petitioner (A1) in Crime No.235 of 2017 for the offences under Sections 447 & 427 of the Indian Penal Code' 1860 (Act No.45 of 1860) and under Section 3 of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992 (Act No.59 of 1992) on the file of Vasudevanallur Police Station, which has culminated into S.C.No. 242 of 2019 on the file of the learned I Additional District Judge, Tirunelveli.

3. Per contra, R.Meenakshi Sundaram, learned Additional Public Prosecutor appearing for the first respondent-State submitted that the Investigating Officer examined seven witnesses, L.W.1 is the complainant, L.W.2 and L.W.3 are the ocular witnesses, L.W.4 and L.W.5 are Observation Mahazar witnesses, L.W.6 is the Expert Witness and L.W.7 to L.W.9 are Official Witnesses. He further submitted that the



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Statement of the witnesses discloses cognizable offences. Accordingly, he prayed to dismiss this Criminal Original Petition.

5. This Court has considered both side submissions and perused the F.I.R and charge-sheet.

6. A perusal of the F.I.R reveals the fact that the petitioner and the second respondent are adjacent land owners. Further, it reveals the fact that the second respondent purchased the property from the petitioner's relatives and hence, there is some animosity between the petitioner and the second respondent. According to the second respondent, the petitioner with a view to grab the property, caused mischief, damage and trouble to the second respondent.

7. It is settled law that at the stage of deciding an application under Section 482 Cr.P.C., it is not permissible for this Court to go into the correctness or otherwise of the material placed by the prosecution in the charge sheet. This Court is of the considered view that the averments stated in the Criminal Original Petition can be tested only in the ongoing trial.



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8. Considering the facts and circumstances and the nature of the case, this Court directs the learned I Additional District Judge, Tirunelveli to conclude the trial in S.C.No.242 of 2019 within a period of three months from the date of receipt of a copy of this order. The petitioner and the second respondent are directed to co-operate with the Trial Court for expeditious disposal of the case.

9. The petitioner has filed Crl.M.P.(MD) No.10888 of 2019 to dispense with his personal appearance before the Trial Court pending disposal of this Criminal Original Petition. Though personal appearance is prayed to be dispensed with pending disposal of this Criminal Original Petition, considering the facts and circumstances of the case, personal appearance of the petitioner before the Trial Court is hereby ordered to be dispensed with on the condition that he shall appear at the time of initial questioning, proceedings under Section 313 of Cr.P.C., at the time of passing Judgment and on hearing dates specifically directed by the Trial Court. The petitioner is further directed to give an undertaking before the Trial Court in the form of affidavit that he will be duly represented by a counsel on all hearing dates and that the counsel representing him will cross-examine the prosecution witnesses on the date of chief examination.



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The petitioner shall not raise any argument that the witnesses did not identify him during trial. The petitioner shall appear before the Trial Court as and when his presence is required by the Trial Judge for the purpose of identification.

10. In the result,

- i. Crl.O.P(MD)No.18532 of 2019 and Crl.M.P(MD)Nos. 10888 of 2019 are disposed of in the above manner.
- ii. Crl.M.P(MD)Nos. 10886 of 2019 filed for interim stay is closed.
- iii. No cost.

22.12.2023

(2/2)

Index: Yes/No

Neutral Citation: Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

PS/JEN

To

1.The Inspector of Police,
Vasudevanallur Police Station,
Tirunelveli District.



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



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R.SAKTHIVEL, J.,

PS/JEN

Pre-Delivery Order made
in
Crl.O.P.(MD) No.18532 of 2019
and
Crl.M.P.(MD) Nos.10886 & 10888 of 2019
in Crl.O.P.(MD) No.18532 of 2019

22.12.2023

(2/2)