



Crl.O.P.(MD)No.2426 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.02.2023

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THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.2426 of 2023

and

Crl.M.P.(MD)Nos.2182 and 2183 of 2023

Thilagavathi

... Petitioner

Vs.

1.State represented by
The Inspector of Police,
Paramakudi Taluk Police Station,
Ramanathapuram District.
(Crime No.57 of 2019)

2.Nagarathnam

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the case registered in impugned charge sheet in S.C.No.228 of 2022 on the file of the learned Additional District Judge (FTC), Paramakudi, Ramanathapuram District in connection with Crime No.57 of 2019 on the file of the first respondent police and quash the same as illegal.

For Petitioner : Mr.B.Arun

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



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ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records pertaining to the charge sheet in S.C.No.228 of 2022 on the file of the learned Additional District Judge (FTC), Paramakudi, Ramanathapuram District in connection with Crime No.57 of 2019 on the file of the first respondent police and quash the same as illegal.

2. After investigation, charge sheet came to be filed for the offences under Sections 147, 148, 342, 294(b), 323 and 307 IPC and the case was taken on file in S.C.No.228 of 2022 against 6 accused including the petitioner and the same is pending on the file of the Additional District Court (FTC), Paramakudi.

3. The petitioner is the fourth accused in S.C.No.228 of 2022 on the file of the learned Additional District Judge (FTC), Paramakudi, Ramanathapuram District and is charged for the offences under Sections 147, 148, 342, 294(b) and 323 IPC.



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4. The case of the prosecution is that the second accused , who is the wife of one Sivakumar, and the fourth accused, who is the wife of one Raja, are the daughter-in-laws of the defacto complainant, that due to some misunderstanding, the second accused and the defacto complainant's son Sivakumar are living separately, that there existed family dispute between the parties and that on 24.04.2019 at about 10.30 a.m., the first accused had attacked the said Sivakumar by using aruval and the accused 2 to 5 had also attacked the said Sivakumar and abused him in filthy language.

5. The main contention of the petitioner is that there is no specific overt act alleged against the petitioner in the charge sheet. But, as rightly pointed out by the learned Government Advocate (Criminal Side), in the FIR as well as in the statement of the defacto complainant under Section 161(3) Cr.P.C. and the consequence charge sheet filed, there is a specific overt act alleged to have been done by the petitioner/fourth accused.

6. 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***



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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:-

“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.”

7. 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.



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8. 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.

9. A cursory perusal of the charge sheet and the statements filed along with the charge sheet, makes out a *prima facie* case against the accused and the contentions now raised by the petitioner cannot be gone into at this stage and the same are matter for trial. Hence, this Court is not inclined to quash the charge sheet in S.C.No.228 of 2022 pending on the file of the Additional District Judge (FTC), Paramakudi, Ramanathapuram District, against the petitioner herein.



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10. In the result, this Criminal Original Petition stands dismissed.

Consequently, connected Miscellaneous Petition in Crl.M.P.(MD)No. 2182 of 2023 is closed.

11. Considering the facts and circumstances, the petition in Crl.M.P.(MD)No.2183 of 2023 is allowed 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 petitioner in accordance with the judgment of Supreme



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Court of India, *in State of Uttar Pradesh Vs. Shambunath Singh*,

reported in *2001 (4) SCC 667*.

09.02.2023

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

1. The Inspector of Police,
Paramakudi Taluk Police Station,
Ramanathapuram District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

csn

Order made in
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