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CrI.O.P.No.28309 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2023

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.28309 of 2022 and
CrI.M.P.No.17408 of 2022

Dr.S.Kumar

... Petitioner

Vs.

1.State Rep By

The Inspector of Police,
Kalapet Police Station,
Muthialpet Cricle,
Puducherry.

2.CheckAshik

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the final report in PRC No-29/2021 pending trial before the Learned Judicial Magistrate-II, Puducherry.

For Petitioner	:	Mr.G.Saravanabhavan
For R1	:	Mr.K.S.Mohandass, Public Prosecutor, Puducherry
For R2	:	Mr.R.V.Preethan Balajee

ORDER

This Criminal Original Petition has been filed to quash the proceedings in P.R.C.No.29 of 2021 pending on the file of the Judicial



Magistrate Court No.II, Puducherry.

2.Learned counsel for the petitioner submitted that the petitioner has been arrayed as A1 on the charge of conspiracy. The case emanates from securing A2 and thereafter, it is projected as though A2 had disclosed the name of the petitioner and about the case. The petitioner has got nothing to do with the above crime. In this case, there is no admissible evidence both oral and document to link the petitioner to the above offence. Further, it is projected that the petitioner had some doubt over the 2nd respondent/defacto complainant about his relationship with the petitioner's wife. As a result, the petitioner is said to have conspired with the other accused and engaged them to attack the 2nd respondent and his family. Learned counsel further submitted that in this case, none of the witnesses have identified the petitioner and no Test Identification Parade has been conducted during investigation. The petitioner is a reputed Doctor in Kalapet Area, Puducherry. In order to tarnish his image, the above case has been filed against him. Due to the pendency of the above case, his reputation and profession has been greatly affected. Without any semblance of evidence, the petitioner has been forced to



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undergo the ordeal of trial. Hence, he prayed for quashing the proceedings.

3.Learned Public Prosecutor, Puducherry strongly opposed this petition and submitted that the 2nd respondent's uncle Zaffrullah was severely injured on the assault of the assailants. The petitioner, who is A1, had conspired with the other accused and engaged them to attack the 2nd respondent and his family. The conspiracy is normally hatched in secrecy and dark, hence, there might not be any direct evidence. The charge of conspiracy can be proved through direct evidence and by inference from the circumstances of the case, which is necessarily to be decided only during trial and not in this Quash Petition. Hence, he prayed for dismissal.

4.Learned counsel for the 2nd respondent submitted that the 2nd respondent's uncle Zaffrullah was assaulted by the assailants engaged by the petitioner/A1. The points raised by the petitioner are disputed facts, which has to be necessarily decided only during trial, not in this Quash Petition and strongly opposed the same.



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5.This Court considered the rival submissions and perused the materials available on record.

6.At this stage, learned counsel for the petitioner sought permission of this Court to withdraw this Criminal Original Petition and made an endorsement to that effect.

7.In view of the endorsement made by the learned counsel for the petitioner, this Criminal Original Petition is dismissed as withdrawn.

8.The petitioner is given liberty to raise all the points during trial. The observations made herein are submissions and not the merits of the case. The trial Court to independently decide the case on its own merits in accordance with law on the evidence and materials available during trial.

9.The plea of the petitioner is that the petitioner is a reputed and well known Doctor in Kalapet Area, Puducherry, hence, the petitioner's appearance before the trial Court not only causes embarrassment, it will



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also hinder his profession. The petitioner undertakes to appear before the committal Court as well as trial Court on the hearing dates and as and when his presence is absolutely necessary and on the dates directed to appear. Hence, he may be permitted to appear through his counsel. The petitioner further undertakes that he will not dispute his identity during trial.

10.Since the main Criminal Original Petition is dismissed as withdrawn, this Court gives liberty to the petitioner to file appropriate petition before the Committal Court as well before the trial Court seeking dispense with personal appearance. The concerned Court to consider the petition positively considering the petitioner's profession. Consequently, the connected Miscellaneous Petition is closed.

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Index: Yes/No
Internet: Yes/No
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M.NIRMAL KUMAR, J.

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To

- 1.The Judicial Magistrate Court No.II,
Puducherry.
- 2.The Inspector of Police,
Kalapet Police Station,
Muthialpet Cicle,
Puducherry.
- 3.The Public Prosecutor,
High Court, Madras.

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