



Crl.O.P.(MD) No.1866 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

ORDERS RESERVED ON : 28.10.2024

ORDERS PRONOUNCED ON : 27.11.2024

CORAM

THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.O.P. (MD) No.1866 of 2021
and C.M.P. (MD) Nos.936 & 937 of 2021

- 1.K.Murugavel
- 2.Ramesh
- 3.Thavamaniraja
- 4.Karuthapandi
- 5.Raju
- 6.Thittadiyaan
- 7.Mookkan
- 8.Kalaimani Selvendran
- 9.Muthukumaran @ Muthukumar
- 10.Chellamani
- 11.Muthu
- 12.Sakthivel
- 13.Jeyachandran
- 14.Muniasamy
- 15.Pandeeshwaran
- 16.Manimuthu
- 17.Sankaralingam
- 18.Pandiyaprabu
- 19.Rajapandi
- 20.Manimaran
- 21.Rajapandi
- 22.Dinesh



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23.Nithish @ Nithishkumar
24.Dhanapal
25.Arunpandi
26.Vijay
27.Prabu
28.Thangapandi
29.Sundarapandi
30.Ramesh
31.Dinesh
32.Selvam
33.Pitchai @ Pitchaimani
34.Alex @ Alexpandiyan
35.Mahendra Rajan
36.Ambethkumar
37.Rajesh @ Rajeshpandi
38.Karunapandi
39.Karuppaiah
40.Kesavan @ Kesavapandian
41.Chellapandi
42.Murugapandi
43.Vijay

... Petitioners

Vs.

1.State Rep.by Inspector of Police,
Jayamangalam Police Station,
Jayamangalam.
(Crime No.82/2019)

2.N.Murugesan

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records relating to the proceedings in P.R.C.No.9 of 2020 on the file of the Judicial Magistrate Court, Periyakulam and quash the same.



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For the Petitioners : Mr.R.Senthil Kumar
For the Respondents : Ms.M.Aasha
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition is filed to call for the records relating to the proceedings in P.R.C.No.9 of 2020 on the file of the Judicial Magistrate Court, Periyakulam and quash the same.

2. The brief facts leading to the filing of the present Criminal Original Petition are that on 07.05.2019 when there was the '*Ooru Kavalan Koil Festival*' at *Jayamangalam*, all the accused persons who joined the procession in a riotous and unruly manner, started abusing the police personnel who are on bandobust duty with filthy language. They attacked the police with stones and also armed with wooden logs, iron rods etc., ransacked the entire area and also damaged the windshields and glass panes of the vehicles which were passing by. As a result, a case was registered in Crime No.82 of 2019 for the offences under Sections 147, 148, 294 (b), 324, 353, 506 (ii) and 307 of IPC read with 3 (1) of the Tamil Nadu Property



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(Prevention of Damage and Loss) Act. The case was subsequently altered into one under Sections 147, 148, 294 (b), 324, 353, 506 (ii), 307 and 427 of IPC. Originally 54 persons were arrayed as accused in this case.

3. The case of the prosecution is that there were injuries to four police personnel, viz., *Nathikumar* suffered grievous head injuries on account of pelting of stones; *Vinothkumar*, *Paulpandi* and *Murugesan* and three other police personnel have also suffered injuries which were simple in nature. *Nathikumar* was admitted to the hospital and treated as an inpatient. Initially, 10 accused persons were arrested, and two accused persons were granted anticipatory bail. The rest of the 42 accused persons were absconding. After the investigation, a charge sheet was filed against 54 accused persons, and the same was taken on file in P.R.C.No.9 of 2020. Of the 54 accused persons, 43 persons have filed the present Criminal Original Petition to quash the proceedings in P.R.C.No.9 of 2020 on the file of the Judicial Magistrate Court, *Periyakulam*.

4. The case of the petitioners is that when the temple festival is celebrated by the Scheduled Caste community in a peaceful manner, normally



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only 10 or 15 policemen are deployed to escort the procession. The then Deputy Superintendent of Police - one *Arumugam*, wilfully deployed nearly 200 policemen having a communal interest in mind and they indulged in *lathi* charge unnecessarily against the youngsters and general public who gathered in the procession and when the festival committee members and the other persons confronted, the present case is registered.

5. The petitioners seek to quash the charge sheet on the ground that even after investigation, the police had cited one *Karthikraja @ Karthik* as accused No.48. The said person died on 17.01.2019 itself, yet for the occurrence on 07.05.2019, the FIR is also registered against him. Further, one *Paramasamy*, son of *Murugan* is cited as accused No.12, one *Pasupathi* son of *Rajendran* is cited as accused No.28, one *Vijay* son of *Thangamani* is cited as accused No.35 and one *Ajith*, son of *Azhagar* is cited as accused No.44 in the charge sheet. There are no such persons in the said names and it can be seen that in a rash manner, wilfully to frame all the villagers belonging to the SC community, the charge sheet is filed with no investigation. The entire charge sheet is filed without fixing any specific overt act for each and every accused and not even any specific overt act is alleged against any particular



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accused thus, the entire final report does not contain any proper material and is only an abuse of process of law and therefore, it is liable to be quashed.

6. This petition is resisted by the respondent – police on the ground that during the temple procession, all these accused were armed with wooden logs, sickle and abused the general public and also quarrelled with the persons who advised them to behave properly, during the temple procession. When the police personnel were on their bandobust duty and when the accused were restrained from their riotous behaviour, they made a deadly attempt on the life of the police personnel, by attacking them with stones continuously and as a result of which, the defacto complainant – *Nathikumar* suffered head injury and was admitted in the Government Hospital, *Periyakulam* and it is evident from the opinion of the Medical Officers that the injuries are grievous in nature. Similarly, the prosecution also relies on the medical records of *Vinothkumar*, *Paulpandi*, *Murugesan* who all suffered injuries in the riot.

7. It is the case of the prosecution that a thorough enquiry was conducted and all these accused persons were identified. The allegation of the



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petitioners that there are no such persons is incorrect. Originally, when the First Information Report was registered, the fathers' names of the accused persons were not mentioned. During the process of investigation, initially, the fathers' names of the four accused persons were wrongly mentioned. Thereafter, the fathers' names of the four accused were correctly identified, and subsequently, the prosecution filed an additional report before the learned Judicial Magistrate, correcting the names of accused No.12 – *Paramasamy* as son of *Mottaiyandi @ Kuttai Pusari*; accused No.44 – *Vijayakumar*, son of *Azhagar*; accused No.47 – *Arun @ Moovendira Pandi*, son of *Subburaj*.

8. As far as the other accused mentioned in the ground No.A, *Karthik* is concerned, it is submitted that only because the father's name is wrongly mentioned a wrong person was identified by the petitioners. The correct accused is *Karthikraja @ Karthik*, son of *Subramaniam*. It is further mentioned that pending the Criminal Original Petition since originally four accused persons remained unserved and continued to be shown as absconding, the case was split up in P.R.C.No.37 of 2023 and the case against these petitioners has already been committed to the Court of Sessions



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and the same was taken on file as S.C.No.123 of 2023 and subsequently, the case was also made over and transferred to the Assistant Sessions Court cum Subordinate Judge, *Theni* and the same is pending. In P.R.C.No.37 of 2023, now with the correct particulars as to fathers' names summons were received and it was being served on the said accused for the hearing on 18.08.2024.

9. Heard, *Mr.Senthilkumar*, the learned counsel for the petitioners. The learned counsel for the petitioners would submit that once the charge sheet is filed against a deceased person, and also persons who are all not in existence, the entire case of the prosecution is liable to be quashed. He would submit that in any event, it shows that without any investigation whatsoever, the final report is filed. The second contention is that absolutely, no role whatsoever has been specifically attributed to each of the accused persons. When general allegations are made, the same would not be adequate to proceed against or convict any of the petitioners – accused and therefore, he would submit that this Court should interfere.

10. In support of his submissions, the learned counsel would rely upon the Judgment of the Hon'ble Supreme Court of India in *Vijay Pandurang*



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Thakre & Ors. Vs. State of Maharashtra¹ to contend that there must be materials to identify the accused that they have used deadly weapons and constituted any unlawful assembly and that there must be witnesses to depose that the accused persons were members of such unlawful assembly and the aspects of motive and intention and that the testimonies of the witnesses are adequate to prove the commission of the offence. The learned counsel would rely upon the Judgment of the Supreme Court of India in the **State of Haryana and Others. Vs. Ch.Bhajan Lal and Others.²** to contend that when criminal proceedings are manifestly attended with malafide or maliciously instituted with an ulterior motive, this Court should interfere in the exercise of the powers under Section 482 of the Cr.P.C.,.

11. The learned counsel would also rely upon the latest Judgment of the Hon'ble Supreme Court of India in **K.Vadivel Vs. K.Shanthi and Others** (S.L.P.(CrI).No.4360 of 2022) for the same proposition, that there must be a reason in the form of subsequent evidence or some new facts being unearthed so as to conduct further investigation in the matter. The power of further investigation should be used sparingly and cannot be routinely used to fill up

1 AIR 2017 SC 897

2 1992 AIR 604



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the gap or lacunae in the investigation or set right the false information which is made during the process of investigation.

12. The learned counsel further relies upon the Judgment of this Court in *Anthony Pal Vs. State rep.by The Inspector of Police and Others* (Crl.R.C.No.564 of 2016 dated 06.09.2022) that even while taking the case on file, the learned Judicial Magistrate should have at least verified the presence of the basic ingredients which was also not done in the case.

13. The learned counsel would also rely upon the Judgment of this Court in *S.Lakshmipathy Vs. The State rep. By The Director General of Police and Others*, (Crl.O.P.No.7122 of 2023 dated 15.02.2024) to contest that once the initial charge sheet which was filed is erroneous as against non-existent and deceased persons, thereafter, the process of further investigation cannot be used to fill up the gaps.

14. Per *contra*, the learned Government Advocate (Criminal Side) would submit that there was no reason for the respondent – Police to file a



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false case. They were only on bundobust duty and four police personnel suffered multiple injuries, on account of the pelting of stones hence, the case is filed against the persons who were involved in the riot. When all the accused formed into an unlawful assembly and indulged in the acts, the offence is attributable to every member of the unlawful assembly. Further, relying upon the medical records of the injured police personnel and the materials collected in the investigation, she would submit that all the four injured police persons and other police personnel who were on duty and an independent eyewitness have all deposed that these petitioners only formed part of unlawful assembly and attacked the police personnel. Recovery of the sickles, wooden logs etc., is also made and those witnesses have also spoken about the same. Therefore, there is enough material to proceed against the petitioners. The persons whose fathers' names are wrongly mentioned are not before this Court. The case against them is split up and is pending separately. Therefore, whether an error was committed in mentioning their fathers' names wrongly, it can be corrected by way of further investigation. The said issue cannot be gone into at the instance of these petitioners, whose cases are separate and split up. Even assuming that the petitioners can raise the same, the same is only a genuine error especially when a total of 54 accused persons



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were involved and by oversight fathers' names were wrongly mentioned by the witnesses.

15. As a matter of fact, identification was duly made in respect of the accused persons and then only action is being taken. Further, relying on the status report filed on behalf of the respondents, she would submit that clash between the groups is a regular feature as far as the temple festivals in *Jayamangalam* are concerned and by pointing to paragraphs Nos.4 to 11 of the status report, she would submit that year after the year, there have been instances of rioting and in some years, there has been murder between two groups etc., and that is why security was tightened, despite which these persons engaged in skirmish attacked the police personnel. Therefore, there is nothing for this Court to interfere by way of this quash petition.

16. I have considered the rival submissions made on either side and perused the material records of the case.

17. I am unable to agree with the prayer of the petitioners to quash the case for the following reasons,



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(i) Firstly, the case against the petitioners has been split up and committed and was taken on file as S.C.No.123 of 2023 and now it is also made over to the Assistant Sessions Court for trial.

(ii) For the offences complained, on a perusal of the memo of evidence and the statement recorded under Section 161 of Cr.P.C., it can be seen that the injured police personnel viz., *Murugesan, Paulpandi, Nathikumar* and *Vinothkumar* are examined as L.Ws.1 to 4 who have spoken about the involvement of these petitioners. Wound Certificates of all these police personnel have also been produced. It can be seen that L.W.3 - *Nathikumar* suffered grievous injuries on account of the pelting of stones. Three other police personnel who were also on duty, viz., *Kalidass, Kannan* and *Ramesh*, are cited as L.Ws.5 to 7. Independent eyewitnesses to the incident, viz., *Pandi* and *Umesh*, are cited as L.Ws.8 and 9. In spite of confession and seizure leading to the recovery of wooden logs, sickles, etc., the mahazar witnesses, viz., *Thangamani* and *Sonai*, who are the VAO, are also cited as witnesses. Besides the observation mahazar witnesses and expert witnesses, the evidence of the Investigating Officer, including the statements recorded, documents seized, and reports prepared during the investigation, would also be relied upon to substantiate the case. Therefore, it cannot be



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said that the case has been filed without any investigation or material whatsoever.

(iii) Regarding the accused who are mentioned in Ground No. A and B of the petition, it can be seen that the contention of the petitioners that one of the accused died and other accused persons are not in existence is incorrect and as a matter of fact, the said contentions are raised only because the fathers' names of the accused persons were wrongly mentioned. Though there can be no quarrel over the proposition argued by the learned counsel for the petitioners that further investigation or supplemental charge sheet cannot be filed as a matter of routine, especially to correct the mistakes or to fill up the gaps and that it can be ousted only sparingly, in the facts and circumstances of this case, where totally 54 accused are involved and considering the nature of the occurrence and the allegations against all these petitioners, this case would fall within the exceptional circumstances, where the respondents would be justified in filing a supplemental report before the concerned Court.

(iv) In any event, it is also taken on file and summons have been issued to those correct accused and the said accused against whom the proceedings are pending in the split-up case in P.R.C.No.37 of 2023 have not



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challenged the same. In view thereof, even assuming that one or two accused persons are wrongly described that by itself will not be a case ground to quash the case against all the accused. It is for the Court during the trial to weigh the case of the prosecution and decide whether the case would be so unbelievable, even to sustain the case against the other accused. Therefore, this cannot be a ground for quashing the proceedings at this stage.

18. Finally, the proposition that in cases involving these offences, simply mentioning the names of all the accused without attributing specific overt acts to even one or two of them is not sufficient to convict, is a matter concerning the appreciation of the prosecution's case and the weightage of evidence. When there is some material in the final report, this contention cannot be examined in detail at the very threshold. Even the Judgment relied upon by the learned counsel in ***Vijay Pandurang Thakre'*** case (cited *supra*) arises out of a trial and thus the said question cannot be gone into in detail at this stage. Adequacy of evidence or material cannot be a ground to consider quashing of the final report. Thus, finding no merits, I am not inclined to accept the prayer of the petitioners to quash the case.



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19. Considering the number of accused, who are involved in the case, the nature of allegations made and the plea that each of them are in different avocations, I am of the view that the personal appearance of the petitioners/accused can be dispensed with. Accordingly, the personal appearance of the petitioners is dispensed with, except for the necessary hearings that may be insisted by the Trial Court.

20. Further, considering the hardship which is pleaded on behalf of the petitioners, the learned Assistant Sessions Judge, *Theni* is requested to complete the trial in S.C. No.123 of 2023 as expeditiously as possible and in any event complete the Trial within six months from the date of receipt of a copy of this order.

21. In the result, this Criminal Original Petition is **disposed of** with the above directions and observations. Consequently, the connected miscellaneous petitions are closed.

27.11.2024

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Neutral citation : Yes



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To
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- 1.The Judicial Magistrate,
Periyakulam.
- 2.The Inspector of Police,
Jayamangalam Police Station,
Jayamangalam.



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D.BHARATHA CHAKRAVARTHY, J.,

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Pre-Delivery Order made in
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