



Crl.O.P.(MD) No.11543 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.06.2022

CORAM:

THE HONOURABLE MR. JUSTICE **V.SIVAGNANAM**

Crl.O.P.(MD) No.11543 of 2022

and

Crl.M.P(MD) Nos.7282 and 7283 of 2022

1. Shanthi,

2. Kothandapani,

: Petitioners

Vs

1. The Inspector of Police,
All Women Police Station,
Aruppukottai,
Virudhunagar District.
Crime.No. 10 of 2019.

2. Vijayalakshmi,

: Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying this Court to call for the records pertaining to the C.C.No.160 of 2021, on the file of the Judicial Magistrate, Aruppukottai in so far as the petitioners herein / accused Nos.4 and 5 and quash the same.



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For Petitioner : M/s.Kannappan A R,

For R1 : Mr.E.Antony Sahaya Prabahar,

Additional Public Prosecutor

ORDER

This criminal original petition has been filed seeking to quash the charge sheet in C.C.No.160 of 2021, on the file of the learned Judicial Magistrate, Aruppukottai.

2.The learned Counsel appearing for the petitioners submitted that there is no evidence attributed against the petitioners that too, among nine prosecution witnesses, no witness has spoken about the participation or aiding of the petitioners for conducting the second marriage for the accused Nos.1 and 2. Further he stated that continuing the criminal proceedings against the petitioners without evidence is misuse of process of Court. Hence, he pleaded to quash the charge sheet in C.C.No.160 of 2021, on the file of the learned Judicial Magistrate, Aruppukottai

3.The learned Additional Public Prosecutor submitted that in this case, PW-1 to PW-6 have been examined. Now, the case is posted for examination



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of other witnesses.

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4.The Hon'ble Supreme Court in **Indian Oil Corporation vs. NEPC India Limited and others [(2006)6 SCC 736]** laid down the principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings, which are relevant for the present purpose are:-

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm,



or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal



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proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

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5.I have considered the matter in the light of the submissions made by both the parties and perused the records.

6.On perusal of records, it is seen that the criminal proceedings have been started, PW-1 to PW-6 were examined by the trial Court, the prosecution relied upon 9 witnesses. Out of that, only 3 witnesses are remaining for examination.

7.On perusal of the charge sheet and the statement of witnesses shows that *prima facie* an offence and allegation made therein will have to be taken on the face value. If it could not be said that their prosecution would amount to an abuse of process of the Court, invoking inherent power, prior to the commencement of trial and leading of evidence, to quash prosecution is not desirable. Power should be exercised only in exceptional cases. Hence, I find no merits in the Criminal Original Petition.



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8.At this stage, it cannot be quashed. Therefore, I find no merit in this criminal original petition and the same is closed.

9.The learned Counsel appearing for the petitioners submitted that the petitioners are residing at Tiruvallur District and the proceedings are conducted at Aruppukottai. Hence, the personal appearance of the petitioners may be dispensed with before the trial Court.

10.Accepting the submission made by the learned Counsel appearing for the petitioners, the personal appearance of the petitioners is hereby, dispensed with a condition that they have to appear before the trial Court, whenever required for further proceedings.

11.Consequently, the connected miscellaneous petitions are closed.

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Internet:Yes
Index:Yes/No
Speaking/Non speaking order
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V.SIVAGNANAM, J.

lr

To

1.The Inspector of Police,
All Women Police Station,
Aruppukottai,
Virudhunagar District.

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

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