



Crl.O.P.(MD)No.15258 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: **31.08.2023**

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

Crl.O.P.(MD)No.15258 of 2023 and
Crl.M.P(MD).Nos.12101 and 12099 of 2023

1. Janani
2. Sumathi
3.Palanisamy

... Petitioners

Vs.

State rep. by
1.The Inspector of Police,
Swamimalai Police Station,
Swamimalai,
Thanajvur District
(in Crime No.978 of 2020)

2.S. Panner Selvam

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records relating to the proceeding in C.C.No.1 of 2022 on the file of the Judicial Magistrate No.II, Kumbakonam in so far as the petitioner's herein and quash the same.

For Petitioner : Mr.V. Selvakumar

For Respondents : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor



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ORDER

This Criminal Original Petition is filed seeking for quashment of charge sheet in C.C.No.1 of 2022 pending on the file of the Judicial Magistrate No.II, Kumbakonam, which is cognizable for the offence under Sections 294(b), 452 and 506(ii) IPC.

2. On hearing the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor it is clear that the petitioners are seeking quashment basically on two grounds. Firstly, the defacto complainant stated to have filed a complaint before the Swamimalai Police Station in RC.No.221 /ADSP / HQ-TAN/ RTI/ 2012, dated 19.04.2021 and subsequently, he has withdrawn. The second ground on which the petitioners seeking quashment is that there is a delay of six months from the date of occurrence to the date of filing of the complaint.

3. Insofar as the earlier complaint filed by the defacto complainant is concerned, the same was withdrawn by him and hence, the same cannot be a ground for quashment of charge sheet. Because on the basis of the earlier complaint, the respondent police have not made any



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investigation and that there is no finding given by any investigating agency or the Court and that there is no offence made out against the petitioners.

Insofar as the other ground of delay is concerned, the First Information Report is filed with an in-ordinate delay which requires to be examined as to the reasons for the delay.

4. The learned Additional Public Prosecutor submitted that the petitioner has approached the learned Magistrate and filed a complaint under Section 200 Cr.P.C., with a request to record the complaint given to the Police under Section 156(3) Cr.P.C., and soon after, referring the same the respondent police have registered a case. Therefore, though it appears on delay on the face of it, immediately on receiving of the direction from the learned Magistrate, the Police have registered a case. Therefore, the delay cannot be attributed to the defacto complainant.

5. It is also submitted by the learned Additional Public Prosecutor that except for the offence under Section 294(b) IPC, the other alleged offence clear overt acts and clear ingredients over the occurrence.

6. When there is a clear overt acts, this Court at this stage



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taking into consideration of the defence of the petitioners cannot conclude that there is no case against the petitioners.

7. Considering the submission of the learned counsel for the petitioners, the presence of the petitioners 1 and 2 / accused is dispensed with before the trial Court only after framing of the charges. Further, the learned Magistrate is at liberty to direct the petitioners 1 and 2 / accused to be present at the time of trial commenced if their presence is required under Section 313 Cr.P.C., examination or any other purpose for smooth progress of trial.

8. With the above direction, this Criminal Original Petition is disposed of. Consequently, the connected Miscellaneous Petitions are closed.

31.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
trp



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To

- 1.The Inspector of Police,
Swamimalai Police Station,
Swamimalai,
Thanajvur District

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



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DR.D.NAGARJUN,J

trp

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