



CrI.O.P.Nos.20867, 20869 & 20871 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.11.2023

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.O.P.Nos.20867, 20869 & 20871 of 2023

1. Subash Chand Jain
2. Abhishek Jain

... Petitioners/Accused
in all cases

/versus/

The Tamil Nadu News Print and Paper Limited,
Represented by its Manager (Legal),
Mr.L.Sezhian,
No.67, Mount Road, Guindy,
Chennai – 600 032.

... Respondent/Complainant
in all cases

Prayer: Criminal Original Petitions are filed under Section 482 of Cr.P.C.,
pleaded to call for the records made in C.M.P.Nos.7286, 7283 & 7284 of 2023 in
C.C.Nos.4434, 1120 & 4432 of 2019 respectively, on the file of Metropolitan
Magistrate, FTC-III, Saidapet, Chennai – 45 and set aside the same and declare the
petitioner as unsound mind person under Section 329 of Cr.P.C, after accepting
the materials placed before the trial Court or examine the petitioner before medical
Board in New Delhi in any Government Hospital at New Delhi on humane
consideration and record a finding to that effect and postpone further proceedings
in C.C.No. of to secure the ends of justice.



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For Petitioners : Mr.R.Sankarasubbu
in all cases

For Respondent : Mr.Richardson Wilson
in all cases

ORDER

The petitioners herein are the accused for the alleged offence under Section 138 N.I Act proceedings pending on the file of Metropolitan Magistrate, FTC-III, Saidapet. The 1st petitioner has taken out an application under Section 329 of Cr.P.C., to declare him as a person of unsound mind as he is incapable of understanding the proceedings of the Court and therefore, appropriate order been passed subjecting him to medical examination by Board of Doctors.

2. The trial Court, after hearing both sides had found that the case is pending since 2019. The accused has filed six medical reports starting from the year 2017 to 2023 to support his plea that the petitioner is not of sound mind and suffering from dementia. The said contention is vehemently opposed by the Learned Counsel appearing for the respondent/complainant stating that the petitioner is running several Educational Institutes, he owe more than Rs.6 crores to the complainant firm and not co-operating with the trial since 2019 and the



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present petition is filed even without presenting himself before the Magistrate in person for the Magistrate to assess the mental health condition of the petitioner and proceed on his application under Section 329 of Cr.P.C. In such circumstances, the Learned Magistrate has rightly held that, to determine the mental faculty of the accused, whether he is capable of defend himself, he shall have to be assessed by the Court and for the said purpose, examination of the person is necessary. It being a mandate under the Statute merely by referring to medical papers and certificates of Medical Board, a Court cannot pass order either discharging the accused or postponing the trial. He has also referred the medical report of the year 2016 and recorded the fact that the petitioner was present before the Court on 12.02.2001 and answered the questioning under Section 251 Cr.P.C., had passed an interim order directing the petitioner to appear before him on 31.07.2023, to assess about his soundness of mind.

3. The said order is under challenge on the ground that the voluminous medical report produced clearly show the mental incapacity of the accused and therefore, the trial Court ought not to have forced the accused to appear in person before him.



4. The Learned Counsel appearing for the complainant/respondent by producing certain photographs of the accused participating in the College Functions and Prize Distribution Ceremony submitted that the petitioner may be not having good health but claiming that, he is unsound mind and suffering from dementia is far from truth.

5. It is a case where physical and mental condition of a person has to be tested by Competent Court and decide whether to proceed further or stop the proceedings in view of the mental condition of the accused. For the said purpose, the Court which tries the accused should be satisfied about the unsound mind of a person and to arrive at such satisfaction his presence and examination by expert has to be done. The petitioner if capable of moving, he may personally appear before the Court and subject himself for examination by the Magistrate and subsequently by the Medical Board. In case, if the petitioner is really incapable of moving and cannot be present before the Court, he must approach the trial Court to explain the difficulty and seek for alternate arrangement for his examination both physically and mentally. Therefore, the petitioner herein is directed to either appear before the Magistrate or in case, if he is not able to physically move around



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and advised not to move, then with appropriate medical certificates shall make request for examining him by experts preferably attached to Government Institution. On such application, the Learned Magistrate shall pass appropriate order.

6. The Learned Counsel appearing for the petitioner states that the petitioner is presently stationed at New Delhi. In such circumstances, the petitioner shall seek for an appointment of Advocate Commissioner to go over to Delhi and record the observation about the petitioners and physical and mental condition. If examination by Medical Board is required, he may assist the Court by overseeing the examination of the petitioner by the Board report. The entire expense for Commissioner and other medical Board shall be borne by the accused herein.

7. With the above observation, these ***Criminal Original Petitions are disposed of.***

07.11.2023



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Index :Yes/No.

Internet :Yes/No.

Speaking Order/Non-Speaking Order
bsm

Copy to:-

1. The Metropolitan Magistrate, FTC-III, Saidapet, Chennai – 45.



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DR.G.JAYACHANDRAN, J.

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