



Crl.O.P.(MD)No.3823 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2023

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.3823 of 2023
and Crl.M.P.(MD)Nos.3396 & 3397 of 2023

Jamal Anish Fathima

... Petitioner

Vs.

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

2.Saran

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records relating to the charge sheet filed in C.C.No.829 of 2022 on the file of the learned Judicial Magistrate No.II, Virudhunagar and quash the same.

For Petitioner : Mr.K.Paramaraj

For R1 : Mr.R.Sivakumar,
Government Advocate (Crl. Side)



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ORDER

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This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records relating to the charge sheet filed in C.C.No.829 of 2022 on the file of the learned Judicial Magistrate No.II, Virudhunagar and quash the same.

2.The petitioner is the sixth accused in C.C.No.829 of 2022 on the file of the Judicial Magistrate No.II, Virudhunagar.

3.The case of the prosecution is that the father of the petitioner served as Head Clerk and misappropriated a sum of Rs.28.10 Lakhs, which was meant for compensation awarded to the victim of the road accident as well as the legal heirs of the deceased persons and the same was transferred to the account of the petitioner herein.

4.On the basis of the complaint lodged by the second respondent, FIR came to be registered in Crime No.21 of 2021 against the petitioner for the alleged offences under Sections 120(B), 408, 420 IPC. After investigation the respondent police filed a final report and the same was taken cognizance in C.C.No.829 of 2022.



5.The main contention of the petitioner is that the petitioner was not having any knowledge about the nature of the amount. It is the specific charge against the petitioner that MCOP amount available in the Court deposit was transferred by the first accused, who is the father of the petitioner, to the petitioner's account and thereafter, withdrawn the amount through cheque.

6.The learned counsel for the petitioner has raised grounds that there are lot of contradictions in the FIR as well as in the final report, that there was no specific allegations made against the petitioner and that the petitioner is no way connected to the crime alleged by the defacto complainant. As rightly contended by the learned Government Advocate(Crl.side), these aspects cannot be gone into now and the same are matter for trial.

7.The Hon'ble Supreme Court in the case of ***State of Haryana and others Vs. Bhajan Lal and others*** reported in ***1992 SCC (Cri) 426*** has enumerated 7 categories of cases, where the power can be exercised under Section 482 of Code of Criminal Procedure and the same are extracted hereunder:-



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“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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 F.I.R. 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;

(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 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.”

8.In ***Dr.Dhruvaram Murlidhar Sonar Vs. The State of Maharashtra and others*** reported in **2019 (18) SCC 191**, the Hon'ble Apex Court has specifically held that exercise of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule. It is settled law that the inherent jurisdiction under Section 482 Cr.P.C. is wide but at the same time, the same is to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself.

9.The Hon'ble Supreme Court in ***Kaptan Singh Vs. The State of Uttar Pradesh and others*** reported in **2021 (3) Crimes 247** has stated that, that Court in catena of decisions has observed that the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate



jurisdiction and/or conducting the trial and that question is required to be examined keeping in view, the contents of FIR and *prima facie* materials, if any, requiring no proof and at such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and materials relied on.

10.It is pertinent to note that if the petition under Section 482 Cr.P.C. was filed at the stage of charge sheet, the allegations in the charge sheet only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered.

11.In the case on hand, as rightly contended by the learned Government Advocate (Criminal Side), a cursory perusal of the charge sheet and the statements filed along with final report makes out a *prima facie* case against the accused and it is a matter for trial and as such, the question of quashing the charge sheet at this stage does not arise at all. Hence, this Court concludes that this is not a fit case to invoke Section 482 Cr.P.C., for quashing the charge sheet at this stage and the same is liable to be dismissed.



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11.In the result, this Criminal Original Petition stands dismissed. Consequently, connected Miscellaneous Petition in Crl.M.P.(MD)No. 3396 of 2023 is closed.

12.Considering the facts and circumstances, Crl.M.P.(MD)No. 3397 of 2023 is ordered and the personal appearance of the petitioner before the trial Court is ordered to be dispensed with, on conditions that she shall appear at the time of initial questioning, proceedings under Section 313 of Cr.P.C., and at the time of passing judgment and on all the hearings, specifically directed by the trial court. The petitioner is further directed to give an undertaking in the form of affidavit that she will be duly represented by a counsel on all hearing dates and that the Counsel representing her will cross examine the prosecution witnesses on the same day they are examined in chief. The petitioner shall not dispute the identity of the witnesses. The petitioner shall appear before the Court in the event her presence is insisted by the trial judge for the purpose of identification. If the petitioner adopts any dilatorial tactics, it is open to the Trial Court to insist for her appearance and deal with the



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petitioner in accordance with the judgment of Supreme Court of India, *in*

State of Uttar Pradesh Vs. Shambunath Singh, reported in *2001 (4)*

SCC 667.

02.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1.The Judicial Magistrate No.II,
Virudhunagar.

2.The Inspector of Police,
District Crime Branch,
Virudhunagar District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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