

WEB COPY

Crl.O.P.(MD)No.3605 of



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 11.07.2022

PRONOUNCED ON: 16.08.2022

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

Crl.O.P.(MD)No.3605 of 2019

and

Crl.M.P.(MD)No.2083 of 2019

- 1.R.V.S.Veeramani
- 2.Santha Veerasamy
- 3.V.P.Sankar
- 4.Selvaraj
- 5.Sundarrajan
- 6.Nallusamynaidu
- 7.Manivannannaidu
- 8.Pandurengannaidu
- 9.Rajendrannaidu

: Petitioner/Accused 1 to 9

Vs.

Varadharajan

: Respondent/Defacto complainant

PRAYER : Criminal Original Petition has been filed under Section 482 Cr.P.C, to call for the records in C.C.No.265 of 2018, pending before the learned Judicial Magistrate, Manapparai and quash the same insofar as the petitioners are concerned.

For Petitioner : Mr.R.Murali
for Mr.K.Govindarajan

For Respondent : Mr.J.Lawrence

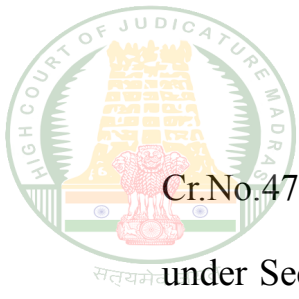


ORDER

WEB COPY

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records pertaining to the case in C.C.No. 265 of 2018, pending on the file of the Judicial Magistrate Court, Manapparai and quash the same.

2. The petitioners are the accused 1 to 9 in C.C.No.265 of 2018, pending on the file of the Court of Judicial Magistrate, Manapparai. The respondent was the President of Manapparai Naidu Mahajana Sangam at the time of filing of the above complaint. The case of the complainant is that the second accused Santha, after becoming the President of Manapparai Municipality, his son - the first accused and others had conspired together and created forged records to grab the property of the said Sangam situated in Town S.No.76, Old Survey No.573/4. A complaint was lodged by the respondent and on that basis, F.I.R came to be registered in Cr.No.8 of 2014, for the offences under Sections 120(b), 420, 465, 468, 471 and 506(i) I.P.C., on the file of the Land Grabbing Cell, Trichy. Subsequently, the first accused, by falsely claiming to be the Honorary President of the said Sangam, had received Rs.12,00,000/- from the tenants in the property of the Sangam and was collecting rents. Hence, the respondent has preferred another complaint and on that basis, another F.I.R. came to be registered in



Cr.No.475 of 2016 against ten persons including the petitioners for the offences under Sections 465, 468, 471, 420 and 109 I.P.C., on the file of the Manapparai Police Station.

WEB COPY

3. The Inspector of Police, Manapparai Police Station, after completing the investigation in Cr.No.475 of 2016, has filed the final report as action dropped, mainly on the ground that similar complaint with respect to the very same property was pending, on the file of the Land Grabbing Cell, Trichy. The respondent/complainant has filed a protest petition in Cr.M.P.NO.2251 of 2017 and the learned Magistrate has passed an order dated 06.06.2017, directing the concerned police to conduct further investigation by collecting documents from the case pending before the Anti-Land Grabbing Cell and to file a final report within a period of eight weeks. Since the final report was not filed within the time frame stipulated, the respondent/complainant has filed a contempt petition in Cr.M.P.No.593 of 2018 and the learned Magistrate, after considering the petition and other records, passed an order directing the Inspector General of Police to take disciplinary action against the said Inspector of Police. Since no action was taken, the respondent has filed another application in Cr.M.P.No.1937 of 2018 for initiation of contempt proceedings against the concerned Inspectors of Police and Inspector General of Police. Since the Inspector General of Police has already initiated departmental action against the concerned Inspector of



Police and final report was also filed, the learned Magistrate has dismissed the said petition, vide order dated 25.08.2018.

WEB COPY

4. As already pointed out, in the meanwhile, the Inspector of Police has filed the second final report in connection with the case in Cr.No.475 of 2016, dropping further action. The respondent/complainant, after the receipt of the RCS notice, has filed another protest petition in Cr.M.P.No.5312 of 2018. The learned Magistrate, after recording sworn statement of the respondent and after enquiry, has passed an order dated 28.12.2018 for taking cognizance of the case against the petitioners/accused under Sections 419, 420, 421, 468 and 471 I.P.C., and ordered issuance of summons to the said accused and accordingly, C.C.No. 265 of 2018 was taken on file on the file of the Judicial Magistrate Court, Manapparai against the petitioners. Aggrieved by the same, the accused in C.C.No.265 of 2018 have come forward with the above petition for its quashment.

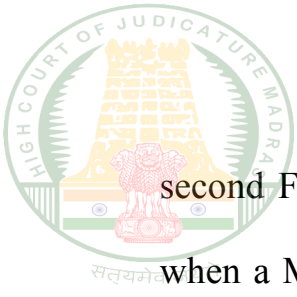
5. The case of the petitioners is that the learned Judicial Magistrate has failed to notice that for the same set of allegations, the second complaint was lodged and is not maintainable, that the learned Magistrate has also failed to note that the Inspector of Police, Anti-Land Grabbing Cell, Trichy has already filed a positive final report in respect of the same set of allegations and the above case



is pending, that though the tenth accused was reported dead, the learned Magistrate, without application of mind, has directed to issue summons to the tenth accused, that the respondent is not the President of Manapparai Naidu Mahajana Sangam and several litigations are pending between them, that the complaint lodged against the petitioners is motivated and tainted with *mala fides* and that a civil dispute has been converted as a criminal case to harass and humiliate the petitioners.

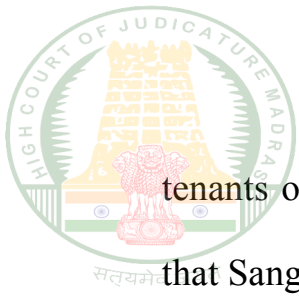
6. The learned Counsel for the petitioners would submit that the Inspector of Police, after completing the investigation, has filed a final report stating that no further action is necessary as another complaint for same set of allegations is pending on the file of the Anti-Land Grabbing Cell, Trichy, that the Inspector of Police, in pursuance of the orders of the Court directing further investigation, has proceeded with the investigation and filed second final report reiterating the stand taken by the earlier Investigating Officer that no further action is needed and that the second complaint which was lodged for the very same set of allegations is legally not maintainable.

7. The learned Counsel for the petitioners has relied on a judgment of the Hon'ble Supreme Court in *T.T.Antony Vs. State of Kerala and Others* reported in *(2001)6 Supreme Court Cases 181* and argued that the registration of the



second F.I.R., for the same occurrence is not legally valid. In the above case, when a Minister came to Kannur District to inaugurate the evening branch of a Cooperative Bank, violent demonstrations were staged by the members of youth wing of the rival political party and the police had to open fire to protect the Minister, public and private properties at two places and as a result of the firing, some of the persons died and some of them were injured and hence, two F.I.Rs came to be registered in respect of the occurrences at two places and the same were pending for investigation. In the meanwhile, the Ruling Party lost to LDF and that as per the report submitted by the Enquiry Commission, the Director General of Police wrote a letter for registration of a case and on that basis, the second F.I.R., came to be registered after three years and the Hon'ble Apex Court has held that the registration of second F.I.R., on the basis of the letter of the Director General of Police is not valid and consequently, the investigation made pursuant thereto is of no legal consequence and quashed the same.

8. In the case on hand, as already pointed out, the first complaint was lodged alleging that the first accused, taking advantage of the position of his mother as President of the Manapparai Municipality along with other accused, had conspired and created forged documents to grab the property of the said Sangam and the second complaint was with respect to swindling of money by taking advance amount of Rs.12,00,000/- and also monthly rents from the



tenants of the said Sangam by falsely claiming to be the Honorary President of that Sangam.

WEB COPY

9. The learned Counsel for the petitioners would submit that apart from the second negative report filed by the concerned police, the Additional Superintendent of Police has also filed a report on 05.07.2018 reiterating the stand taken in the earlier two negative reports to the effect that no further action is necessary in respect of the complaint registered in Cr.No.475 of 2016 as the similar complaint was pending before the Anti-Land Grabbing Cell.

10. The Inspectors of Police as well as the Additional Superintendent of Police in their reports have also stated that the petitioners/accused had filed a petition in CrI.O.P.(MD)No.11002 of 2014 for quashing the F.I.R in Cr.No.8 of 2014, on the file of the Anti-Land Grabbing Cell and that the Hon'ble Madurai Bench of Madras High Court has granted stay restraining the concerned police from filing the final report.

11. It is the specific case of the respondent that the petition in CrI.O.P. (MD)No. 11002 of 2014 was dismissed on 19.09.2018, as charge sheet has already been filed and the said case is pending. As already pointed out, since the petitioners/accused were allegedly attempting to grab the property of the said

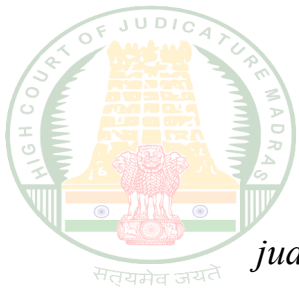


WEB COPY

Sangam, the first complaint in Cr.No.8 of 2014 came to be registered and that since the petitioners/accused had swindled the amount of the Sangam by receiving the advance amount to the tune of Rs.12,00,000/- and the rent amount from the tenants of the Sangam, falsely claiming to be the Honorary President of the Sangam, the second complaint came to be registered in Cr.No.475 of 2016.

12. As rightly contended by the learned Counsel for the respondent, though both the complaints relate to the same property, but for the different offences and that is why, the earlier complaint was registered by the Anti-Land Grabbing Cell and whereas the second complaint came to be registered by the jurisdictional police.

13. The learned Counsel for the petitioners would submit that the procedure adopted by the learned Magistrate while taking cognizance of the case is not only improper but also is illegal and that the learned Magistrate has not followed the procedure contemplated for considering the protest petition and for taking cognizance of the case on the basis of the protest petition. The learned Counsel has relied on the decision of this Court in *Alaguthangamani and two others Vs. Saravanan* (Crl.O.P.(MD)No.7740 of 2019, dated 29.04.2022), wherein this Court has held as follows:



“18. *The learned Counsel for the petitioners has relied on the judgment of this Court in **Narayanamma and Others Vs. Chikka Venkateshaiah** reported in (2019)4 MLJ (Crl.) 616 and the learned Judge of this Court after referring various decisions, has held as follows:*

“20. *It is clear from the above judgments that if the learned Magistrate wants to convert the protest petition into a private complaint, he has the jurisdiction to do so. However, at the time of taking cognizance, the learned Magistrate has to necessarily apply his mind on the closure report filed by the police and the statements recorded by the police during the course of investigation. This exercise has not been done by the Court below, while converting the protest petition in to a private complaint and taking cognizance of the same.*”

19. *In the case on hand, the learned Magistrate has not even whispered anything about the negative report filed by the police and the statements recorded by them during the course of investigation. Generally, while taking cognizance of a private complaint, after conducting enquiry under Section 202 Cr.P.C., the learned Judicial Magistrate is expected not to pass any elaborate order, but he is duty bound to record his satisfaction that there are prima facie materials to proceed against the accused.*

20. *In the present case, the learned Magistrate has passed two pages order in Tamil in Cr.M.P.No.2913 of 2019, dated 07.03.2019, found available in the photocopy of the material parts of the records in C.C.No.89 of 2019 and Cr.M.P.No.2913 of 2019 submitted before*

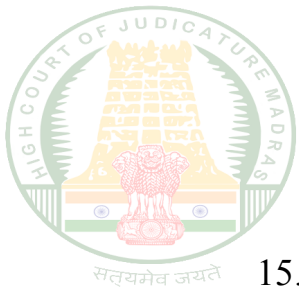


this Court. But the learned Magistrate, in the notes papers, has passed the following docket order:

“ Complainant present. Records perused. Taken on file under Sections 447, 351, 294(b), 427, 506(ii) and 120(b) I.P.C. Issue summons to accused on payment of process fee.”

As rightly pointed out by the learned Counsel for the petitioners, the learned Magistrate has not at all recorded her satisfaction about the existence of prima facie materials to proceed. Moreover, the learned Magistrate has given a one line finding that a perusal of the evidence of the defacto complainant and his witness would reveal that the occurrence was true. It is pertinent to note that the Magistrate is not expected to record such a finding at the time of taking cognizance of the case and he has to record his satisfaction that there existed prima facie case to proceed against the accused. As rightly contended by the learned Counsel for the petitioners, by giving such a finding, the learned Magistrate has exceeded his jurisdiction while taking cognizance of the case.”

14. In the present case, the learned Judicial Magistrate has considered the protest petition, earlier orders passed by the Magistrate and the final reports filed by the Inspectors of Police, Manapparai Police Station. The learned Magistrate has specifically observed that the reports filed by the police are not satisfactory and they appeared to be of evading in nature and the investigation was not properly done in consonance with the earlier orders of the learned Magistrate. No doubt, the learned Magistrate has recorded the sworn statement of the complainant.

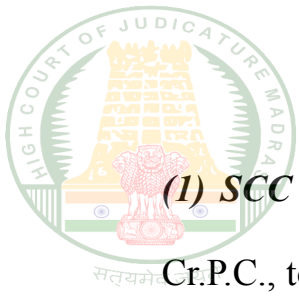


WEB COPY

15. Considering the order of the learned Magistrate dated 28.12.2018, it is clearly evident that the learned Magistrate has treated the protest petition as a private complaint, recording the sworn statement of the complainant and after considering the two negative reports filed by the police, has passed the impugned order of taking cognizance of the case. No doubt, the learned Magistrate is not expected to pass an elaborate order and the only requirement is that he has to record his satisfaction that there existed prima facie case to proceed against the accused.

16. In the case on hand, the learned Magistrate has recorded his satisfaction that there are prima facie materials to proceed against the accused. On perusing the protest petition, the negative reports filed by the police and other records, this Court is of the clear view that the order of the learned Magistrate, taking cognizance of the case against the petitioners, as there are *prima facie* materials to proceed against the accused, cannot be found fault with.

17. It is pertinent to mention that the Hon'ble Supreme Court in in *Dhruvaram Murlidhar Sonar vs The State Of Maharashtra* reported in **2019(18) SCC 191**, after considering the decision of the Hon'ble Supreme Court in *State of Haryana and Ors. v. Bhajan Lal and Others, r* reported in **1992 Supp**



(1) SCC 335, has specifically held that exercise of powers under Section 482 Cr.P.C., to quash the proceedings is an exception and not a rule and that inherent

jurisdiction under Section 482 Cr.P.C., though wide, has to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in Section itself. It is also settled law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 Cr.P.C., for quashing the criminal proceedings.

18. It is pertinent to note that this Court in exercise of its jurisdiction under Section 482 Cr.P.C., cannot go into truth or otherwise of allegations made in the complaint or delve into the disputed question of facts. A perusal of F.I.R., and the final reports filed by the Inspector of Police makes out a *prima facie* case against the accused at this stage and there appears to be sufficient ground for proceeding against the accused.

19. In the above circumstances, I do not find any justification to quash the proceedings as against the petitioners, as the case does not fall in any of the categories recognised by the Hon'ble Apex Court, which may justify their quashing. Consequently, this Court concludes that the above Criminal Original Petition is devoid of merits and the same is dismissed.



WEB COPY

20. In the result, the Criminal Original Petition is dismissed.

Consequently, the connected Miscellaneous Petition is also dismissed.

16.08.2022

Index : Yes/No

Internet : Yes/No

SSL

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Judicial Magistrate Court, Manapparai.



WEB COPY



Crl.O.P.(MD)No.3605 of

K.MURALI SHANKAR, J.

SSL

Crl.O.P.(MD)No.3605 of 2019

16.08.2022