



Crl.O.P.No.17535 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

Crl.O.P.No.17535 of 2021

and

Crl.M.P.Nos.9634 & 9635 of 2021

1. T. D. Birapavathi
2. T. D. Thathaji
3. T. D. Soniya
4. T. D. Banu

...Petitioners / A5 to A8

-Vs-

- 1.The State Rep. by,
Inspector of Police,
District Crime Branch,
Thiruvallur District.

... 1st Respondent / Complainant

- 2.Mathiyazhagan

... 2nd Respondent / Defacto Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records relating to the proceedings in C.C.No.63 of 2018 pending on the file of the Judicial Magistrate Court, Thiruthani and to quash the same.

For Petitioners

: Mr. A. Saravanan



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For R1

: Mr. A. Damodaran,
Addl. Public Prosecutor

For R2

: No appearance

ORDER

This Criminal Original Petition has been filed seeking to quash the proceeding in C.C.No.63 of 2018 on the file of the Judicial Magistrate Court, Thiruthani.

2. The case of the prosecution is that A1 in this case, one T.D.Naidu was the Founder and Managing Trustee of the DD Medical and Educational Trust and without obtaining proper permission from the Government, he had started a medical college and collected huge amount of fees from various students and cheated the students. The petitioners herein are his wife and children who have shared the common intention and they have also threatened the students.

3.The learned counsel for the petitioners submitted that the petitioners are arrayed as A5 to A8 and they are facing trial for the offences under Sections 406, 420, 294(b), 506(i) of IPC, r/w Section 34



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of IPC in C.C.No.63 of 2018 on the file of the learned Judicial Magistrate, Thiruthani. He further submitted that the first petitioner(A5) is the wife of the Managing Trustee (A1) and the alleged occurrence had taken place during the year 2011 and 2012, at that time, the petitioners 2 (A6) and 3 (A7) were minors and they were unnecessarily implicated in this case and the petitioners who happen to be the members of the Trust, have not signed any document or made any representation to the students or they have taken charge or colluded with A1 in the offence. He further submitted that the entire materials collected by the prosecution do not show any involvement of the petitioners in the alleged transaction or admission of the students for the year 2011-2012 and the final report is nothing but an abuse of process of law.

4. The learned Additional Public Prosecutor appearing for the first respondent submitted that the petitioners are the family members and members of one T.D.Naidu Trust and they have joined along with the Managing Trustee (A1) and had cheated several students and also spoiled their future. He further submitted that they have also actively aided and abetted the main accused in this case. There are materials against A1 and fairly submitted that there are no materials against the petitioners (A5 to



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5. This Court finds that the 1st accused and the petitioners have been prosecuted and many final reports have been filed against them based on individual complaints received from the students. The prosecution against the petitioners were quashed by this Court in similar final reports in Crl.O.P.Nos.9177 & 8442 of 2022 dated 28.06.2022 and in Crl.O.P.Nos.19766 and 19776 of 2022 dated 24.08.2022. This Court had made the following observations in the above orders:

*“5. No doubt when the final report is filed, the Court will not normally exercise its power under Section 482 of Cr.P.C by appreciating the probative value of the statements or evidence collected by the prosecution and at the same time when the entire Final Report is taken on its face value do not constitute any offence against the petitioners, continuing the prosecution against the petitioners is nothing but waste of time and a futile exercise. In **1992 SUPP (1) SUPREME COURT CASES – 335 STATE OF HARYANA AND OTHERS Vs. BHAJAN LAL AND OTHERS**, the Hon'ble*



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Apex Court has set out the following guidelines for quashing the complaint.

(1) Where the allegations made in the first information report or 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 a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.



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(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for



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the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

6. Considering the above submissions and all the materials available on record, except stating that these petitioners are members of the Trust, no other material is available on record attributing any contact of the petitioners or attribute any involvement of the petitioners in running the medical college. Such view of the matter, merely because they are family members of A1, they cannot be forced to undergo the ordeal of trial. The pendency of the proceedings against the petitioners is clearly an abuse of process of Court and it requires interference of this Court under Section 482 of Cr.P.C.



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6.The above observations squarely apply to the facts of this case.

7. Accordingly the proceedings in C.C.No.63 2018 pending on the file of the learned Judicial Magistrate, Thiruthani is hereby quashed in so far as the petitioners (A5 to A8) are concerned and the Criminal Original Petitions is allowed. The Trial Court shall proceed as against the remaining accused in accordance with law. Consequently the connected Criminal Miscellaneous Petitions are also closed.

09.06.2023

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Index : Yes/No

Speaking order : Yes / No

Neutral Citation : Yes / No



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To,

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- 1.The Inspector of Police,
District Crime Branch,
Thiruvallur District.
- 2.The Judicial Magistrate, Thiruthani.
- 3.The Public Prosecutor,
High Court of Madras.

SUNDER MOHAN,J.



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