



Crl.O.P.(MD) No.13210 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.07.2022

CORAM:

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

Crl.O.P.(MD) No.13210 of 2022

and

Crl.M.P(MD) Nos.8421 and 8422 of 2022

Solaisamy,

: Petitioner

Vs

1. State of Tamil Nadu
Represented by
The Inspector of Police,
Aruppukkottai Taluk Police Station,
Virudhunagar District.
Crime No.181 of 2018

2. Selvaraj,

: Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying this Court to call for the records relating to the impugned Charge Sheet in C.C.No.111 of 2021, on the file of the learned Judicial Magistrate, Aruppukkottai, in so far as the petitioner is concerned and quash the same.



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For Petitioner : M/s.Sasi Kumar V,
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.111 of 2021, on the file of the learned Judicial Magistrate, Aruppukottai.

2.The learned Counsel appearing for the petitioner submitted that the petitioner is the sixth accused in C.C.No.111 of 2021, on the file of the learned Judicial Magistrate, Aruppukottai. The charge against the petitioner is that the petitioner received a Tipper Lorry bearing Registration No.TN 03 F 3538, from the second respondent, for the purpose of repairing its engine, but he changed the paint of the said vehicle and helped the offenders, who came in TATA Indica Car, bearing Registration No.TN 02 AV 3497, to stole the second respondent's vehicle. But, the original Registration number of the TATA Indica Car is that TN 69 Q 1134. The petitioner harboured the offenders



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with the intention to screen them from legal punishment. Further, he submitted that he is running a painting shop and now, the same is also closed.

He did not paint the stolen vehicle as stated by the prosecution. The respondent police have not collected evidence against him but, only on the confession statement of the second accused/Harikrishnan, they included him. In the absence of any evidence apart from the confession statement of the second accused, the prosecution against the petitioner is misusing the process of law and it has to be quashed.

3.The learned Additional Public Prosecutor submitted that admittedly, the petitioner is the sixth accused in C.C.No.111 of 2021 and doing the profession of painter. According to the prosecution, he helped the offender to screen the stolen vehicle and also prepared a new number plate as TN 69 Q 1134 and based on the confession statement of the second accused, he is included in the case. The truthfulness of the confession statement has to be decided by the trial Court by let in evidences before the trial Court. Therefore, it is inappropriate to quash the charge sheet and pleaded to dismiss this petition.



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.



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(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.



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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 the fact that based on the complaint lodged by Defacto complainant/Selvaraj, the case has been registered by the respondent police in Crime No.181 of 2018, for missing of Torus Lorry, bearing Registration No.TN 03 F 5538, worth about Rs.25,00,000/-. After investigation, the respondent police identified the accused persons and arrested the second accused/Harikrishnan. Based on his confession statement, they identified the petitioner, who helped to change the paint of the stolen vehicle and thereby, helped the offenders to escape from the legal punishment. These allegations are denied by the petitioner, as false and he never painted the stolen vehicle and also never helped the offenders to escape from the legal punishment. These facts have to be decided by the trial Court and further the truthfulness of the confession statement of the second accused has also to be tested before the trial Court by let in prosecution witnesses.

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



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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.

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

9.However, the learned Counsel appearing for the petitioner submitted that the personal appearance of the petitioner before the trial Court may be dispensed with.

10.I have considered the submission. Therefore, the personal appearance of the petitioner before the trial Court is hereby, dispensed with. But, he should appear before the trial Court, whenever required for further proceedings.



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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,
Aruppukkottai Taluk Police Station,
Virudhunagar District.

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

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