



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **11.09.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **R.PONGIAPPAN**

Crl.O.P.[MD]No.9615 of 2020

and

Crl.M.P.(MD) .No.4494 of 2020

1.K.Prasanth
2.K.Pradeep Kumar
3.K.Dinesh
4.R.Santhanaprabhu

... Petitioners / Accused Nos.17 to 20

Vs.

1.The State represented by
The Inspector of Police,
Keelavalavu Police Station,
Madurai District.

(Crime No.163 of 2019) ...1st Respondent / Complainant

2.Subash ... 2nd Respondent / De facto complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to the impugned FIR in Crime No.163 of 2019, dated 17.06.2019, on the file of the first respondent herein and quash the same insofar as the petitioners' concern.

For Petitioners : Mr.N.Marimuthu
For R1 : Mr.A.P.G.Ohm Chairma Prabhu
Government Advocate (Criminal side)

O R D E R

This Criminal Original Petition has been filed seeking the relief to call for the records in the impugned FIR in Crime No.163 of 2019, dated 17.06.2019, on the file of the first respondent herein and quash the same insofar as the petitioners herein are concerned.

2.The learned counsel appearing for the petitioners would submit that the petitioners 1 to 4 herein are arrayed as Accused Nos.17 to 20 in the impugned First Information Report. In the averments found in the First Information Report reveals the fact that during the time of occurrence, the petitioners herein have not participated in the occurrence and therefore, the implication



of the petitioners in the above said Crime No.163 of 2019 is doubtful. Therefore, for rendering justice, it is appropriate to quash the impugned First Information Report in respect of the petitioners herein are concerned.

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3.In response to the submissions made by the learned counsel appearing for the petitioners, Mr.A.P.G.Ohm Chairma Prabhu, learned Government Advocate (Criminal side), appearing for the first respondent / Police, on instructions, would submit that since the averments found in the First Information Report will categorically prove that during the time of occurrence the petitioners are also participated along with the other accused, therefore, for the reason that the investigation has not been completed, it cannot be said that the petitioners are not directly involved in the alleged occurrence.

4.Upon considering the arguments advanced by either side, it appears that the impugned First Information Report has been registered against the petitioners and others for the offences punishable under Sections 147, 148, 341, 294(b), 323 324, 506 (2), 307 of I.P.C. and Section 3 (1) of Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992, and the investigation is now at the threshold stage.

5.I have gone through the copy of the complaint given by the *de facto* complainant, in which, it was mentioned as while at the time of alleged occurrence, along with sixteen others, the petitioners have also assembled unlawfully with others and intercepted the two-wheeler, in which, the *de facto* complainant and the deceased were travelling. Further, at the time of occurrence, some of the accused have attacked the deceased and the *de facto* complainant by using wooden log and stones and some of the accused also caused damage to the motorcycle, which was driven by the *de facto* complainant.

6.Therefore, in the said circumstances, though no overt act is attributed against the petitioners, for the reason that the investigation is now at the threshold stage, it cannot be held that the petitioners have been falsely implicated in this case.

7.At this juncture, it is necessary and useful to see the judgment of our Hon'ble Apex Court in the case of **Sau.Kamal Shivaji Pokarnekar Vs. The State of Maharashtra and others [Criminal Appeal No.255 of 2019, dated 12.02.2019]**, wherein it has been held as follows:-

''9. A perusal of the complaint discloses that *prima facie* offences that are alleged against the respondents. The correctness or otherwise of the said



allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Court to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused.''

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8. Further, it is necessary to see the judgment of our Hon'ble Apex Court in the case of **Central Bureau of Investigation Vs. Ravi Shankar Srivastava, IAS and another** reported in (2006) 7 SCC 188, wherein it has been held as follows:-

"While exercising powers under the Section, the Court does not function as a Court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone the Courts exist."

9. Further, it is necessary to see the judgment of our Hon'ble Apex Court in the case of **U.P. Pollution Control Board Vs. Dr. Bhupendra Kumar Modi and another** reported in (2009) 2 SCC 147, wherein it has been held as follows:-

"40. It is true that it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. While exercising inherent powers either on civil or criminal jurisdiction, the Court does not function as a Court of appeal or revision. The inherent jurisdiction though wide has to be exercised sparingly, carefully and with caution. It should be exercised to do real and substantial justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse."

10. More than that, in the impugned First Information Report, the de facto complainant has stated the name of the petitioners along with the name of their fathers. It was specifically alleged that during the time of occurrence, the petitioners and others with common object joined together and intercepted the vehicle, in which, the deceased and the others had travelled. Therefore, those aspects have to be decided only during the time of investigation or at the time, when the case which has to be enquired by the learned Trial Judge. In otherwise, the grounds raised by the petitioners are not in the exceptional circumstances as indicated by the Hon'ble Apex Court in the case of **State of Haryana Vs. Bhajan Lal and others** reported in 1992 Supp (1) SCC 335. Therefore, this Court is not in a



position to accept the contentions raised by the petitioners.

11. Therefore, the Criminal Original Petition stands dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

tsg

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

1. The Inspector of Police,
Keelavalavu Police Station,
Madurai District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

CrI.O.P. [MD] No. 9615 of 2020
11.09.2020

SRK (CO)
TR (01.10.2020) 4P 3C