



Crl.OP(MD).Nos.4781 & 14854 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 03.07.2026

ORDER PRONOUNCED ON : 21.07.2026

CORAM

THE HONOURABLE MR JUSTICE R.VIJAYAKUMAR

Crl.OP.(MD)Nos.4781 and 14854 of 2024
and Crl.MP(MD).Nos.3746 & 3747 of 2024

1.Shanmuganathan	...Petitioner/Accused No.4 in Crl.OP(MD).No.4781 of 2024
2.Kathiravan	Petitioner/Accused No.5 in Crl.OP(MD).No.14854 of 2024
Vs	
1.State of Tamil Nadu Rep.by The Inspector of Police Kenikkarai Police Station Ramanathapuram District Crime No.155 of 2023	Respondent/Complainant in both petitions
2.Ganesan	...Respondent/Defacto Complainant in both petitions

COMMON PRAYER: Criminal Original Petitions are filed under Section 528 of BNSS, 2023, to call for the entire records pertaining to the case in P.R.C.No.13 of 2024 on the file of the Judicial Magistrate No.II, Ramanthapuram and quash the same as against the petitioners.



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For Petitioners : Mr.R.Anand for
Mr.S.Ashok in Crl.OP.No.4781 of 2024

:Mr.V.Kathirvelu
Senior Counsel for Mr.Pal Muruges
in Crl.OP.No.14854 of 2024

For Respondents : Mr.P.Samuel Gunasingh
Government Advocate (Crl.side) for R1
in both petitions

:Mr.K.C.Maniyarasu for R2
in both petitions

COMMON ORDER

These two petitions have been filed by accused Nos.4 & 5 in PRC.No. 13 of 2024 on the file of the Judicial Magistrate No.II, Ramanathapuram seeking to quash the final report wherein they are charged with the offence under Section 120B, 109 and 307 of I.P.C.

(A).Factual Matrix:

2.A perusal of the charge sheet reveals that all the accused persons have conspired to commit murder of a District President of a political party. On 16.04.2023 at about 8.30 p.m, accused Nos.1 and 2 are alleged to have entered into the house of L.W.2. Accused No.1 is said to have attacked L.W.2 with aruval and accused No.2 is said to have attacked L.W.2 with a knife. The watchman of L.W.2 who is arrayed as L.W.1 was also attacked. Accused Nos. 1 and 2 were caught red-handed by the persons standing in the nearby.



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3. Accused Nos.1 and 2 are alleged to have stated that they were instigated by accused Nos.4, 5 and 6 to commit murder of L.W.2. Arval, knife, cell phone and two bikes were recovered and handed over to the police. Accused No.1, in his confession statement has stated that he has got acquaintance with A3 who is a close relative. A3 had called him over phone and engaged him for committing murder of L.W.2. In his confession, he had further alleged that A4 who is an Advocate, would take care of the criminal case and other expenses would be taken care of by A6. In the confession statement A1 has stated that he was sent by A3 to A6.

4. In the confession statement of A3, he has stated that A5 is his uncle who is the former District President of the political party and he was removed and in his place LW2 was appointed. Therefore, A5 had called him over whatsapp phone call and requested him to do away with L.W.2. In his confession, he further stated that A4 who is an Advocate also called him over phone and asked him to make arrangement to do away with L.W.2.

5. In the 161 Cr.P.C statement of LW1, he had stated that when A1 and A2 were caught red-handed, they stated that A3 to A6 have sent them. In the 161(3) Cr.P.C statement of L.W.2, he had stated that A3 to A6 have conspired to kill him since he was appointed as a District President after removing A5. The other list witnesses have also named A3 to A5. Accused Nos.4 and 5 have filed the present petition seeking to quash the charge sheet as against



them.

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6.According to the learned senior counsel appearing for petitioner/A5, there are no witness to prove the charges under Section 120B of I.P.C. The confession of co-accused which has not led to any recovery, cannot be a ground to continue the prosecution as against the petitioners, morefully under Section 307 of I.P.C. He had further submitted that except the confession of A1 and A3, there is no material whatsoever as against A4 and A5. Those confession statements are inadmissible in evidence. He had further submitted that the phones that have been recovered from the accused persons namely accused Nos.1 to 3 are ordinary button phones through which whatsapp calls cannot be made. Therefore, the prosecution has not established the prior agreement or meeting of minds between accused Nos.1 and 2, accused Nos.4 and 5. In such circumstances, he submitted that the continuation of prosecution as against A5 would only be an abuse of process of law.

7.The learned counsel appearing for the petitioner/accused No.4 submitted that except the confession of the co-accused, no substantial material has been placed on record by the prosecution. The investigation agency has not collected any material. There are no call records to establish the meeting of minds between A1 and A2 and A4 and A5. There are no witnesses to support the prosecution case under Section 120B as against the



petitioner herein.

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8.The learned counsel for the petitioner/4th accused has also contended that the confession of co-accused which has not led to any recovery cannot be relied upon. There is no possibility of making whatsapp call from the button phone which are recovered from A1 and A3. The other witnesses are only hearsay witnesses. Hence, he prayed for quashing of the charge sheet as against A4 also.

9.Per contra, the learned Government Advocate (Crl.side) appearing for the respondent police submitted that 161 Cr.P.C statement of the witnesses would clearly reveal the involvement of A4 and A5. A1 and A2 were caught red-handed on the scene of occurrence who have stated that they were sent by A3 to A6. He had further submitted that the CDR details could be filed at any point of time. He relied upon the victim statement under 161(3) Cr.P.C and contended that they referred to the names of A4 and A5 also. The veracity of these statements could be verified only during trial.

10.The learned counsel appearing for the defacto complainant/LW1 submitted that A1 and A2 in their confession statement have categorically pointed out that they were sent by A3 to A6 in order to do away with L.W.2. He further pointed out that five persons were injured and all of them have named A4 and A5.



11. Heard the learned counsel appearing on either side and perused the material records.

(C).Discussion:

12. A careful perusal of the charges in the charge sheet alleges that A3 to A5 have conspired and brought A1 and A2 from Chennai in order to commit murder of L.W.2. A5 who was the District President of the political party and in the place, L.W.2 has been appointed. Due to political enmity, A3 to A6 have conspired and brought A1 and A2 from Chennai in order to commit murder of L.W.2. A1 and A2 were caught red-handed on the spot. In the said incident, three of them namely L.W.2, L.W.3 and L.W.4 have been injured.

13. The confession statement of A1 and A3 named A4 and A5. According to the petitioners, except the confession of the co-accused, no other material has been placed by the investigation agency. It is settled position of law that the confession to the police officials is inadmissible in law unless it leads to recovery.

14. In the present case, admittedly, no recovery has been made from A4 and A5 who are the petitioners herein. They have also relied upon a decision of the Hon'ble Supreme Court reported in **(2023) 20 SCC 219** (*Mohd. Wajid and another Vs. State of Uttar Pradesh and others*); **2025 SCC Online Mad 5600** (*Ezhilarasan Vs. State rep. by Superintendent of Police and others*) and



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2025 SCC Online SC 17 (Kim Wansoo Vs. State of Uttar Pradesh and others) in support of their condition.

15.Per contra, the learned Government Advocate (Crl.side) had relied upon a judgment of the Hon'ble Supreme Court reported in **2023 LiveLaw (SC) 642 (Manik B. Vs. Kadapala Sreyes Reddy and another)**.

16. The learned counsel appearing for the defacto complainant had relied upon a decision of the Hon'ble Supreme Court reported in **2023 LiveLaw (SC) 279 (Balu Sudam Khalde and another Vs. The State of Maharashtra)**.

17.The learned counsel for the petitioners have vehemently contended that no evidence has been placed on record to prove the ingredients of Section 120B of I.P.C especially when the mobile phones that were recovered from A1 and A3 are button phones and hence, the allegations that A4 and A5 have contacted through whatsapp call, cannot be believed.

18.The Court can take a judicial notice of the fact that even if it is a button phone, whatsapp can be installed and calls can be made, provided the instrument supports 4G network. Therefore, merely because recovered mobile phones are button phones, the possibility of whatsapp call cannot be ruled out. It depends upon the model of the phone and it is a subject matter of evidence.



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19.As far as the contention of the petitioners that the call detail records have not been collected and they are not part of the annexure with the charge sheet is concerned, the Hon'ble Supreme Court in a judgment reported in **(2002) 5 SCC 82 (Central Bureau of Investigation Vs.R.S.Pai and another)** in Paragraph No.7 had held as follows:

“7.From the aforesaid sub-sections, it is apparent that normally, the Investigating Officer is required to produce all the relevant documents at the time of submitting the charge-sheet. At the same time, as there is no specific prohibition, it cannot be held that the additional documents cannot be produced subsequently. If some mistake is committed in not producing the relevant documents at the time of submitting the report or charge-sheet, it is always open to the Investigating Officer to produce the same with the permission of the Court. In our view, considering the preliminary stage of prosecution and the context in which Police Officer is required to forward to the Magistrate all the documents or the relevant extracts thereof on which prosecution proposes to rely, the word 'shall' used in sub-section (5) cannot be interpreted as mandatory, but as directory. Normally, the documents gathered during the investigation upon which the prosecution wants to rely are required to be forwarded to the Magistrate, but if there is some omission, it would not mean that the remaining documents cannot be produced subsequently. Analogous provision under Section 173(4) of the Code of Criminal Procedure, 1898 was considered by this Court in Narayan Rao v. The State of Andhra Pradesh [(1958) SCR 283 at 293] and it was held that the word



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'shall' occurring in sub-section 4 of Section 173 and sub-section 3 of Section 207A is not mandatory but only directory. Further, the scheme of sub-section (8) of Section 173 also makes it abundantly clear that even after the charge-sheet is submitted, further investigation, if called for, is not precluded. If further investigation is not precluded then there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to investigation. In such cases, there can not be any prejudice to the accused. Hence, the impugned order passed by the Special Court cannot be sustained."

20.This judgment has been followed by the Hon'ble Supreme Court in a judgment reported in **2025 SCC Online SC 1206 (Sameer Sandhir Vs. Central Bureau of Investigation)** wherein the Hon'ble Supreme Court was pleased to hold that if there is an omission on the part of the prosecution in forwarding the documents, the prosecution can be permitted to produce the additional documents which were gathered prior to or subsequent to the investigation, even after charge sheet is submitted.

21.In such view of the matter, it is clear that whether there was any whatsapp call between A3 on one side and A4 and A5 on the other side, whether mobile phones recovered from A1 to A3 support whatsapp calls or not are all subject matter of evidence.



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(D).Conclusion:

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22.In view of the judgment of the Hon'ble Supreme Court, even after filing of the charge sheet, the prosecution can produce Case Detail Records as additional documents. In such circumstances, this Court is of the considered opinion that quashing of the charge sheet as against A4 and A5 on the grounds raised by the learned counsel for the petitioners, cannot be countenanced. There are no merits in the petitions and both the Criminal Original Petitions stand dismissed. Consequently, connected miscellaneous petitions are closed.

21.07.2026.

Internet : Yes/No
Index : Yes/No
NCC : Yes/No
msa

To

1.The Judicial Magistrate No.II, Ramanthapuram

2.The Inspector of Police
Kenikkarai Police Station
Ramanathapuram District
Crime No.155 of 2023

3.The Additional Public Prosecutor
Madurai Bench of Madras High Court
Madurai



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R.VIJAYAKUMAR, J.

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