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Crl.O.P.(MD).No.7978 of 2018 and 19077 of 2021

**Crl.O.P.(MD).Nos.7978 of 2018 and 19077 of 2021**

**K.K.RAMAKRISHNAN, J.**

This matter is listed today under the caption 'for being mentioned' at the instance of the learned counsel for the petitioners.

2. The learned counsel for the petitioners made a request that it is suffice that the observation rendered by this Court in the above Crl.O.Ps not to be taken into consideration by the trial Court during the course of the trial and also he seeks indulgence of this Court to grant the order of dispense with the appearance of the petitioners before the trial Court. The said submission is accepted.

3. This Court, considering the pendency of the case and also taking into consideration the age of the accused and their frequent cooperation to the trial Court before filing quash petition, this Court is inclined to grant the order of dispense with the appearance of the petitioners.

4. Hence, the Registry is directed to add the following paragraphs as **16.1 and 16.2** in the order dated 01.06.2023 and issue a fresh order copy.



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“**16.1.** The learned trial Judge shall independently appreciate the evidence and render justice without getting influenced by the above discussion which is meant only for deciding the above quash petitions.

**16.2.** Considering the facts and circumstances of the case, the personal appearance of the petitioners before the trial Court is ordered to be dispensed with, on conditions that they shall appear at the time of furnishing copies, at the time of committal and on the hearings, specifically directed by the trial court. The petitioners are further directed to give an undertaking in the form of affidavit that they will be duly represented by a counsel on all hearing dates. If the petitioners adopt any dilatorial tactics, it is open to the Trial Court to insist for their appearance and deal with the petitioners in accordance with the judgment of Supreme Court of India, *in State of Uttar Pradesh Vs. Shambunath Singh*, reported in *2001 (4) SCC 667.*”

**5.** The other portion of the order dated 01.06.2023 shall remain intact.

**08.06.2023**

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**K.K.RAMAKRISHNAN, J.**

PJL

CrI.O.P.(MD)Nos.7978 of 2018  
and 19077 of 2021

08.06.2023



Crl.O.P.(MD).No.7978 of 2018 and 19077 of 2021

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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Reserved on : 15.03.2023

Pronounced on : 01.06.2023

CORAM:

**THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN**

**Crl.O.P(MD)No.7978 of 2018 and 19077 of 2021  
and**

**Crl.M.P(MD)Nos.3642 of 2018 & 3643 of 2018 and  
10592 of 2021 & 10593 of 2021**

**Crl.O.P(MD)No.7978 of 2018:**

1.K.Subburam

2.S.J.Abiram Vikash

3.Ramakrishnan

4.V.P.Ramesh

5.Ravi @ Ravindran

6. Sankar

7.Alagarsamy

8.Sangili

9.Murugan

10.Pandiyan

.. Petitioners/A1 to A10

Vs.

P.Sivaram

.. Respondent/Complainant



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**PRAYER:** Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the entire records related to the private complaint made in C.C.No.55 of 2018 on the file of the learned Judicial Magistrate, Vadipatti, Madurai District and quash the same as against the petitioners as illegal.

For Petitioner : Mr.M.Jagadeesh Pandian

For Respondent : Mr.S.Chandrasekaran

**CrI.O.P(MD)No.19077 of 2021:**

S.Nirmala,  
Inspector of Police,  
Vadipatti Police Station,  
Madurai District.  
Now working as the Inspector of Police,  
Anti Child Trafficking Unit (ACTU),  
Virudhunagar.

.. Petitioner /A12

Vs.

P.Sivaram

.. Respondent/  
Complainant

**PRAYER:** Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the entire proceedings related to the



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private complaint made in C.C.No.55 of 2018 on the file of the learned Judicial Magistrate, Vadipatti, Madurai District and quash the same as against the petitioner as illegal.

For Petitioner : Mr.M.Jegadeesh Pandian

for Mr.B.Jeyakumar

For Respondent : Mr.S.Chandrasekaran

### **COMMON ORDER**

The respondent/complainant in both petitions has filed private complaint in C.C.No.55 of 2018 before the learned Judicial Magistrate, Vadipatti, Madurai District. The learned Judicial Magistrate by following procedure stated in the Code of Criminal Procedure, taken on file the complaint in C.C.No.55 of 2018 against the petitioners for the offences stated below and issue summons to the petitioners.

| SL. No. | Rank of the accused | Offences punishable under Sections              |
|---------|---------------------|-------------------------------------------------|
| 1       | A1, A2, A4          | 147, 294(b), 427, 447, 500 & 506(ii) r/w 34 IPC |



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|   |               |                                             |
|---|---------------|---------------------------------------------|
| 2 | A3, A5 to A10 | 147, 294(b), 427, 447 & 506(ii) r/w 34 IPC. |
| 3 | A12           | 166 IPC                                     |

The Accused Nos.1 to 10 in C.C.No.55 of 2018 on the file of the learned Judicial Magistrate, Vadipatti, Madurai District are the petitioners in CrI.O.P(MD)No.7978 of 2018. Accused No.12 in C.C.No.55 of 2018 on the file of the learned Judicial Magistrate, Vadipatti, Madurai District, is the petitioner in CrI.O.P(MD)No.19077 of 2021.

2. The respondent herein is the resident of the Ayyankottai village which was situated in the jurisdiction of the Vadipatti Police Station limit, Madurai District. The respondent is a practising advocate. In the village, there is a temple called “Sastha Iyyanar Thirukovil” in which various idols are installed. In the said temple, a big pond is also available. A1 is running a Hotel in the name and style of “Temple City” in Survey No.318/1B-2 to the extent of 9 cents in the northern side of the temple. A2 is the son of the first petitioner and the Managing Director of the said Hotel and the remaining petitioners are the workers in the said Hotel. The said hotel



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authorities made encroachment in the said “Sastha Ayyanar Thiurkovil” and they used the temple land as car parking and also caused damage to the temple land by using the same as passage of sewage water. So, the villagers along with the volunteers of the Tamilnadu Viswa Hindu Parisath including the respondent are jointly taking steps to recover the land from the custody of the said hotel authorities/petitioners. The respondent filed the writ petition before this Court in W.P(MD)No.17144 of 2017 on behalf of the villagers seeking mandamus to remove the encroachment by impleading the Hotel authorities. The said case was posted for hearing on 02.11.2017. After completion of the Court hearing on the said date, the Accused Nos.1 to 10 illegally trespassed into the northern side of the temple property and caused damages to the various trees planted there and on hearing the said illegal activity, the respondent and other village people went there and when they questioned the same, A1, A2 criminally intimidated the defacto complainant and directed A3 to A10 to drive out the respondent and other villagers forcibly and also making the defamatory statement. The third accused thrown stones towards the defacto complainant and the defacto complainant being scared away, he did not sustain injury. In continuance,



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the accused Nos.4 to 7 with Aruval, A8 to A10 with Iron rod traced and found the defacto complainant and driven out the defacto complainant and the villagers from the temple property. Hence, he made the complaint before the petitioner in Crl.O.P(MD)No.19077 of 2021, namely, A12 in the above case, but she did not take the complaint on file by colluding with A1 to A10 and refrain from registering the case against A1 to A10 for their alleged illegal activities as stated above. Hence, the petitioner sent a complaint to the Superintendent of Police and the Superintendent of Police also did not take any action and hence, he preferred the private complaint before the learned Judicial Magistrate, Vadipatti and the learned Magistrate, after recording the statement and following the procedure, taken cognizance in C.C.No.55 of 2018 and issued the summons to the petitioners for the above stated offence.

**3.** The petitioners in Crl.O.P(MD)No.7978/2018 made the following submissions:

Mr.Jagadeesh Pandian, learned counsel for the petitioner submitted that in the complaint, the petitioners narrated the events took place from



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2015 to 2017 and hence taking cognizance for the entire period is not in accordance with Section 218 Cr.P.C and thus, the learned Judicial Magistrate has committed serious error in taking the cognizance. The learned Judicial Magistrate without jurisdiction, has taken cognizance under Section 500 IPC against A1 and A2; he further submitted that there was no offence made out against the accused persons under Section 447 IPC and the petitioners are not the owner of the property and there was no apprehension of threat as required under Section 447 IPC and he further specifically raised a question regarding the *locus standi* of the defacto complainant, who is no way connected with the temple property either as a trustee or any authorised agent of the HR&CE Department of Tamilnadu. He further submitted that some of the accused are not residing within the jurisdiction of the learned Judicial Magistrate and hence, the issuance of process without complying Section 202 Cr.P.C, is not legally valid.

4. The learned counsel for the petitioner in CrI.O.P(MD)No.19077 of 2021 made the submission that the proceedings against her is not maintainable on the ground that the ingredients of the offence under Section



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166 IPC is not made out and also the learned Judicial Magistrate without getting sanction under Section 197 Cr.P.C., erroneously taken the cognizance.

5. Per contra, the learned counsel for the respondent/complainant submitted that the respondent is one of the villagers and he is continuously giving his participation to the maintenance of the temple and he is one of the member in the management committee of the temple and he is actively participated in Kumbabisekam conducted in the temple along with the villagers and he filed the writ petition to remove the encroachment made by the Hotel authorities on behalf of the villagers and hence, he is dutybound to protect the interest of the temple and temple is the non juristic person and as a worshipper of the temple, he filed the complaint about the damages caused by the Hotel authorities to the temple properties. Hence, the complaint is maintainable at the instance of the petitioners. Further, number of the witnesses also made the sworn statement endorsing the above incident.

6. The learned counsel for the complainant further submitted that by



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way of the events, the respondent disclosed the events that had taken place from the year 2015 to 2017 onwards and he confined the incident which took place on 02.11.2017. The learned trial Judge also taken cognizance only in respect to the 02.11.2017 incident. In the said circumstances, the argument of the learned counsel for the petitioners that the proceedings is against the provisions of Section 218 Cr.P.C cannot be taken as correct. He further submitted that the respondent and the villagers doing all the renovation work of the temple and fixed the boundary stone in all the four corners, more particularly, in the northern side of the Hotel authorities and also they had planted number of trees within the temple premises and the accused Nos.1 to 10 caused damages to the fencing stone and uprooted the trees and hence the offence under Section 447 IPC is made out. A1 and A2 made the defamatory statement by abusing the respondent using filthy language and by calling the respondent as 'Advocate dog' and hence the decision taken by the learned Judicial Magistrate by taking cognizance under Section 500 IPC against A1 and A2 is correct. The accused persons also attempted to cause injuries by throwing stones towards the defacto complainant by making criminal intimidation. So, the offence under Section



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506(ii) IPC also made out. The Accused No.12, who is the Inspector of Police, who is dutybound to receive the complaint and made enquiry as per the **Lalithakumari** case, was not even received the complaint and that amounts to the commission of the offence under Section 166 IPC and the learned trial Judge had correctly taken cognizance against all the accused and the jurisdiction of this Court to exercise its power under Section 482 Cr.P.C is very limited and the same may be sparingly used and no such situation arises in this case and all the submission made by the learned counsel for the petitioners is the disputed facts and the same required for proper adjudication after completion of the trial and hence, he seeks for dismissal of the quash petition. He made reliance upon the following judgments:

1. 2021(2) CTC 609 [PRP Granites rep., by the partner  
P.Palanichamy and others v. the Directorate of Enforcement  
rep. By its Assistant Director]
2. 2021(3)CTC157, M/s.Mahalakshmi Textile Mills Ltd., v.  
M.Peter & Others)
3. S.L.P.CrI.No.4931 of 2020, Skoda Auto Volkswagen India Pvt.



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Ltd., v. The State of Uttarpradesh and others.

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7.This Court has considered the rival submissions and also the relevant authorities cited by both sides.

**8.Locus standi of the respondent:**

8.1. The respondent is the native of the Ayyankottai village, where the temple is situated and he is the worshipper of the said temple. He and the villagers jointly conducted the 'Kumbabisekam' to the temple and they fixed the boundary stone to the temple property and on behalf of the villagers, he filed the writ petition before this Court to remove the encroachment made by the Hotel authorities. So, the allegation that the respondent has no *locus standi* to file the complaint for the alleged act of the illegality committed by the Hotel management, is viewed on the principle that the temple is not a juristic person and anybody can bring to the notice of the Court regarding any mischief committed in the temple properties, more particularly, when the temple authorities, namely, HR&CE authorities hand in glove with the encroacher and the troublemaker, namely, who



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caused damage to the temple property. So the respondent, upon receipt of the information regarding the removal of boundary stone and the trees in the temple property, he went there and when he was trying to prevent the said illegal activities, A1 to A10 committed the above illegal activities and hence they committed the offence as stated above. So, he preferred the private complaint, after the inaction on the part of A12. So, this Court *prima facie* satisfied that he is not preferred the complaint in the nature of wayfarers, interlopers or persons interested in fomenting the litigation. Once the A1 to A10 caused damage to the temple property, the offence against the property as enumerated in the Indian Penal Code is deemed to be committed. Since the temple is voiceless on the account of its ear and eyes are kept under the artificial ventilation by the inaction on the part of the HR&CE authorities, the respondent made a complaint to the learned Judicial Magistrate and the learned Magistrate has exercised *paren patrie* jurisdiction and the same was within the power. It is well settled principle that any person, *who are interested in protecting the temple property, in the interest of the temple, always entitled to file a suit for recovery of possession. Apart from that, the Court itself is duty bound to protect the*



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*interest of the temple over the property by exercising the parens patriae jurisdiction. The said mandate is on the basic concept that idol is not a juristic person. So, the Hon'ble Supreme Court in the case of **A.A.Gopalakrishnan v. Cochin Devaswom Board**, reported in **AIR 2007 SC 3162** held as follows:*

*"The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their trustees/archakas/shebaites/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the authorities concerned. Such acts of "fences eating the crops" should be dealt with sternly. The Government, members or trustees of boards/trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation."*

**8.2.** Apart from that it is well settled that any person can set the criminal law in motion as held by the Hon'ble Supreme Court in **1984 (2)SCC500, & AIR2001SC1820** as follows:

**(i) A.R. Antulay v. Ramdas Srinivas Nayak, (1984) 2 SCC 500:**



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*“6.It is a well recognised principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary.”*

**(ii) Manohar Lal v. Vinesh Anand, (2001) 5 SCC 407:**

*“5. ....To pursue an offender in the event of commission of an offence is to subserve a social need — society cannot afford to have a criminal escape his liability, since that would bring about a state of social pollution, which is neither desired nor warranted and this is irrespective of the concept of locus — the doctrine of locus standi is totally foreign to criminal jurisprudence. This observation of ours, however, obtains support from the decision of this Court in A.R. Antulay v. Ramdas Srinivas Nayak [(1984) 2 SCC 500]”*

So, in all aspect the plea of the petitioners that respondent has no *locus standi* to prefer the complaint in respect of the illegal trespass into the temple property and causing damage to the boundary stone of the temple and removal of trees cannot be sustained.

**9.Offence under Section 500 IPC:**

**9.1.** Section 500 IPC stated that if the defamation is committed by the private parties in respect of the private persons, the learned Judicial Magistrate has jurisdiction to entertain the complaint and proceed in



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accordance with law. In case any defamation made against any public servant, the Sessions Court alone has jurisdiction. So, taking of cognizance by the learned Judicial Magistrate under Section 500 IPC cannot be found fault with.

#### **10. Offence under Section 447 IPC:**

Admittedly the property is the temple property and the villagers and the respondent are maintaining the property by making fence over the boundary and safeguarding the trees planted. Every worshipper is entitled to enter into the temple and also dutybound to protect the interest of the temple. Further, the temple is not a juristic person and only the worshippers and the authorities constituted to maintain the temple are in occupation of the temple either impliedly or expressly. It is the case of the respondent that the villagers and the respondent are maintaining the temple property by appointing watchman. In the said circumstances, when the Hotel authorities entered into the temple premises and uprooted the trees and when the same was questioned by the worshipper, the act of Accused Nos.1 to 10 causing criminal intimidation is amount to committing the offence under Section



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### **11. Offence under Section 506(ii) IPC:**

It is the specific case of the respondent that when he and others questioned the illegal trespass and illegal act of uprooting of trees and removal of the boundary stones of the temple, the accused persons abused the complainant and criminally intimidated him by throwing stones towards them, hence, the offence under Section 506(ii) IPC is clearly made out with the combination of *actus rea* and *mens rea*. The Hon'ble Supreme Court in **2018(13)SCC455 [State v. S. Selvi]** specifically held that when the complainant is threatened with dire consequence, the offence is made out and the jurisdictional High Court has no jurisdiction to quash the same by appreciating the statement made by the complainant in the quash proceedings.

### **12. Applicability of Section 216 Cr.P.C:**

The material portion of the averment is as follows:

*On 02.11.2017 at 6.00 p.m, after completion of the*



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*proceedings before the High Court, A1 to A10 trespassed into the temple land. A1 and A2 directed the accused Nos.3 to 10 to uproot the trees planted in the temple premises in order to facilitate the car parking of the Hotel. The same was informed by the watchman/Vinayagam to the respondent/complainant and other villagers. Immediately, the villagers, complainant and watchman went to the temple property and requested the accused Nos.1 to 10 not to cause damage to the temple trees. But, the accused Nos. 1 and 2 scolded the complainant as 'Advocate dog' and criminally intimidated the complainant and other witnesses by throwing stones and thereby uprooted 40 number of trees from the temple property. The same was informed to the Inspector of Police and requested to register the case. But, the Inspector of Police, in collusion with the accused Nos.1 to 10, refused to receive the complaint and hence, offence under Section 166 IPC was made out against her.*

In this case, it is the specific submission of the learned counsel for the respondent that the events stated from the year 2015 to the date of the occurrence took place on 02.11.2017 is only for the narration of the events and the sworn statement of the remaining witnesses are only conferred with the occurrence took place on 02.11.2017. Further, the learned Judicial



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Magistrate had taken cognizance only relating to the events took place on 02.11.2017. Hence, the submission of the learned counsel for the petitioner that the learned Judicial Magistrate has no jurisdiction to take the cognizance for the narration of the events, which has been running nearly more than three years under Section 216 Cr.P.C, is not legally correct.

**13. Non-compliance of Section 202 Cr.P.C:**

From the array of the parties with address, A1 to A10 are running the Temple City Hotel and their address also shown within the jurisdiction of the jurisdictional Magistrate and also they received the summons in the said addresses and hence, the plea of the non-compliance of Section 202 Cr.P.C has no legs to stand.

**14. The citation relied by the petitioners' counsel have no relevance to the present case and the same was distinguished on facts:**

1. **2015(4)SCC609, *Sunil Bharti Mittal v. Central Bureau of Investigation* :-** In this case, Hon'ble Supreme Court considering the factual situation that the initiation of proceedings under Section 204



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Cr.P.C in the 2G Spectrum scam case against the non-charge-sheeted directors without recording the reason is amount to the non-compliance of Section 204 Cr.P.C. In this case, the learned Judicial Magistrate recorded the reason that all the accused unlawfully assembled and trespassed into the temple land and uprooted 40 number of trees of the temple in order to facilitate their parking area. So, the above judgment is not applicable to the present case.

2. **2019(3)MLJ339, Shanmugam and others v. Inspector of Police, Ariyalur Police Station, Ariyalur and Others:-** In this case, this Court quashed the order of the learned Judicial Magistrate for taking cognizance by resorting to the 'Rubber Stamp' cognizance without assigning any reason. But in the present case, learned Judge applied his mind and categorically held that there is prima facie case in the allegation made in the complaint as well as sworn statement of the witnesses to constitute the offence as stated above.
3. **2021(5)SCC435, Krishna Lal Chawla and others v. State of Uttapradesh and another:-** In this case, Hon'ble Supreme Court considering the delay in filing the second complaint, that too, after



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finding that the complainant suppressed the earlier closure report of the investigation agency, set aside the cognizance taken under Section 204 Cr.P.C. But in the case on hand, immediately after the occurrence on 02.11.2017, the complainant and the villagers approached the 12<sup>th</sup> accused, who was the Inspector of Police of the jurisdictional Police Station to give complaint, she refused to receive the complaint and hence, he made a complaint to the Superintendent of Police and there was no response. Hence, he preferred the private complaint before the learned Judicial Magistrate as per the Criminal Procedure Code. So, the said ratio is not applicable to the present case.

4. ***2022 Live Law (SC)833, Lalankumar Singh & Ors. v. State of Maharashtra and 2022 Live Law(SC) 844, N.S.Madhanagopal & Another v. K.Lalitha:-*** In these cases, Hon'ble Supreme Court set aside the order of taking cognizance under Section 204 Cr.P.C on the ground that no reason was given by the learned Judicial Magistrate for taken the cognizance under Section 204 Cr.P.C. But in the present case, as stated earlier, the learned Judge perused the complaint, examined the witnesses and applied his mind and issued the process



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for the alleged offence stated supra. So, the said ratio is not applicable to the present case.

5. **2023(1)MWN272(SC), Deepak Gaba and others v. State of U.P.:-** In this cited case, the petitioner's counsel on the basis of the Hon'ble Supreme Court judgment, submitted that since the number of accused are living outside the jurisdictional Magistrate Court without complying Section 202 Cr.P.C procedure, act of taking cognizance by the learned Judicial Magistrate is illegal. This Court perused the records of the case on hand and found that all the accused are having the residence within the jurisdiction of the learned Judicial Magistrate. The cause title address also mentioned as Vadipatti jurisdiction. The accused also received summons in the said address. So, the petitioner's submission on the basis of the Hon'ble Supreme Court judgment cannot be accepted.

6. **2022 Live Law (Karnataka), (Crl.Petn.NO.2776/2022) Sri Shivaswamy and ors. v. State of Karnataka:-** The learned counsel by relying the paragraph No.13 and 16 of the judgment contended that in order to attract the offence under Section 441 Cr.P.C., the complainant



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must prove his exclusive possession of the property. The said submission is not applicable to the present case where the property is temple property and the defacto complainant and the villagers are in occupation of the temple property and they are continuously maintaining the property by fencing the land and also by appointing the watchman. Sofaras temple is concerned, temple is not a juristic person and hence, every worshipper is entitled to protect the possession of the temple property.

**7. 2021(3)MWN(Cr.)110, *K.E.Gnanavel Raja v. K.Mukanchand***

**Bothra:-** In this case, considering the facts of the case, the proceedings for the offence under Section 500 IPC was quashed by this Court. In the case on hand, it is the specific averment that A1 and A2 scolded the defacto complainant as 'Advocate dog' in front of the villagers and other persons and caused criminal intimidation. So, offence under Section 500 IPC is not made out. Further, the case of the petitioners that they would come under the exception is matter for trial.

**8. 2015(7)SCC423, *Manik Taneja and another v. State of Karnataka***



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**and another:-** In this case, there was a criminal intimidation through the facebook post and hence, the Hon'ble Supreme Court quashed the proceedings for lack of ingredients under Section 506 IPC. In the present case, there is a clear averment that A1 and A2 directed A3 to A10 to drive out the defacto complainant and other villagers from the temple property. In furtherance, A3 to A10 criminally intimidated the defacto complainant and the villagers by throwing stones and driven them out from the temple properties, hence, there is presence of *mens rea* and *actus rea* in this case to constitute the offence under Section 506(i) IPC. So, the said ratio is not applicable to the present case.

**15. The jurisdiction of this Court to exercise the power under**

**Section 482 Cr.P.C:**

This Court has limited jurisdiction to entertain the quash petition and the case of the petitioners does not come under the said exceptional categories. All the points raised by the petitioners are intertwined with the facts and law and the same can be decided only during the course of trial on the basis of evidence to be recorded. Also it is well settled to exercise the



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power under Section 482 Cr.P.C., is different from the appreciation of evidence as appellate or revisional authority. Under the jurisdiction of Section 482 Cr.P.C, this Court has no power to venture into the appreciation of the materials available on record as held by the Hon'ble Supreme Court in the following cases:

**(i) *State of Bihar v. Ramesh Singh (1977) 4 SCC 39:***

*"4. Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If "the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing", as enjoined by Section 227. If, on the other hand, "the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-...(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused", as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the*



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*Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not: If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding*



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*with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even, at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227.*

**(ii) In Saranya v. Bharathi, (2021) 8 SCC 583 : (24.5.2023)**

**inserted)**

*“11. In Deepak [State of M.P. v. Deepak, (2019) 13 SCC 62] , to which one of us (Dr D.Y. Chandrachud, J.) is the author, after considering the other binding decisions of this Court on the point, namely, Amit Kapoor v. Ramesh Chander [Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460], State of Rajasthan v. Fatehkaran Mehdu [State of Rajasthan v. Fatehkaran Mehdu, (2017) 3 SCC 198], and Chitresh Kumar Chopra v. State (NCT of Delhi) [Chitresh Kumar Chopra v. State (NCT of Delhi), (2009) 16 SCC 605], it is observed and held that at the stage of framing of charges, the Court has to consider the material only with a view to find out if there is a ground for “presuming” that the accused had committed the offence. It is observed and held that at that stage, the High Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom,*



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*taken at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. It is further observed and held that at this stage the High Court is not required to appreciate the evidence on record and consider the allegations on merits and to find out on the basis of the evidence recorded the accused chargesheeted or against whom the charge is framed is likely to be convicted or not.”*

**(iii) 2012(9)SCC460 [Amit Kapoor vs. Ramesh Chander and Ors.]**

*"17. .... Once the facts and ingredients of the Section exists, then the Court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.*

*19. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage.*



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*27. Having discussed the scope of jurisdiction under these two provisions, i.e., Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:*

*27.1) Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.*

*27.2) The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.*

*27.3) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.*

*27.4) Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loathe to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.*

*27.5) Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.*

*27.6) The Court has a duty to balance the freedom of a person and*



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*the right of the complainant or prosecution to investigate and prosecute the offender.*

*27.7) The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.*

*27.8) Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a 'civil wrong' with no 'element of criminality' and does not satisfy the basic ingredients of a criminal offence, the Court may be justified in quashing the charge. Even in such cases, the Court would not embark upon the critical analysis of the evidence.*

*27.9) Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction, the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.*

*27.10) It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.*

*27.11) Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.*

*27.12) In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed with by the prosecution.*

*27.13) Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.*

*27.14) Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well*



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*within its jurisdiction to frame a charge.*

*27.15) Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae, i.e. to do real and substantial justice for administration of which alone, the courts exist.*

*27.16) These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance to the requirements of the offence.*

**(iii) (2006) 4 SCC 359 [Minu Kumari v. State of Bihar]:**

*"20.....The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. ..."*

**16.** The contentions of the learned counsel for the petitioner in Crl.O.P.No.19077/2021 that the offence under Section 166 IPC is not made out and that the cognizance taken by the trial Court against the petitioner without obtaining sanction under Section 197 Cr.P.C is not maintainable, cannot be sustained for the following reasoning:

“It is the duty of A12, as a Station House Officer to be



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strictly adhere to the direction of the Hon'ble Supreme Court in **Lalithakumari** case to receive the complaint and conduct enquiry to the extent that whether any cognizable offence is made out or not. But, she did not receive the complaint and acted against the direction of the Hon'ble Supreme Court as well as the statutory provisions stated in the Criminal Procedure Code under Section 154 Cr.P.C which mandate that every Station House Officer should receive the complaint and register the case, if cognizable offence is made out. Failure on her part to receive the complaint itself amount to the illegal exercise of her jurisdiction and hence sanction to prosecute under Section 197 Cr.P.C is not required and hence, the quash petition filed by A12 is also dismissed.”

Hence, in all aspect the contention of the learned counsel for the petitioners is not accepted and hence, these quash petitions deserve to be dismissed.



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**17.** In the result, these Criminal Original Petitions are dismissed.

Consequently, connected miscellaneous petitions are closed.

**01.06.2023**

Internet: Yes/No

Index : Yes/No

PJL

To

The Judicial Magistrate,  
Periyakulam.



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**K.K.RAMAKRISHNAN,J.**

PJL

**Order made in  
CrI.O.P(MD)No.7978 of 2018  
and 19077 of 2021  
and  
CrI.M.P(MD)Nos.3642 of 2018 &  
3643 of 2018 and  
10592 of 2021 & 10593 of 2021**

**01.06.2023**