



**Crl.O.P.(MD) No.14250 of 2022**

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**DATED: 10.08.2022**

**CORAM**

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

**CRL.O.P (MD) No.14250 of 2022**

**and**

**CrI.M.P(MD) Nos.9185 & 9187 of 2022**

1. Anish

2. Ajin

... Petitioners/Accused No.4 & 5

Vs

1. The State of Tamil Nadu  
Represented by  
The Inspector of Police,  
Thuckalay Police Station,  
Kanyakumari District.  
Crime No.259 of 2017

... 1<sup>st</sup> Respondent/Complainant

2. Shoba

... 2<sup>nd</sup> Respondent/ Defacto Complainant

**PRAYER:** Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records in connection with the charge sheet in C.C.No.97 of 2019, on the file of the learned Judicial Magistrate, Padmanabhapuram and quash the same.



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For Petitioners : Mr.S.Ramakrishnan

For R1 : Mr.E.Anotny Sahaya Prabahar

## **ORDER**

This Criminal Original Petition has been filed seeking to quash the charge sheet in C.C.No.97 of 2019, on the file of the learned Judicial Magistrate, Padmanabhapuram.

2. The case of the prosecution is that the second respondent lodged a complaint against the petitioners before the first respondent police on 09.05.2017. Based on the complaint, FIR was registered against the petitioners and three others in Crime No. 259 of 2017, for the offences punishable under Sections 147, 341, 294(b), 323, 506(i) I.P.C and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002. After completion of investigation, a final report has been filed by the first respondent before the learned Judicial Magistrate, Padmanabhapuram in C.C.No.97 of 2019 for the offences punishable under Sections 147, 294(b), 323, 341 & 506(i) I.P.C., and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002.



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3. The learned counsel for the petitioners submitted that the petitioners are Accused Nos 4 and 5 in this case. There is no specific allegation as against these petitioners. Therefore, continuing the criminal proceedings in C.C.No.97 of 2019 is of no use and hence, he seeks to quash the proceedings, by filing this Criminal Original Petition.

4. The learned Additional Public Prosecutor appearing for the first respondent submitted that, there is no specific allegation against these petitioners. The Doctor – PW.6 gave a oral statement with regard to the injury sustained by the defacto complainant. In these circumstances, before the commencement of trial, it is not proper to initiate the criminal proceedings as against the petitioners.

5.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.

6. I have considered the submission made by the learned counsel on either side.

7. On perusal of the records it reveals that the petitioners are the accused No.4 and 5 in CC.No.97 of 2019, on the file of the learned Judicial Magistrate, Padmanabhapuram. The allegation as against the petitioners is



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that on 08.05.2017, at about 04.30 p.m., when the defacto complainant and the family members walked in the disputed pathway, the petitioners along with other accused assaulted them and caused simple injuries. In these circumstances, the *prima facie* case is made out. The factual defence cannot be considered at this stage. The allegation against the petitioners has to be decided by letting evidence before the trial Court.

8. 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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9. Accordingly, this Criminal Original Petition stands dismissed.

Consequently, connected Miscellaneous Petitions are closed.

Internet:Yes./No

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Index:Yes/no

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To

1. The Judicial Magistrate,  
Padmanabhapuram.
2. The Inspector of Police,  
Thuckalay Police Station,  
Kanyakumari District.



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**V.SIVAGNANAM, J.**

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ORDER IN  
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