



Crl.O.P.(MD) No.13679 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 28.07.2022

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THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRL.O.P (MD) No.13679 of 2022

and

Crl.M.P(MD) Nos.8739 & 8740 of 2022

1. Sundararaj
2. Sakthivel @ Siva Sakthivel
3. Muthukumar ... Petitioners/ Accused Nos.1 to 3
Vs

1. The State Represented by
The Inspector of Police,
Karivalamvanthanallur Police Station,
Tenkasi District.
(In Crime No. 122 of 2022) 1st Respondent /Complainant

2. Chithiravelu ... 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records pertaining to the case in impugned Charge Sheet in C.C.No.230 of 2022, on the file of the Judicial Magistrate Court, Sankarankovil and to quash the same as illegal.

For Petitioners : Mr.V.Malaiyendran
For R1 : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor



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ORDER

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This Criminal Original Petition has been filed to quash the Charge Sheet in C.C.No.230 of 2021, on the file of the Judicial Magistrate Court, Sankarankovil.

2. The learned counsel for the petitioners submitted that there is a civil dispute between the petitioners/accused Nos.1 to 3 and the defacto complainant. The defacto complainant has given a complaint before the first respondent police. The first respondent police registered a case in Crime No.122 of 2022, for the offence under Sections 294(b), 323, 324 and 506(ii) I.P.C. After investigation, charge sheet has been filed and the same was taken on file in C.C.No.230 of 2022, on the file of the Judicial Magistrate Court, Sankarankovil, against the petitioners. Hence, the present Criminal Original Petition is filed.

3. The learned Additional Public Prosecutor appearing for the first respondent submitted that the case has been registered, on the complaint given by the defacto complainant. According to the prosecution, the



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petitioners assaulted the defacto complainant and injured and also threatened and abused in filthy language. Therefore, a case has been registered in Crime No.122 of 2022, for the offences under Sections 294(b), 323, 324 and 506(ii) I.P.C. After investigation, charge sheet has been filed before the Judicial Magistrate Court, Sankarankovil and the same was taken on file in C.C.No.230 of 2022. Now, the case is posted for appearance of the petitioners on 18.10.2022. He further submitted that the defacto complainant sustained injuries and witness No.9 viz., Dr.Devi Prapakalyani was examined and gave Wound Certificate. In these circumstances, it is improper to quash the criminal proceedings before the commencement of trial and the case has to be conducted for proper adjudication and found out the truthfulness. Therefore, he pleaded to dismiss the 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.

(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



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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 counsel.

6. Perusal of the records would reveal that the petitioners are the accused in this case. The case has been registered in Crime No.122 of 2022 for the offences under Sections 294(b), 323, 324 and 506 (ii) I.P.C. After



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investigation, final report has been filed and the same was taken on file as C.C.No.230 of 2022 on the file of the Judicial Magistrate, Sankarankovil.

The case has been registered based on the complaint given by the complainant viz., Chithiravelu. According to him, the petitioners assaulted him on 14.03.2022 at about 08.00 a.m. There was a previous enmity with regard to the use of the pathway between the defacto complainant and the first petitioner herein. The petitioners alleged to have gone to the gardens and attacked the defacto complainant and also threatened him with dire consequences and caused injuries. He was treated by witness No.9 viz., Dr.Devi Prapakalyani who was examined and she gave Wound Certificate. After investigation, the respondent police filed charge sheet.

7. A 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 its face value. It could not be said that the prosecution would amount to an abuse of process of the Court. Invoking inherent powers of this Court, prior to the commencement of trial and letting evidence, to quash the proceedings is not desirable. Power should be exercised only in exceptional cases. Hence, I find no merit in this Criminal Original Petition.



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8. However, the learned counsel appearing for the petitioners submitted that the first petitioner is aged about 65 years and the third petitioner is a physically handicapped person and the personal appearance of the petitioners 1 and 3 before the trial Court may be dispensed with.

9. I have considered the submission of the learned counsel for the petitioners that, the first petitioner is aged about 65 years and the third petitioner is the physically handicapped person. Hence, the personal appearance of the petitioners 1 and 3 before the trial Court is hereby, dispensed with, with a condition that the petitioners 1 and 3 petitioners shall appear before the trial Court, whenever required for further proceedings.

10. Accordingly, this Criminal Original Petition stands dismissed. Consequently, the connected Miscellaneous Petitions are closed.

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Internet: Yes./No
Index: Yes/no
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To

1. The Judicial Magistrate Court,
Sankarankovil.
2. The Inspector of Police,
Karivalamvanthanallur Police Station,
Tenkasi District.
- 23 The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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V.SIVAGNANAM, J.

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ORDER IN
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