



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.02.2022

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P(MD)Nos.1035, 1038 and 1039 of 2022
and
Crl.M.P. (MD)Nos.735, 737 and 741 of 2022

Crl.O.P. (MD)No.1035 of 2022:-

S.Kalyani ... Petitioner/Sole Accused
Vs.

- 1.State Rep by
The Inspector of Police,
Kariapatti Police Station,
Virudhunagar District,
Virudhunagar.
(Crime No.185 of 2021) ... Respondent/
Defacto Complainant
- 2.Manimaran
- 3.The Superintendent of Police,
Virudhunagar District. ... Respondents/Respondents
(R3 is suo motu impleaded as per order dated
21.01.2022 in Crl.O.P. (MD)No.1035 of 2022 by
GRSJ)

Prayer: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the entire records pertaining to the impugned FIR in Crime No.185 of 2021 dated 22.10.2021 on the file of the respondent No.1 and quash the same as illegal as against the petitioner.

For Petitioner : Mr.T.Lajapathi Roy
For Respondents : Mr.B.Thanga Aranvindh,
Govt. Advocate (Crl. Side) for R1 & R3.

Crl.O.P. (MD)No.1038 of 2022:-

S.Kalyani ... Petitioner/Accused No.1
Vs.

- 1.State Rep by
The Inspector of Police,
Kariapatti Police Station,
Virudhunagar District,
Virudhunagar.
(Crime No.186 of 2021)



2.Pitchaipandi,
Sub Inspector of Police,
Kariapatti Police Station,
Virudhunagar District.

...Respondent/
Defacto Complainant

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3.The Superintendent of Police,
Virudhunagar District.

... Respondents/Respondents

(R3 is suo motu impleaded as per order dated
21.01.2022 in Crl.O.P. (MD)No.1038 of 2022 by
GRSJ)

Prayer: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the entire records pertaining to the impugned FIR in Crime No.186 of 2021 dated 22.10.2021 on the file of the respondent No.1 and quash the same as illegal as against the petitioner.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.B.Thanga Aranvindh,
Govt. Advocate (Crl. Side).

Crl.O.P. (MD)No.1039 of 2022:-

S.Kalyani

... Petitioner/Accused No.1
Vs.

1.State Rep by
The Inspector of Police,
PEW-Sattur Police Station,
Virudhunagar District,
Virudhunagar.
(Crime No.1249 of 2021)

... Respondent/
Defacto Complainant

2.Periyasamy,
Special Sub Inspector,
PEW-Sattur Police Station,
Virudhunagar District,
Virudhunagar.

3.The Superintendent of Police,
Virudhunagar District.

... Respondents/Respondents

(R3 is suo motu impleaded as per order dated
21.01.2022 in Crl.O.P. (MD)No.1039 of 2022 by
GRSJ)

Prayer: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the entire records pertaining to the impugned FIR in Crime No.1249 of 2021 dated 22.10.2021 on the file



of the respondent No.1 and quash the same as illegal as against the petitioner.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.B.Thanga Aranvindh,
Govt. Advocate (Crl. Side).

C O M M O N O R D E R

These criminal original petitions have been filed to quash the FIRs in Crime Nos.185 and 186 of 2021 registered on the file of Kariapatti Police Station and Crime No.1249 of 2021 registered on the file of PEW- Sattur Police Station.

2.Heard the learned counsel on either side.

3.I carefully read all the three FIRs. It is seen that on 22.10.2021 at around 02.00 pm, one Manimaran, who is a police constable attached to Armed Reserved had gone to the shop run by the petitioner/Kalyani. Admittedly, Manimaran was consuming beer. The petitioner is said to have raised his objections. This had led to a quarrel between the petitioner/Kalyani and the defacto complainant/Manimaran. According to Manimaran, with a kitchen utensil, the petitioner had hit him on his head. Based on the complaint of Manimaran, Crime No.185 of 2021 was registered for the offences under Sections 294(b), 324 and 506(ii) of IPC.

4.Though the learned counsel for the petitioner prayed for quashing the said FIR, I am of the view that the petitioner has to necessarily establish his innocence only before the Court below. This is because, one of the offences invoked against the petitioner is Section 324 of IPC. Since contentions facts are involved, I am not inclined to quash Crime No.185 of 2021.

5.Leaving open all the contentions and defences of the petitioner, Crl.O.P.No.1035 of 2022 is dismissed.

6.However, Crime No.186 of 2021 stands on a different footing. This FIR has been registered against the petitioner for the offence under Section 4(1-A) of Tamilnadu Prohibition Act, 1937. The scene of occurrence that is the subject matter of Crime Nos.185 and 186 of 2021 are one and the same. According to the police, the occurrence had taken place at 03.15 pm on 22.10.2021. I am of the view that the case projected by the prosecution is inherently improbable. Admittedly, a physical fight had taken place between a police constable and the petitioner at 02.00 pm. The petitioner would obviously know that there would be repercussion, since a police man was injured. Therefore the allegation that at 03.15 pm in the scene of occurrence, the petitioner would have kept eight brandy bottles is impossible to believe. I find considerable force in the



contention of the learned counsel for the petitioner that since the petitioner had assaulted a police man, Crime No.186 of 2021 was registered as a counter blast. It has been held in Bhajan Lal's case that where registration of a criminal case is attended by malafides, then it is a ground of quashing. Therefore, Crime No.186 of 2021 is quashed and Crl.O.P.(MD)No.1038 of 2021 is allowed.

7.Of-course the learned counsel for the petitioner would argue that applying the very same logic, Crime No.1249 of 2021 also has to be quashed. As rightly pointed out by the learned Government Advocate (Crl. Side), Crime No.1249 of 2021 was not registered by Kariapatti Police Station but by PEW-Sattur Police Station. Though the petitioner had been named as the first accused in the said FIR, the prosecution did not allege that the petitioner was present at Sattur. It had only stated that the shop in question from where the liquor was sold belonged to the petitioner. Therefore, the said FIR cannot be quashed in toto. However, there is some merit in the contention of the petitioner's counsel that the respondent could not have invoked Section 4(1-A) of Tamilnadu Prohibition Act. The said provision could have been invoked only if the liquor contains poisonous substance. Therefore, PEW-Sattur are directed to file an alteration report for substituting Section 4(1)(a) of Tamilnadu Prohibition Act in the place of 4(1-A) of Tamilnadu Prohibition Act. Crl.O.P.(MD)No.1039 of 2022 is partly allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

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/ /2022

Sub Assistant Registrar(CS)

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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 Superintendent of Police,
Virudhunagar District.

2.The Inspector of Police,
Kariapatti Police Station,
Virudhunagar District,

<https://hcservices.hcscourt.gov.in/hcservices/>



3.The Inspector of Police,
PEW-Sattur Police Station,
Virudhunagar District,
Virudhunagar.

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

+3 CC to M/s.T.LAJAPATHI ROY, Advocate(SR-3866[F] dated
03/02/2022)

Crl.O.P(MD)Nos.1035, 1038 and 1039 of 2022
01.02.2022

MGJ(17.02.2022) 5P 8C