



CRL OP(MD)No.5850 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRL OP(MD)No.5850 of 2024

and

CRL MP(MD)Nos.4409, 4410 and 4877 of 2024

1.A.Kalimuthu

2.Morarji Ganesh @ Ganesan

... Petitioners

Vs

1.The Director General of Police,
Mylapore,
Chennai – 600 004.

2.The Additional Director General of Police,
Crime Branch Crime Investigation Department (CBCID),
Pantheon Road,
Egmore, Chennai – 600 008.

3.The Commissioner of Police,
Tirunelveli City,
Office of the City Police Commissioner,
Palayamkottai,
Tirunelveli – 627 002.

4.The Inspector of Police (Crime Branch),
Tirunelveli Junction Police Station,
Tirunelveli City.



CRL OP(MD)No.5850 of 2024

5.The Sub-Inspector of Police,
Tirunelveli Junction Police Station,
Tirunelveli City,
[Crime No.107 of 2024]

6.Venkatesan,
Assistant Commissioner of Police,
Tirunelveli City,
Madurai Road,
Tirunelveli Junction – 627 001.

7.Ponraj,
Inspector of Police,
Tirunelveli Junction Police Station,
Tirunelveli Junction – 627 001.

8.N.Mariappan,

9.M.Saravanakumar

10.M.Abdul Khadar

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 CrPC to issue a direction to the 1st respondent to withdraw the case pending in Crime No.107 of 2024 from the file of the 5th respondent and to transfer it to the 2nd respondent to constitute a special investigation team to conduct a proper and expeditious investigation and to file the final report within a time frame stipulated by this Court.

For Petitioner : Mr.L.Shaji Chellan

For Respondent : Mr.T.Senthil Kumar,
Nos.1 to 5 Additional Public Prosecutor

For Respondent : Mr.A.S.Balaji
No.8 & 9

For Respondent : No appearance
Nos.6, 7 and 10



CRL OP(MD)No.5850 of 2024

ORDER

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The petitioners / victims in Crime No.107 of 2024 have filed this criminal original petition seeking a direction to the 1st respondent to withdraw the case in Crime No.107 of 2024 from the file of the 5th respondent police and to transfer the same to the 2nd respondent to constitute a special investigation team to conduct a proper, expeditious investigation and to file the final report within a stipulated time.

2.The case of the petitioners is that the 1st petitioner Kalimuthu is running an automobile workshop in the name and style of Reliable Motor Works at Door No.67 A and 67 B at Madurai Road, Tirunelveli Junction. He has got GST registration, Udayam registration and electricity service connection for the said workshop. While so on 17.03.2024 around 3.00 am, the respondents 8 to 10 with the help of 10 advocates and 20 rowdy elements, trespassed into his workshop, with deadly weapons, damaged the CCTV cameras and taken away all the vehicles parked in the workshop and other belongings from the workshop in lorries. They have also taken away a Vinayagar idol, which was worshipped in the workshop. All these



CRL OP(MD)No.5850 of 2024

had taken place with the help of the 6th and 7th respondents, namely, the Assistant Commissioner of Police, Tirunelveli City and the Inspector of Police, Tirunelveli Junction Police Station. The petitioners have added them in their individual capacity also.

3.The 2nd petitioner a relative of the 1st petitioner has lodged a complaint before the 5th respondent on 17.03.2024 and the same was registered in Crime No.107 of 2024, as against the respondents 8 to 10 for the commission of offence under Sections 448 and 427 IPC. Though the incident reveals several offences, the 5th respondent police just for the namesake registered the case only under Sections 448 and 427 IPC and has not conducted the investigation in a proper manner and therefore, the petitioners seek transfer of investigation.

4.The learned Counsel for the petitioners submits that the property in which the 1st petitioner running his workshop is in prime location having an extent of 22 cents, which belongs to one Sri Dhakshinamoorthy Ashramam. It is a public charitable trust established by one Vedanayagam swamigal through a registered Will



CRL OP(MD)No.5850 of 2024

deed dated 20.04.1920. The last trustee of the Ashramam namely one Nammazhwar has permitted one Koilpillai on tenancy for running the workshop. Koilpillai was running the workshop from 09.09.1968 in the name of the Reliable Motor Works. After the death of the Koilpillai on 15.01.2006, his son one Jebakumar was running the workshop and he executed a general power of attorney in favour of the 1st petitioner for running workshop in the year 2012. In August 2023, all the sons of late Koilpillai executed a deed of assignment of lease in favour of the 1st petitioner and since then he was running the Reliable Motor Works by paying taxes and electricity bill.

5.He further submits that in the year 2006 one Jeyakumar and Suresh Kumar claiming to be tenants of the subject property have filed a suit before the I Additional District Munsif Court, Tirunelveli in OS.No.184 of 2006 seeking a relief of depositing arrears of rent for the period from September 2005 to February 2006 and for the subsequent period. The case of the plaintiffs in that case is that they were joint tenants of the said property from 09.09.1968 and they were running the works in the name of Reliable Motor Works. The



CRL OP(MD)No.5850 of 2024

case of the plaintiffs in the suit is that the property belongs to a public charitable trust and after the demise of the trustee, one Velayudham pillai claiming to be the trustee is claiming rent. The respondents 8 and 9 have impleaded themselves in the suit in the year 2007 and claimed that it is not the trust property and it is the absolute property of the 8th respondent's father Nammazhwar and after his demise it devolved upon them. Nammazhwar has obtained the property by a Will dated 21.09.1956 and he executed a Will in favour of the 7th respondent on 02.09.2004. They also claim that they were enjoying the property and the plaintiffs were in arrears of rent from the year 2005 and they filed an application in RCOP No.2 of 2007 as against the plaintiffs, which was allowed on 15.06.2007. The I Additional District Munsif, Tirunelveli has framed the following issues in the suit:

"1. Whether the plaintiff is entitle for a permission as relief as prayed for ?

2. Whether the plaintiff is entitled for consequential injunction relied as prayed for?

3. Whether the suit property absolutely belongs to the 2nd defendant by virtue of a Will dated



CRL OP(MD)No.5850 of 2024

02.09.2004 as averred in the written statement?

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4.How for the RCOP 2 of 2007 on the file of this Court binds the parties and properties?"

and dismissed the suit by answering to issue Nos. 1 and 2 that the plaintiffs are not entitled for the relief of permitting depositing of rental arrears, issue No.3 that it does not arise for consideration in the suit and issue No.4 that the decision in the RCOP No.2 of 2007 does not bind the parties and the properties.

6.He further submits that 8th respondent has filed RCOP No.2 of 2007 before the Rent Controller / I Additional District Munsif Court, Tirunelveli as against one Jebakumar @ Jeyakumar and his brothers Suresh Kumar and Saravanakumar to vacate the premises. However the same was dismissed on 30.10.2022 that the 8th respondent had not established his title and his entitlement to receive the rent. Aggrieved over it, the 8th respondent filed an appeal before the Principal Sub Court, Tirunelveli in RCA No.19 of 2013 and it was also dismissed by order dated 20.09.2019.



CRL OP(MD)No.5850 of 2024

7. The learned Counsel for the petitioner further submits that 9th respondent has entered into a sale agreement with 10th respondent on 15.06.2022 to sell the workshop premises for a sum of Rs.1.75 crores. In order to facilitate the sale agreement, on 13.02.2023 the respondents 8 to 10 have demolished the workshop and in this regard, based on a complaint criminal case was registered by the 5th respondent in crime number 47 of 2023 and after investigation the 5th respondent has filed the final report in that case. Thereafter this incident had occurred on 17.03.2024 at about 3.00 am with the help of the police officials and some advocates.

8. According to the learned Counsel for the petitioners, the 6th respondent office is situated at a distance of 25 metres from the workshop and the entire occurrence was committed by the accused with in the presence of Advocates and with the help of Police officials. Therefore a proper investigation would not be conducted, if the present investigation agency is permitted to continue their investigation. The learned Counsel has also submitted that though several persons were involved in the incident, the petitioner's workshop was ransacked and the vehicles and articles



CRL OP(MD)No.5850 of 2024

were taken away, the respondent police has registered a case for the offence under Sections 428 and 427 IPC alone, but has not registered the case for the offence under Sections 120 (b), 147, 148, 395, 452, 456, 201 and 506 IPC, 380 (2) IPC (Tamil Nadu amended Act) and the provisions under the Tamil Nadu Prevention of Public Properties (Damages and Loss) Act, Arms Act and Explosives Act.

9.The learned Counsel for the respondents 8 and 9 submits that 9th respondent is the original owner of the disputed property. The 1st petitioner is a stranger to the property and is attempting to grab the property. According to him the 1st petitioner has lodged a complaint before the Revenue Divisional Officer, Tirunelveli in the year 2019 claiming ownership of the disputed property. Now the 1st petitioner is claiming that he is the tenant of the property. The contention of the petitioner before the RDO, Tirunelveli and this Court would establish the intention of the 1st petitioner to grab the property. He also submits that on 17.03.2024 the petitioners along with 10 advocates from Tuticorin attempted to forcibly take possession of the property from the 8th and 9th respondents.



CRL OP(MD)No.5850 of 2024

Among them, Muthulakshmi, Punitha and Sornam are advocates of one communal leader Pasupathi pandiyan, one Ramesh Babu is the advocate for another communal party leader in Tamil Nadu and advocate Ameer, Tirunelveli came and quarrelled in front of the property. The petitioners and their advocates along with rowdy elements assaulted the 8th respondent and he was admitted in Tirunelveli Medical College Hospital as inpatient for more than five days. In this regard, an FIR was registered in Crime No.18 of 2024 as against the petitioners and others. Since the petitioners and their team assaulted these respondents, having no other option, they informed the same to the local police station and also called their advocates from Tirunelveli. Their advocates explained the issue to the advocates of Tuticorin in front of the police officials.

10.Mr.S.Ponraj, Inspector of Police, Tirunelveli Police Station has filed a status report before this Court as under:

"On the complaint of the defacto complainant Tr.Ganesan, the case in Junction PS.Crime No.107 of 2024 was registered on 18.03.2024 at 14.30 hrs by the



CRL OP(MD)No.5850 of 2024

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Special SI of Police Tr.Ganagasababathy of Junction PS and Sub-Inspector of Police Tr.Ramesh Manikandan took up investigation in this case.

The investigating officer Sub-Inspector of Police Tr.Ramesh Manikandan visited the place of occurrence in Crime No.107 of 2024 on 18.03.2024 at 15.30 hrs, prepared rough sketch and observation mahazar in presence of witnesses and examined the defacto complainant Ganesan. The investigating officer came to conclusion that this is a true case and the occurrence has been committed by the aforesaid accused Mariappan of Mahizhvannapuram and his son Saravanakumar demolished the workshop with the connivance of accused No.3, Abdul Kadhar of Melapalayam using hooligans, who tried to enter into an agreement to sell the workshop in favour of A3 Abdul Kadhar.

During the course of investigation in the case in Crime No.107 of 2024, the in-charge of Junction PS



CRL OP(MD)No.5850 of 2024

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Tr.S.Ganagasababathy received the injury intimation of the 1st accused Mariappan, S/o. Nammazhwar, a resident in Door.No.15, Magilvannapuram, Tirunelveli from TVMC Hospital and obtained the complaint Mariappan through woman SSI Tmt.Sakunthala and registered a counter case in Junction PS Crime NO.108 of 2024 under Section 147, 294(b), 323, 506(ii) IPC on 18.03.2024 at 18.30 hours.

This Counter case was also investigated by the Sub-Inspector of Police Tr.Ramesh Manikandan, who visited the place of occurrence in this case in Cr.No.108 of 2024 on 18.03.2024 at 19.30 hrs, located opposite to the professional couriers on junction – Madurai road prepared rough sketch and observation mahazar in presence of the same two witnesses and examined the injured defacto complainant Mariappan and SSI Ganagasababathy who registered the case. The investigating officer came to conclusion that this case is also a true case in which the accuse Kalimuthu and



CRL OP(MD)No.5850 of 2024

others committed the retaliatory attack for damaging

*his workshop namely reliance motor works located on
Madurai road."*

11.This Court considered the rival submissions and perused the materials placed on record.

12.The 1st petitioner claims that he is a tenant of the property to an extent of 22 cents located in the prime location near Tirunelveli junction, belongs to Sri Dhakshinamurthy Ashram, which is a public charitable trust established by Vedhanayagam swamigal through a registered Will dated 20.04.1920. There was a tenancy between the Ashram and the Reliable Motor Works in the year 1968 executed by the then Trustee Nammazhwar (who is none other than the father of the 8th respondent Mariyappan) in favour of one Koilpillai. Koilpillai is the founder of the Reliable Motor Works and this petitioner is said to have obtained the same through a power of attorney from the legal heirs of the said Koilpillai and he is in possession of the property. This case projected by the 1st petitioner is also confirmed by the 7th respondent police. The 8th respondent has also made certain attempts in the year 2007 in RCOP.No.2 of



CRL OP(MD)No.5850 of 2024

2007 and has lost the case. The RCA filed by him in the year 2013 in RCA No.19 of 2013 was also dismissed. Thereafter, there was an attempt by the respondents 8 to 10 in the year 2023 for which the criminal case was registered in Crime No.47 of 2023 and another case in Crime No.48 of 2023 was also registered as against 8th and 9th respondents. The 5th respondent has also filed a charge sheet as against 8th and 9th respondents and the same are pending before the learned Judicial Magistrate No.IV Tirunelveli in STC No. 808 of 2024 and CC No.115 of 2024. The present occurrence had taken place on 17.03.2024 in the early morning at 3.00am. The 1st petitioner has installed CCTV in the workshop, it was damaged and the entire workshop was destroyed with JCB. The photographs placed before this Court by the petitioners and the respondent police reveal that there was a workshop in the name of Reliable Motor Works in the premises, it has been ransacked and the entire premise has been cleaned off. For these incidents cases in Crime Nos.107 and 108 were registered.

13.The allegations and the counter allegations would reveal that the occurrence had taken place with the blessings of a few



CRL OP(MD)No.5850 of 2024

advocates. The case of the petitioners is that 10 advocates from Tirunelveli along with 8th and 9th respondents and some rowdy elements have demolished the workshop on 17.03.2024. The case of the 8th and 9th respondents is that the petitioners have engaged 10 advocates from Tuticorin and attempted to forcibly take possession of the property from 8th and 9th respondents. They have also made specific allegations as against few advocates that they belong to a communal party and they have created problems with the 8th respondent. The fact remains that the 1st petitioner has also permitted an advocate to have his office in the premises.

14.This petition has been filed for transfer of investigation. This Court is of the view that the petitioners have made out a clear case for transfer of investigation that the occurrence place is just 25 metres away from the respondent Police Station and though the occurrence had taken place in the early morning at 3.00 am involving JCB, the police has not prevented it. The case has been registered only for the offence under Sections 448 and 427 IPC without adding the required penal provisions for the offences committed. The occurrence had taken place in the month of March



CRL OP(MD)No.5850 of 2024

2024, however, there is no progress in the investigation, they have not identified the JCB and the lorries involved in this incident and so far the stolen goods are also not recovered.

15. This Court has also perused the CD files in Crime Nos.107 and 108 of 2024. The observation mahazars have been prepared without even disclosing the nature of damage in the place of occurrence. Further the respondent police has filed a report before this Court that the incidents as projected by the complainant are true. The status report filed by the respondent police before this Court on 10.07.204 is contrary and the CD file is not supporting the report dated 10.07.2024

16.The occurrence had taken place in a high handed manner with the help of the police officials and the advocates. It appears that the petitioners are also not angels and are attempting to usurp the public trust properties. Since property is located in the prime place near the Tirunelveli junction both parties are attempting to exploit the public trust property.



CRL OP(MD)No.5850 of 2024

17. In view of the above discussion held this criminal original

petition is allowed with the following directions:

i. The 1st respondent is directed to withdraw the case in Crime Nos.107 and 108 of 2024 from the file of the 5th respondent Police and entrust the same to the 2nd respondent within a period of two weeks from the date of receipt of a copy of this order;

ii. Upon receipt of the cases, the 2nd respondent shall entrust the same with the CB-CID, Tirunelveli by constituting a special team, find out the truth, find out the role of the advocates and police in the offence; Ensure that the proper investigation is conducted and final report is filed as expeditiously as possibly preferably within a period of six months from thereon.

iii. The new investigating officer - CB-CID shall find out the ownership of the disputed property and the person, who is eligible to be the trustee. The investigating officer CB-CID shall file a report before the



CRL OP(MD)No.5850 of 2024

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District Collector, Tirunelveli as to the details of the property in dispute, its ownership., etc., If there is no proper ownership for the public trust, the District Collector shall take necessary steps under the Public Trust Act to take over the property by entrusting it to the competent authority under the Act.

iv.The investigating officer shall forward a separate report to the Inspector General of Police and also to the Bar Council of Tamil Nadu and Pudhucherry as to the role of the police and the advocates in the commission of offence as hooligans or law breakers.

18. Before winding up, in this case the respondents 8 and 9 are said to have engaged the Advocates from Tirunelveli as hooligans to devastate the workshop along with rowdy elements. The petitioners are said to have engaged the Advocates from Tuticorin to defend them in the very same way. They acted like the proverb, 'diamond cuts diamond - முள்ளை முள்ளால் எடுக்க வேண்டும்'



CRL OP(MD)No.5850 of 2024

19. Before this Court, a person claiming to be an Advocate with an identity card issued by the Bar Council of Tamil Nadu and Pudhucherry has sought for permission to conduct brothel centre. In another case it was reported that an Advocate was arrested for dacoity.

20. The Advocate profession is still believed to be a noble profession. The freedom struggle was led by the Advocates. The illiterates have been believing the Advocates as God, but the profession is getting a transformation by indulging in other activities. The Advocate is a person, who is expected to take the cause of another person before the Court of law or before any other Judicial or Quasi Judicial authority. The Advocates are given with special attire of black coat with ropes, which would signify their strength and authority.

21. This Court is very much concerned that the Advocates are involved in these incidents. If some members of the Bar indulge in such activities, the image and reputation of the Advocates in society gained by our forefather advocates would be destroyed one day.



CRL OP(MD)No.5850 of 2024

22. Most of the rowdy elements indulge in such activities taking the shelter as Advocates by obtaining degree from other States. The Bar Council has to identify those institutions, which are providing degrees just for namesake, also identify the antecedents of the persons, who are enrolling with the Bar Council and prevent the entry of rowdy elements into the Bar council. The Bar council has to kick start its action, even without complaint on the institutions.

23. The Bar Council of Tamil Nadu and Pudhucherry is expected to protect the interest of its members and also to ensure their discipline. The Bar council shall appraise its members about the duties and responsibilities of the Advocates towards the Courts and the society. It shall also ensure the majesty and the dignity of the profession is maintained. Consequently connected miscellaneous petitions are closed.

29.07.2024

Index :Yes/No
Internet : Yes/No

DSK



CRL OP(MD)No.5850 of 2024

To

- 1.The Director General of Police,
Mylapore,
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- 2.The Additional Director General of Police,
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Tirunelveli City.
- 5.The Sub-Inspector of Police,
Tirunelveli Junction Police Station,
Tirunelveli City,
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

- 1.The District Collector,
Tirunelveli
- 2.The Bar Council of
Tamil Nadu and Pudhucherry,
Chennai.
- 3.Inspector General of Police,
South Zone, Madurai.
- 4.CB-CID, Tirunelveli.



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CRL OP(MD)No.5850 of 2024

B.PUGALENDHI,J.

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CRL OP(MD)No.5850 of 2024

29.07.2024