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Crl.O.P.(MD).No5504 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :18.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

Crl.O.P.(MD).No5504 of 2021

and

Crl.M.P(MD) Nos.3157 and 3159 of 2021

Pothigasalam

... Petitioner

Vs.

1. The Inspector of Police
Puliyarai Police Station,
Tirunelveli District

2.Vincent Anbarasi
The Sub Inspector of Police
Puliyarai Police Station,
Tirunelveli District

..Respondents

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the case in S.C. No.164 of 2021 on the file of the Sub Court, Tenkasi and quash the same.

For Petitioner : Mr.S.Ramasamy

For R-1 : Mr.M.Sakthi Kumar
Government Advocate(Crl.Side)

ORDER

This Criminal Original Petition has been filed to quash the charge sheet in S.C. No.164 of 2021 on the file of the Sub Court, Tenkasi.



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2. According to the petitioner the respondent registered First Information Report as against this petitioner and others in Crime No.227 of 2017 for the offence under Sections 120(B) and 399 of IPC. After completing investigation the first respondent filed final report before the learned Judicial Magistrate, Shenkottai and subsequently the case was committed to the Court of Sessions, Tirunelveli and the same was made over the Assistant Sessions Court, Tenkasi and the same was pending in S.C.No.164 of 2021.

3. The case of the prosecution is that the second respondent has given complaint before the first respondent stating that on 14.10.2017 at about 3.00 pm., when she was in patrol duty to prevent the commission of crime at that time the petitioner along with other accused at cremation shed conspired together and they are preparing to commit dacoity at Co-operative Society, Gopalapuram, Tirunelveli District. This petitioner along with other accused are having aruval in their hand and during dacoity if any person came to the spot they decided to murder them. Immediately she arrested the petitioner along with other accused seized aruval, chilli pockets, two iron rods and three monkey caps and also seized two wheeler which was parked near the occurrence place. Infact the petitioner is working in the Highway Department and he has no connection with the other accused and the petitioner while laying road



the respondent police asked them to lay road in front of the police station but the same was not obliged for which a false case has been filed as against the petitioner . The petitioner also filed a quash petition before this Court in Crl.O.P(MD) No.8770 of 2019 and the same was dismissed a withdrawn on 24.06.2019. There are no materials available as against this petitioner and hence the charge sheet is liable to be quashed.

4. No counter was filed by the respondents.

5. The learned counsel for the petitioner would contend that the petitioner is working as a road worker in Highways Department and he was not connected with the above said crime. The respondent police have filed a false case complaint against the petitioner alleging that the petitioner along with other accused made preparation to commit dacoity in the Co-operative Society, Gopalapuram, Tirunelveli District. Further on the date of occurrence the petitioner was not present in the scene of occurrence and also he is no way connected with the above said crime. The first respondent without conducting proper investigation filed final report and the same was taken on file and then committed to the Court of Sessions and now the case is pending in S.C. No.164 of 2021 on the file of the Sub Court, Tenkasi. The act of the first respondent is clear abuse of process of law and thereby the charge sheet against the petitioner is liable to be quashed.



6. The learned Government Advocate(Crl.Side) appearing for the respondent would contend that when the second respondent was in patrol duty to prevent the commission of crime at that time the petitioner along with other accused at cremation shed conspired together and they are preparing to commit dacoity at Co-operative Society, Gopalapuram, Tirunelveli District. They have aruval, chilli powder and iron rod and thereby she arrested all the persons and then registered the First Information Report and filed final report and as per the final report *prima facie* materials are available and hence the case was taken on file and now the case is pending before the Sub Court, Tenkasi for examination of witnesses.

7. Heard both sides and perused the materials available on record.

8. On perusal of the records, it is observed that the first respondent registered First Information Report as against this petitioner and others in Crime No.227 of 2017 for the offence under Sections 120(B) and 399 of IPC. After completing investigation the first respondent filed final report before the learned Judicial Magistrate, Shenkottai and subsequently the case was committed to the Court of Sessions, Tirunelveli and the same was made over the Sub Court, Tenkasi and the same is pending in S.C.No.164 of 2021.



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9. The contention of the petitioner is that he has been falsely implicated in this case and he is a road worker and working in High Ways Department, Government of Tamil Nadu. When they are laying road in front of the police station the first respondent asked to lay road upto police station but the same was not agreed by the petitioner, thereby wordy quarrel arose between the petitioner and the police. After that only the first respondent filed false case as against the petitioner. Further the petitioner also produced the copy of the identity card. On perusal of the same, it reveals that the petitioner is working in the Highways Department. The further contention of the petitioner is that he is no way connected with the co-accused and the alleged occurrence. On perusal of the complaint and charge sheet it reveals that there are general and omnibus allegations and the petitioner has no previous case and no specific overt act attributed as against this petitioner. Based on the above said general and omnibus allegations the charge sheet has been filed in this case. The Sub Inspector of Police is the complainant in this case and the contention of the petitioner is that the already there is a dispute between them with regard to the laying of road and no any material to prove the above said contention. However lodging of complaint itself shows the intention of the defacto complainant. The allegation in the complaint with regard to the preparation to commit dacoity is not sufficient to constitute any offence under Sections 399 and



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120(B) of IPC and therefore the charge against the petitioner in S.C. No. 164 of 2021 is liable to be quashed

10. Accordingly this Criminal Original Petition is allowed and the proceedings in S.C. No.164 of 2021 on the file of the Sub Court, Tenkasi. is hereby quashed in so far as the petitioner is concerned. Consequently connected miscellaneous petitions are closed.

18.08.2023

Index : Yes / No
Internet : Yes / No
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To

1. The Sub Court, Tenkasi.
2. The Inspector of Police
Puliyarai Police Station,
Tirunelveli District
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL, J.

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