



Crl.O.P.(MD)No.1260 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.11.2024

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD)No.1260of 2023
and Crl.M.P.(MD) No.1122 of 2023

1.Rajendran
2.Vellaisamy
3.Sakthivel

... Petitioners/
Accused Nos.1 to 3

Vs.

1.State through the Inspector of Police,
Vikramangalam Police Station,
Madurai District.
(In Crime No.1 of 2023)

... Respondent/
Complainant

2.Ramar

... Respondent/
Defacto Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records of FIR in Crime No.1 of 2023 pending investigation on the file of the first respondent police station and quash the same.

For Petitioners : Mr.N.Sathish Babu

For Respondents : Mr.B.Thanga Aravindh
Government Advocate (Crl. Side)
for R1



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ORDER

This petition has been filed to quash the FIR in Crime No. 1 of 2023 pending investigation on the file of the first respondent police.

2.The case of the prosecution is that the petitioner damaged a public road and also the borewell situated in Survey No.72/8A by claiming ownership over the property. The second respondent, who is the Block Development Officer lodged a complaint based on which the FIR came to be registered in Crime No.1 of 2023 for offences under Section 431 of IPC and Section 3(1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992.

3.Heard Mr.N.Sathish Babu, learned counsel for the petitioners and Mr.B.Thanga Aravindh, learned Government Advocate (Crl. Side) appearing on behalf of the first respondent.



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4.The main ground that was urged on the side of the petitioner is that the petitioners are the absolute owners of the property in Survey No.72/8A. While so, a public road was laid and borewells were also dug in the property. Therefore, the first and second petitioners filed a suit against the revenue authorities and also the panchayat union in O.S.No.168 of 2012 on the file of the District Munsif-cum-Judicial Magistrate No.1, Usilampatti, seeking for the relief of mandatory injunction and permanent injunction not to interfere with the possession and enjoyment of the property.

5.The above suit was contested by the official defendants and ultimately, the suit came to be decreed through a judgment and decree dated 23.12.2021. The authorities were directed to remove three borewells that were dug in the property and ninety days time was given to restore the property. The petitioners waited for more than a year and ultimately, since the decree was not complied with, the petitioners proceeded to restore the property. It is under these circumstances, the complaint came to be lodged against the petitioners by the Block Development Officer.



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6. In the considered view of the Court, the right of the petitioners over the subject property has already been declared by a competent civil Court. The civil Court had categorically directed the official respondents to restore the property by removing the borewells within a period of ninety days. It was not done for more than a year. The petitioners went ahead and restored the patta land. If at all the defendants are aggrieved by the judgment and decree of the trial Court, they should have filed an appeal contesting the case. However, when the petitioners decided to restore the property since it was their patta land, a criminal case has been lodged against them as if they have committed an offence.

7. The offence for which the FIR has been registered can be sustained only if the property in Survey No.72/8A is taken to be a public road. Once the competent Court has declared that it is the private patta land of the petitioners, the offence itself is not made out since the petitioners are deemed to have restored their own property.



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8.In the light of the above discussion, the continuation of the investigation against the petitioners will result in abuse of process of law which requires the interference of the Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

9.In the result, the FIR in Crime No.1 of 2023 pending investigation on the file of the first respondent is hereby quashed and this criminal original petition is accordingly allowed. Consequently, connected miscellaneous petition is closed.

04.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PKN



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To

- 1.The Inspector of Police,
Vikramangalam Police Station,
Madurai District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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N.ANAND VENKATESH,J.

PKN

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