



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.03.2017

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

**Crl.O.P.(MD) No.3093 of 2017
and Crl.M.P.Nos. 2358 and 2359 of 2017**

1.A.Alfred Alex

2.A.Sheela

3.Anto

... Petitioners

-vs-

1.The Inspector of Police,
District Crime Branch
Nagercoil,
Kanyakumari District

2.Lawrence

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records pertaining to the chargesheet in C.C.No.228/2007 on the file of the learned Judicial Court No.I, Nagercoil in Crime No.36/2006 dated 27.10.2006 on the file of the respondent No.1 and quash the same as illegal as against the petitioners.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.A.P.Balasubramani for R1
Govt. Advocate (Crl.Side)

O R D E R

This petition has been filed to quash the case in C.C.No.228/2007 on the file of Judicial Magistrate, No.I, Nagercoil.

2.On the complaint lodged by the 2nd respondent, the first respondent police registered a case in Crime No.36/2006 on 27.10.2006 and after completing investigation, has filed the chargesheet in C.C.No.228/2007 before the Judicial Magistrate, No.I, Nagercoil for offences under Sections 120(b), 420, 468, 471 IPC. Challenging which, the petitioners/A1 to A3 are before this Court.



3. Mr. M. Murugan, Special Sub Inspector of Police, District Crime Branch, Nagercoil, is present before this Court.

4. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. side) for the first respondent.

5. It is the case of the prosecution that the accused herein had received Rs.16 lakhs for getting medical college admission to the daughter of the de-facto complainant some time in the year 2005 and neither got the admission nor returned the amount.

6. The learned counsel for the petitioner submitted that even before the FIR was registered, the accused had returned Rs.10.50 lakhs, which has also been recorded in the police statement of the de-facto complainant and they had to give only the balance and for that they have also executed a mortgage deed in favour of the de-facto complainant. Therefore, the present prosecution is an abuse of process of law.

7. The learned Government Advocate submitted that the accused had filed discharge application in Crl.M.P.No.3470/2008, which was also dismissed by the trial Court, as early as on 16.08.2013 and now, they have come by way of this quash application.

8. This Court gave its anxious consideration to the rival submissions.

9. On a reading of the chargesheet, it is alleged that the petitioner had received the money for getting admission to the daughter of the de-facto complainant in a Medical College and thereafter, he had failed to get the admission. Thus, there are prima facie materials on record for the commission of the alleged offence and therefore, the prosecution cannot be quashed. It is seen that the trial of the case is pending from the year 2007 and now, we are in 2017. Therefore, the quash application is dismissed with a direction to the Judicial Magistrate, No.I, Nagercoil to dispose of C.C.No.228/2007 within a period of six months from the date of receipt of a copy of this order.

10. As regards Alfred Alex(A1), it is represented that he is physically challenged and his presence may be dispensed with. Accepting the said submission, he shall appear before the Trial Court for collecting the final report and other papers under Section 207 Cr.P.C., for framing the charges, for questioning under Section 313 Cr.P.C. and on the day of judgment. On all other dates, if the 1st petitioner files an application under Section 317 Cr.P.C. stating that he will not dispute his identity and that his counsel will cross-examine the prosecution witnesses in his absence without adopting dilatory tactics, the Trial Court may



liberally consider and entertain the same. If the 1st petitioner adopts any dilatory tactics, it is open to the Trial Court to insist upon his presence.

11. The learned Government Advocate submitted that non bailable warrant is pending against (A3) from 22.04.2016 and under normal circumstances, this Court would not recall any non bailable warrant, but, in this case, the prosecution is pending from 2007 onwards and the non bailable warrant itself is pending from 22.04.2016, as the police have not been able to execute the same, this Court directs the 3rd petitioner to surrender before the Judicial Magistrate, No.I, Nagercoil, within two weeks from the date of receipt of a copy of this order and on such surrender, non bailable warrant against him shall be recalled and he should furnish a fresh bond for Rs.10,000/- without sureties. If any of the accused abscond, the trial Court shall register a fresh FIR under Section 229(A) of the Indian Penal Code against the petitioners/accused. The accused shall cross examine the witnesses on the day, they are examined in chief. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar

To:

1.The Judicial Magistrate, No.I,
Nagercoil.

2.The Inspector of Police,
District Crime Branch
Nagercoil, Kanyakumari District

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

+1 cc to Mr.T.Lajapathi Roy , Advocate in SR.No. 16102

RR

AE/RR/SAR3/06.04.2017/3P/5C

**Cr1.O.P. (MD)No.3093 of 2017
and Cr1.M.P.Nos.2358 and 2359/2017
20.03.2017**