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Crl.O.P.(MD) No.18277 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.18277 of 2019

and

Crl.M.P.(MD) No.10767 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.122 of 2018)

... 1st Respondent/
Complainant

2.Vijayaprakash

... 2nd Respondent/
Defacto Complainant

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, 1973, to call for the records and quash the F.I.R in Crime No.122 of 2018 dated 05.06.2018 on the file of the first respondent/Inspector of Police, Vasudevanallur Police Station, Tirunelveli District as against the petitioner herein.



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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 to quash the First Information Report [F.I.R] in Crime No.122 of 2018, dated June 5th, 2018 on the file of the first respondent.

2. The first respondent has registered a case against the petitioner (A1) 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) based on the complaint lodged by the second respondent.

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



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and the second respondent are adjacent land owners. He further submitted that the case of the prosecution is that the petitioner and his men trespassed into the second respondent/defacto complainant's land and sprayed herbicide in his sugar cane field and thereby caused mischief and damage to the second respondent; that there is a civil dispute pending between the petitioner and the second respondent; that in order to wreak vengeance, the second respondent has filed a false case against the petitioner.

3.1. The learned counsel further submitted that the Forensic Lab Report reveals the fact that there is no herbicide found on the sample crops collected by the respondent Police. Further, the entire reading of the F.I.R. would not disclose a cognizable offence. Accordingly, he prayed to quash the F.I.R in Crime No.122 of 2018, dated June 5th, 2018 on the file of the first respondent.

4. Per contra, Mr.R.Meenakshi Sundaram, learned State Additional Public Prosecutor appearing for the first respondent submitted that the first respondent conducted investigation and filed a charge-sheet and the same was taken on file in C.C.No.179 of 2022 on the file of the learned



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Judicial Magistrate, Sivagiri. He further submitted that the second respondent is residing out of town. Upon learning about the incident from his tenant, the second respondent has lodged a complaint. Hence, there is a delay of four days in registering the F.I.R. He further submitted that the Investigating Officer collected ample materials against the petitioner and the said materials disclose cognizable offence and accordingly, he prayed to dismiss the Criminal Original Petition.

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

6. A perusal of the F.I.R and the charge sheet 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.



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7. The Investigating Officer collected materials and filed charge-sheet and the same was taken on file in C.C.No.179 of 2022 on the file of the learned Judicial Magistrate, Sivagiri. The material collected by the Investigating Officer *prima facie* establishes the offence. 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 a trial.

8. Considering the facts and circumstances and also considering the nature of the case, this Court directs the learned Judicial Magistrate, Sivagiri to conclude the trial in C.C.No.179 of 2022 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 for expeditious disposal of the case.

9. 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



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

10. Accordingly, this Criminal Original Petition is disposed of. No cost. Consequently, Crl.M.P(MD) No.10767 of 2019 filed for interim stay is closed.

22.12.2023

(1/2)

Index: Yes/No

Neutral Citation: Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

PS/JEN



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To

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- 1.The Inspector of Police,
Vasudevanallur Police Station,
Tirunelveli District.
- 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.18277 of 2019
and Crl.M.P.(MD) No.10767 of 2019

22.12.2023

(1/2)