



Crl.O.P.No.10844 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**RESERVED ON** : 29.11.2024

**PRONOUNCED ON** : 11.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE **P.VELMURUGAN**

**Crl.O.P.No.10844 of 2021 and  
Crl.M.P.No.6454 and 6456 of 2021**

1. Dr.P.Nedunchezian
  2. Ponniamani alias Subramanian
- ...Petitioners

Vs.

1. State represented by  
The Deputy Superintendent of Police  
Land Grabbing (Prevention) Special Cell,  
Namakkal District.  
Crime No.33 of 2011
  2. Mathiazhagan
- ...Respondents

**Prayer :** The Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the entire records in relation to the charge-sheet filed by the first respondent against the petitioners in P.R.C.No.29 of 2020 on the file of the learned Principal District and Sessions Court, Namakkal, and to quash the same.



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For Petitioner : Mr.B.Kumar, Senior Advocate  
for Mr.S.Senthil

For Respondents : Mr.S.Vinoth Kumar  
Government Advocate (Crl.Side) for R1

R2 – No Appearance  
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### **ORDER**

This Criminal Original Petition has been filed seeking to quash the case against the petitioners in P.R.C.No.29 of 2020 on the file of the learned Principal District and Sessions Court, Namakkal.

2 It is the case of the prosecution that the subject property measuring an extent of 1.73 Acres comprised in S.No.33/1 situated at Punjai Edayar Melmugam Village, was originally purchased by one Thaniappa Chettiar and 16 others on behalf of Committee christened as “Mahatma Gandhiji Memorial Committee” vide Doc.No.1004/1950 dated 29.05.2018 on the file of SRO, Vellur. Subsequently the aforesaid 17 members



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constituted a Club namely “Gandhiji Memorial Club” on 24.03.1958, which was also registered as Doc.No.6 of 1958 before the District Registrar, Salem, under the Societies Registration Act, 1960. Thereafter the said committee members constructed a building for the purpose of 'reading room', 'indoor games' and other recreations meant for the general public in the locality and one amongst them namely V.K.Poori was nominated as the President of the said Club.

**2.1** On 12.03.1970 the District Registrar, Salem, struck off the name of the above Club from the Register as two amongst the 17 members passed away and others were unable to run the Club and the same was revived by an order dated 30.09.1972. Once again on 28.08.1976 the said Club was struck off due to failure to get the said Club registered under the Tamil Nadu Societies Registration Act, 1975.

**2.2** In the mean time, the persons not connected with the Club, namely Srinivasan and Shanmugam along with 5 others registered Club named as “The Gandhiji Memorial Club” on 21.04.1980 bearing Reg.No.18



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of 1980 to sound like the earlier Club and the above said 7 members have no line whatsoever with the earlier Club. Based on the fake registration, in the year 1987, patta was fraudulently mutated in respect of the subject property as “Mahatma Gandhiji Memorial Club President, Shanmugam” as if both old and new clubs are one and the same and the said registration is a genuine one. On 17.01.1987, the first accused in this case joined as a Member of the Club. From 1987 to 1990 one Mr.Shanmugam was acting as President of the Club, maintaining its accounts thereafter on 22.04.1990, the first accused registered himself as the President of the Club.

**2.3** In the meantime, out of 17 trustees, two of original trustees, who are only alive, along with 5 others once against registered the Trust in the year 1995 and taken possession of the subject property and administrating the same. Now the accused 1 to 3, incited by the evil intention of encroaching the subject property and in order to evict the real trustees from the subject property, the first accused knowing fully well that he has no right over the subject property, fictitiously creating a lease deed as if the land had been let on lease to the Paramathi Vellur Lions Club, where



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the second accused is holding the post as Governor, for 30 years, trespassed into the subject land and created encumbrance over the subject properties.

Therefore the accused 1 to 3 committed offence punishable under Sections 120B, 447, 448, 467, 468, 471, 467 r/w 109, 468 r/w 109 and 471 r/w 109 IPC and 3(i) of TNPPDL Act, 1992.

**3** Learned Senior Counsel for the petitioners would submit that in the year 1985, the Additional Tahsildar, Namakkal, in compliance with the verbal order issued by the Collector, Salem District, took forcible possession of the premises and denied entry to the Members of the Gandhiji Memorial Club (in short “the Club”). Aggrieved over the same, the president of the Club, registered in Reg.No.18 of 1980, approached this Court in W.P.No.5090 of 1986 seeking the relief of forbearing the official respondents from interfering with the peaceful possession and enjoyment of the subject property by the Club. This Court by order dated 13.08.1986 directed the District Collector to hand over the keys to the Club giving liberty to the Collector to take action if there is any violation of any law. Thereafter the revenue officials handed over the possession of the subject



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property to the Club.

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**3.1** Thereafter, the Club, who was in possession of the property entered into lease agreement with the Paramathi-Vellur Lions Club (in short “Lions Club”), on 11.04.2001 registered by the petitioners as its office bearers, thereby allowing the Lions Club leasing the land measuring an extent of 15,000 sq.ft out of the subject property for a period of 30 years for social activities of the Lions Club. The portion of the subject property was also used for running gym centre under the name of M.Rathinasabapathy Physical Fitness Centre, in which the defacto complainant is working as a Trainer. While so, there was a dispute arose between the defacto complainant/2<sup>nd</sup> respondent and the Club, which resulted in filing the civil suit in O.S.No.102 of 2007, by the defacto complainant against the Club, seeking injunction, before the Sub Court, Namakkal, which was also dismissed on 17.06.2015 for default and the suit was not restored.

**3.2** In the meantime, as the defacto complainant filed a suit in O.S.No.102 of 2007 as stated above and since there was dispute over the



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subject property, RDO, Thiruchengodu, has passed *suo motu* order dated 24.09.2011 under Section 144 Cr.P.C. prohibiting from entering, trespassing and using the subject property. The said order was challenged before this Court in Crl.O.P.No.23885 of 2011 and thereafter in pursuance of the order of this Court dated 03.04.2012, possession of the subject property was restored. On the representation given by the nine persons representing them as members of Mahatma Gandhiji Memorial Committee Trust, the District Collector directed the Revenue Divisional Officer, Thiruchengode, to conduct proceedings under Section 145 Cr.P.C. Revenue Divisional Officer, in compliance of the directions, passed two orders, one is attaching the subject property and another is appointing Tahsildar, Paramathi Vellur as a Receiver for looking after the subject property. Both the orders were challenged before this Court in Crl.O.P.Nos.14099 and 14100 of 2012 by the President of Club and this Court quashed the impugned orders and remitted the matter back to the Revenue Divisional Officer for fresh enquiry by order dated 03.09.2012. Thereafter Revenue Divisional Officer conducted enquiry and passed the interim order dated 31.12.2012, wherein Lions Club was fixed as trespassers/aggressors in unlawful possession,



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against which the first petitioner herein filed Crl.O.P.No.6545 of 2013 before this Court and this Court after hearing both the parties including the defacto complainant, by order dated 09.03.2015 restored possession to the Lions Club observing that the Lions Club is in possession prior to passing of the preliminary order, as a lessee under the Gandhiji Memorial Club.

**3.3** The suit filed by the beneficiaries of Mahatma Gandhi Memorial Committee in O.S.No.66 of 2013 was decreed as prayed for and it is pertinent to state that in the said suit, the very same possession of Lions Club of Vellore was admitted and accepted.

**3.4** However, the respondent police without taking into consideration all the above facts has filed the charge sheet against the petitioners. The learned Magistrate, without application of mind, has taken cognizance on the charge sheet by issuing summons to the petitioners, when the charge sheet did not disclose any ingredients of any of the offence alleged against the petitioners. Admittedly the Lions Club is in possession of the property as lessee and the Civil Court judgment also proves the same.



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The respondent police had given a criminal color to the dispute, which in fact is purely civil in nature. There are absolutely no averments in the complaint and also in the statements of the witnesses and no material documents filed by the prosecution in order to attract the offences alleged against the petitioners.

**3.5** Now the first accused died and there is no *prima facie* case as against the petitioners, who are second and third accused. The respondent police has not stated that the land in dispute is Government or Poramboke land and admittedly the property was purchased by the Society.

**3.6** The learned Senior Counsel for the petitioners would contend that petitioners are in lawful possession of the subject property as Trustees and Members of Lions Club as lessee under the Gandhiji Memorial Club, who is the lawful owner of the property and the suit filed by the defacto complainant was also dismissed. Therefore viewing from any angle, the charge sheet filed by the respondent police against the petitioners is non-est in the eye of law and the same is liable to be quashed at the threshold.



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4 The learned Government Advocate (Crl.Side) for the first respondent police would submit that the property in dispute was originally purchased by one Swamiyappa Chettiyar and 16 others in the year of 1950 and they constituted a Club namely “Gandhiji Memorial Club” on 24.03.1958, and constructed a building meant for the general public in the locality. On 12.03.1970 the District Registrar, Salem, struck off the name of the above Club from the Register as two amongst 17 members passed away and others were unable to run the Club and the same was revived by an order dated 30.09.1972. Once again on 28.08.1976 the said Club was struck off due to failure to get the said Club registered under the Tamil Nadu Societies Registration Act, 1975. Thereafter the property was left abandoned without any claims and making use of the same, the petitioners, with an ill motive to grab the subject property, despite the first accused having no right over the property, created a pre-dated and unregistered lease deed in their trust for a period of 30 years. Furthermore, as if permission had already been granted to the second accused, they created a pre-dated lease



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deed and registered it before the Paramathi Vellore, as if it was a real one and with the assistance of the third accused, they obtained permission to construct an indoor club. Hence case was registered against all the three accused for the offence punishable under Sections 120B, 447, 448, 467, 468, 471, 467 r/w 109, 468 r/w 109 and 471 r/w 109 IPC and 3(i) of TNPPDL Act, 1992.

**4.1** The learned Government Advocate (Crl.Side) would further point out that the respondent police investigated the matter and recorded statement of the witnesses under Section 161(3) of Cr.P.C. who have clearly spoken about the commission of offence by the petitioners. All the grounds raised by the learned Senior Counsel for the petitioners is a matter for trial. When there is *prima facie* case and the witnesses have also spoken about the offence and materials also available, the petitioners have to prove their innocence during trial. There is enough material to proceed against the petitioners and therefore the Magistrate also, while taking cognizance of the charge sheet, issued summons to the petitioners. Therefore the criminal original petition is liable to be dismissed.



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5 Heard the learned Senior Counsel appearing for the petitioners and the learned Government Advocate (Crl.Side) for the respondent police and perused the materials available on record.

6 It is the main contention of the learned Senior Counsel for the petitioners that the Lions Club is in lawful possession of the property in dispute as Lessee under the Gandhiji Memorial Club, who is the owner of the property and the Civil Court also passed judgment in favour of the Club and there is no *prima facie* case against the petitioners.

7 Per contra, it is the contention of the learned Government Advocate (Crl.Side) for the first respondent police that the petitioners forged the revenue records and tried to grab the properties and the witnesses have also spoken about the involvement of the petitioners in the offences.



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8 A careful reading of the complaint filed by the defacto complainant and the statement of the witnesses i.e. L.W.1 to 4 recorded under section 161 Cr.P.C. reveals *prima facie* allegations against the petitioners and there is enough material to lay the charge sheet. During investigation, the investigation agency found enough materials to lay the charge sheet and accordingly laid the charge sheet. The main contention of the learned senior counsel for the petitioners is that the civil court passed an order in their favour. However, it is to be noted that the suit filed by the defacto complainant in O.S.No.102 of 2007 was dismissed for default. Another suit, O.S.No.66 of 2013, was merely to settle a scheme for proper administration and management and did not declare the title in favour of the petitioners. Therefore, no civil court has granted title to the petitioners. This matter pertains to the petitioners, who, with an ill motive to grab the subject property, despite the first accused having no right over the property, created a pre-dated and unregistered lease deed in their trust for a period of 30 years. Furthermore, as if permission had already been granted to the second



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accused, they created a pre-dated lease deed and registered it before the Paramathi Vellore, as if it were a real one. With the assistance of the third accused, they obtained permission to construct an indoor club. Therefore, the real truth will come out only during the trial.

9 As already stated the statement of the prosecution witnesses recorded under Section 161(3) Cr.P.C. clearly shows that the witnesses have spoken about the commission of offence, role and involvement of the petitioners in the offence. Under these circumstances, this Court finds that there is *prima facie* case to proceed further. As rightly contended by the learned Government Advocate (Crl.Side) all the grounds raised by the learned Senior Counsel for the petitioners are matter for trial and the same can be taken as defence during trial before the Magistrate.

10 Even though this Court has inherent powers under Section 482 of Cr.P.C., the same is not automatic and it has to be exercised sparingly. This Court finds that there is specific allegations attributed against the petitioners and there is no ground to quash the case at this stage.



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**WEB COPY 11** Accordingly, this criminal original petition stands dismissed.

However, the petitioners are at liberty to take all their defence during trial.

Consequently connected miscellaneous petitions are closed.

**11.12.2024**

Speaking Order/Non Speaking  
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To

1. The Deputy Superintendent of Police  
Land Grabbing (Prevention) Special Cell, Namakkal District.
2. The Public Prosecutor, High Court of Madras.



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**P.VELMURUGAN, J.,**

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**Pre-Delivery Orders in**  
**Crl.O.P.No.10844 of 2021 and**  
**Crl.M.P.No.6454 and 6456 of 2021**

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