



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.02.2015

CORAM:

THE HONOURABLE MR. JUSTICE C.T.SELVAM

CRL.O.P.(MD)No.2308 of 2015 & MP(MD)NO.1 of 2015

1. RAJALINGAM

2. YESUDASAN RAJKUMAR

3. ATHISAYA RAJ

.. PETITIONERS/ACCUSED 1 TO 3

VS.

1. THE INSPECTOR OF POLICE,
KALAKADU POLICE STATION,
TIRUNELVELI DISTRICT.

..1ST RESPONDENT/COMPLAINANT

2. SHANMUGAVEL SAMY

..2ND RESPONDENT/DEFACTO COMPLAINANT

Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in first information report in connection with Cr.NO.60/2013 on the file of the 1st Inspector of Police, Kalakadu Police Station, Tirunelveli district and quash the same.

For Petitioners : Mr.S.Palanivelayutham

For R1 : Mr.K.V.Rajarajan
Government Advocate, (Crl. Side)

O R D E R

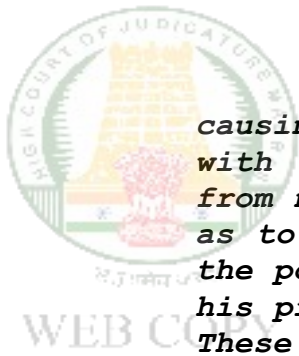
This petition has been filed to quash the proceedings in Cr.No.60 of 2013 on the file of the first respondent police.

2. There are about 10,000 pending criminal original petitions before the Madurai Bench of this Court. It is settled law that FIR can be quashed in the rarest of rare cases.

3. The case in Crime No.60 of 2013 stands registered for the offence under Sections 341, 294(b), 394 (NH), 365 r/w.109 of IPC.

4. A reading of the compliant informs Commission of cognizable offences. What are the offences, if any, that stand committed, is a matter for investigation. The Hon'ble Apex Court in *Arnesh Kumar Vs.State of Bihar* reported in 2014 (8) Scale 250, has held thus:-

"9. From a plain reading of the aforesaid provision, it is evident that a person accused of offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on its satisfaction that such person had committed the offence punishable as aforesaid. Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from



causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts. Law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. Law further requires the police officers to record the reasons in writing for not making the arrest. In pith and core, the police office before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 of Cr.P.C.

14. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A of the I.P.C. or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.

15. We direct that a copy of this Judgment be forwarded to the Chief Secretaries as also the Director Generals of Police of all the State Governments and the Union Territories and the Registrar General of all the High Courts for onward transmission and ensuring its compliance."

5. The respondent is upon duty to follow the dictum of the Apex Court and in the event of arrest of persons for the offences punishable not beyond seven years, the reasons for arrest are to be recorded. Similarly, in such cases judicial Magistrates upon arrested persons being produced before them for the purpose of remand, necessarily would have to inform the reasons why they consider remand necessary.

6. With the above observations, this petition stands dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (AE)

/True copy/

Sub Assistant Registrar



To

1. THE INSPECTOR OF POLICE,
KALAKADU POLICE STATION,
TIRUNELVELI DISTRICT.

2. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1cc to MR.S.PALAIVELAYUTHAM, ADVOCATE IN SR : 8795

Rj2

SR : 17.03.2015 : 3p/4c

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