



Crl.O.P.(MD) No.11573 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.11573 of 2022

and

Crl.M.P(MD) Nos.7298 and 7299 of 2022

J.James Anbiah,

: Petitioner

Vs

1. State represented by
The Inspector of Police,
District Crime Branch Police Station,
Kanniyakumari District.
(Crime No. 89 of 2013).

2. Sunil Prakash,

: Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying this Court to call for the records pertaining to the FIR in C.C.No. 90 of 2022 on the file of the learned Judicial Magistre No. I, Nagercoil, Kanyakumari District in Crime No. 89 of 2013 dated 27.11.2013, on the file of the first respondent and quash the same as illegal as against the petitioners alone.

For Petitioner	: M/s.Lajapathi Roy T,
For R1	: Mr.E.Antony Sahaya Prabahar, Additional Public Prosecutor



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ORDER

WEB COPY This criminal original petition has been filed seeking to quash the charge sheet in C.C.No. 90 of 2022 on the file of the learned Judicial Magistre No. I, Nagercoil, Kanyakumari District.

2.The learned Counsel appearing for the petitioner submitted the petitioner is only a record clerk and the amount as stated by the prosecution was not entrusted to him and he had not signed any challan. Further, he state that the petitioner is no way connected with the mis-appropriation of that amount and not committed any offence. Hence, the criminal proceedings has to be quashed.

3.The learned Additional Public Prosecutor submitted that in this case, charge has been framed and the case is posted on 08.07.2022, for examination of prosecution witnesses.

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

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

6.On a perusal of records, it reveals that a case has been registered against the petitioner, who is working as record clerk in the Government



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Aided Dethi School. The petitioner was initially appointed as an Office Assistant, on 12.02.2006. Then, the petitioner was promoted as record clerk on 24.03.2008. In 2012-2013, while auditing the accounts, it was found that the amount payable to the Government was not paid. Therefore, PW-2/ Head Mistress of the said school entrusted Rs.7,75,675/- and Rs.5,70,000/- totally Rs.13,45,675/- to the petitioner. For remitting that amount in the treasury, the accused person obtained Rs.3,72,250/- on 07.06.2013, but he altered the said amount as Rs.250/- in challan No.15239 and subsequently, he altered Rs. 82,675/-, Rs.3,75,100/-, Rs.2,63,750/-, Rs.44,400/- and Rs.2,07,500/- as Rs. 675/- in challan No.16497, Rs.100/- in challan No.21477, Rs.750/- in challan No.21665, Rs.400/- in challan No.1970, Rs.500/- in challan No.2497, respectively.

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



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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 dismissed. Consequently, connected miscellaneous petitions are closed.

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Internet: Yes
Index: Yes/No
Speaking/Non speaking order
lr



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V.SIVAGNANAM, J.

lr

To

1.The Inspector of Police,
District Crime Branch Police Station,
Kanniyakumari District.

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

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