



CrI.O.P.(MD) No.14995 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.08.2022

CORAM:

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

CrI.O.P.(MD) No.14995 of 2022

and

CrI.M.P(MD) Nos.9781 and 9782 of 2022

Muthukumar

.....Petitioner

.vs.

1. The Inspector of Police
Devakottai Taluk Police Station
Devakottai, Sivagangai District

2. Arjunan

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying this Court to call for the records pertaining to the case in CC No.110 of 2022 on the file of the learned Judicial Magistrate, Devakottai, Sivagangai District and quash the same as illegal in so far the petitioner/A4 concerned.

For Petitioner : Mr.L.Chandrasekaran

For Respondent : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor



Crl.O.P.(MD) No.14995 of 2022

ORDER

WEB COPY This criminal original petition has been filed seeking to quash the charge sheet in CC No.110 of 2022 on the file of the learned Judicial Magistrate, Devakottai, Sivagangai District

2.The learned counsel for the petitioner submitted that the petitioner is the fourth accused in this case. According to the statement of the complainant and injured persons it is stated that that four persons assaulted with hands and legs and specify one othe accused Karnan. Further other witnesses not specifically stated anything about the petitioner/accused. Apart from that the petitioner is the handicapped persons and he is not present at the time of occurrence he is not involved in the crime as stated by the complainant, being a false case, he pleaded to quash the same.

3. The learned Additional Public Prosecutor would submit that after taking cognizance the case stands posted for appearance of accused on 16.09.2022



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.



WEB COPY



Crl.O.P.(MD) No.14995 of 2022

(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.



CrI.O.P.(MD) No.14995 of 2022

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

6. Perusal of the record reveals the fact that the petitioner is the fourth accused in the case in CC No.110 of 2022 on the file of the learned Judicial Magistrate, Devakottai, Sivagangai District. The respondent police prosecuted the petitioner along with other three accused persons for having committed the offence punishable under Sections 147,294(b),323,506(ii) of IPC. The contention of the petitioner that the petitioner/fourth accused is a handicapped person not present during the time of alleged occurrence and he was preparing for the examination and also he denied the presence of the petitioner/accused at the place of occurrence. Further the involvement of the petitioner is also denied. The factual denial of the petitioner at the time of occurrence has to be tested before the trial Court by letting in prosecution witnesses. *Prima facie* injured witnesses and other witnesses gave statement to the police that this petitioner along with others assaulted the complainant and another injured persons was also treated by witness no.9 Venkatesh Government hospital Doctor. Under these circumstances, the presence of the petitioner as well as the involvement has to be tested after commencement of



Crl.O.P.(MD) No.14995 of 2022

trial after letting in prosecution witness. Before commencement of examination of witnesses, it is not proper to quash the proceedings pending against the petitioner. Further it does satisfy the parameter laid down by the Hon'ble Supreme Court in the case of ***Neeharika Infrastructure Pvt Ltd vs. State of Maharastra and Others*** reported in ***2021 SCC Online SC 315*** and another case in ***State of Haryana vs.Ch.Bhajan Lal (AIR) 1992 SC 604*** .

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

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

11.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.



Crl.O.P.(MD) No.14995 of 2022

12. Consequently, the connected miscellaneous petition in Crl.M.P(MD)

No.9781 of 2022 stands dismissed and Crl.M.P(MD) No.9782 of 2022 stands allowed.

23.08.2022

Internet: Yes

Index: Yes/No

Speaking/Non speaking order

aav

To

1. The Judicial Magistrate, Devakottai, Sivagangai District
2. The Inspector of Police
Devakottai Taluk Police Station
Devakottai, Sivagangai District
3. The Additional Public Prosecutor
Madurai Bench of Madras High Court.
Madurai



WEB COPY



Crl.O.P.(MD) No.14995 of 2022

V.SIVAGNANAM, J.

aav

Crl.O.P.(MD) No.14995 of 2022

23.08.2022