

**(2010) 10 MAD CK 0079**

**In the Madras High Court**

**Case No :** Criminal O.P. No's. 30769 and 31068 of 2008 and M.P. No's. 1 and 1 of 2008

M.B. Nirmal and R. Babashankar

APPELLANT

Vs

The State and A. Sethu

RESPONDENT

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**Date of Decision :** 22-10-2010

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 173(8)  
Penal Code, 1860 (IPC) — Section 427, 447, 506

**Citation :** (2010) 10 MAD CK 0079

**Hon'ble Judges :** C.T. Selvam, J

**Bench :** Single Bench

**Advocate :** R. Srinivas, in Criminal O.P. 31068/2008 and V. Selvaraj, in Criminal O.P. 30769/2008, for the Appellant; I. Paul Nobel Devakumar, for R1 and G. Prabhakaran, for R2, for the Respondent

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**Judgement**

C.T. Selvam, J.—The petitioners herein who are the accused one and two in case pending in C.C. No. 503/2008 before the Judicial

Magistrate, Alandur, seek quash of the proceedings.

2. Based on a complaint dated 2.6.2007, an FIR was registered by the first respondent in Cr. No. 429 of 2007 and pursuant to investigation

thereon, charge sheet has been filed against the petitioners informing that an extent of 18.75 acres in S. No. 507/1 Sholinganallur Village covered

by patta No. 159 standing in the name of an ancestor of the land holders had been leased out to the defacto complainant 14 years back, that on or

before 26.4.2007 the first accused began building activity of the ""Classic Club"" close to the land held by the second respondent and using benamis

and henchmen caused great damage to the agricultural operations of the second respondent. The land in the second respondent's possession

wrongfully was entered into, a compound wall and new buildings were put up suddenly and at around 9.00 am on 14.7.2006 earth was excavated

from the land held by the lessee using machinery. The second respondent was chased away by persons brandishing dangerous weapons. The

wrongs were committed with intent of using such land for purposes of providing boating and water-games. Despite knowledge of the wrongful

intent of the first accused, the second accused aided him. Thus the accused stand charged for offence u/s 447 IPC. In continuation of the wrongful

acts the accused are said to have destroyed the fences and crops of the second respondent, using henchmen who brandished dangerous weapons.

The name of the organisation of the second accused viz. "Exnora" is said to have been wrongfully used for such purposes. Hence the other charges

u/s 427 and 506(ii) IPC.

3. Sri Srinivas, learned Counsel appearing for the petitioners would first point to the malafides of the first respondent in informing in the charge

sheet that the accused were absconding. He would impress upon this Court that the second accused was a well known public figure whose various

social activities towards public welfare were well known and well appreciated. He was a person in the everyday public eye and never could be

informed to be absconding. While he would refer to much material towards informing that the property claimed by the second respondent to be in

his possession was a water body and classified as "poramboke", that there was absolutely no material to support the claim of the second

respondent and that the second respondent was in litigation with the very persons through whom he claimed possession, the counsel for the second

respondent would seek to support the prosecution case by informing that the ownership of the disputed land by the lessors of the second

respondent are borne out by records. At the very first blush, it is seen that the statements of List Witnesses No. 4 & 5, the Tahsildar and Revenue

Inspector, inform of the land in S. No. 507/1 Sholinganallur Village being poramboke. The statement of the Village Administrative Officers and the

menials inform of encroachment on a small extent by persons other than the second respondent or through whom he claims. In such circumstances,

it is difficult to understand how the charge sheet came to be filed when the revenue records do not support the claim of possession by the second

respondent.

4. In the facts of the case, it would not be possible to prefer a charge sheet in the absence of any material to support the claim for possession by

the second respondent. The first respondent has not directed himself towards such end. In the circumstances, this Court would consider it

appropriate to direct further investigation towards ascertaining on which side lies the truth. Accordingly, the first respondent is directed to conduct

further investigation in Cr. No. 429 of 2007 u/s 173(8) Cr.P.C and conclude the investigation within a period of two months. The proceedings in

C.C. No. 503 of 2008 pending on the file of the Judicial Magistrate, Alandur shall stand stayed, pending filing of the further report by the first

respondent. It is also directed that upon receipt of the further report, it will be open to the lower court to proceed further in accordance with law.

5. With the above direction, the Criminal Original Petitions shall stand closed. Consequently, the connected miscellaneous petitions are closed.