



*CrI.O.P.(MD) No.15513 of 2023*

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.09.2023

CORAM:

THE HONOURABLE DR.JUSTICE D.NAGARJUN

**CrI.O.P.(MD) No.15513 of 2023**

**and**

**CrI.M.P(MD)Nos.12308 and 12310 of 2023**

Sudalaikumar

... Petitioner/A.3

Vs.

1.The Inspector of Police,  
All Women Police Station,  
Rajapalayam,  
Virudhunagar District.

... 1<sup>st</sup> Respondent/  
Complainant

2.S.Muthumareeswari

... 2<sup>nd</sup> Respondent/  
Defacto Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pending on the file of the Additional Mahila Court, Srivilliputtur, in C.C.No.28 of 2023 and quash the same as against the petitioner.

For Petitioner :Mr.S.Chellapandian

For Respondents :Mr.E.Antony Sahaya Prabahar

Additional Public Prosecutor for R1



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### **ORDER**

This Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure seeking quashment of the charge sheet in C.C.No.28 of 2023 on the file of the Additional Mahila Court, Srivilliputtur, for the offences punishable under Sections 498A, 294(b), 323, 406 and 506(i) IPC, Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002 and Section 4 of Dowry Prohibition Act, 1961.

2.The petitioner is the accused No.3 in CC.No.28 of 2023 pending on the file of the learned Additional Mahila Judge, Srivilliputhur, which was registered on a complaint given by the respondent No.2 for the offences punishable under Sections 498A, 294(b), 323, 406 and 506(i) IPC, Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002 and Section 4 of Dowry Prohibition Act, 1961. The respondent No.2 is stated to be the victim at the hands of the petitioner.



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3. According to the petitioner, he is the brother of the accused No.1 and he has been settled and resided along with the family in Mumbai. The offence alleged to have been committed during the COVID-19 period and there was no occasion for him to come over here as alleged by the defacto complainant and submitted further that to harass the petitioner only, a false case has been foisted.

4. It is submitted by the learned counsel for the petitioner that as per the charge sheet, there is no material against the petitioner to proceed with the case and therefore, sought for quashment of the charge sheet.

5. The learned Additional Public Prosecutor has submitted that as per the investigation done by the police, there are clear overt acts against all the accused and thereby the trial requires to be conducted.

6. Heard both sides and perused the records.

7. The Hon'ble Supreme Court has laid down the guidelines for exercising of inherent power under Section 482 of the Cr.P.C. for quashing the criminal



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proceedings. In *State of Haryana v. Bhajanlal*, which is reported in *1992 SCC (Cri) 426*, it is held as follows:-

"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 FIR 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



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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.It is to be examined as to whether the facts of the case will fall in any one of the circumstances as held by the Hon'ble Apex Court to consider whether the case against the petitioner can be quashed.



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9.It is not a case, where the petitioner is seeking quashment of the charge sheet on the ground that there is a statutory embargo in continuation of the proceedings. On going through the charge sheet including the statements recorded under Section 161 Cr.P.C., it is clear that there are clear and direct overt acts against the petitioner. On going through the charge sheet, it is clear that the allegations levelled against the petitioner are not vague and that the statements of the witnesses are clearly against the petitioner. It is submitted by the petitioner that the witnesses examined by the prosecution have given the false statements under 161(3) Cr.P.C. In order to consider the petitioner case, this Court has to hold and give a finding that the statements of the witnesses recorded under Section 161 Cr.P.C., are false.

10.In a petition filed under Section 482 Cr.P.C., it cannot be decided as to which one of the versions is correct. Unless, the trial is conducted, the truth or otherwise of the statement of the witnesses cannot be appreciated. This Court cannot conduct mini trial, analyse both the versions and give a finding like trial Court. Once there is a prima facie case is established, the charge sheet cannot be



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quashed, but has to be referred to trial Court. Therefore, it is a fit case, where the case has to be referred to the trial Court as there is *prima facie* material against the petitioner.

11. Accordingly, this Criminal Original Petition is disposed of directing the trial Court to dispose of CC.No.28 of 2023 as quickly as possible. Further, considering the age of the petitioner/accused No.3 and other factors, personal appearance of the petitioner/A3 before the trial Court is dispensed with. However, the trial Court is at liberty to direct the accused No.3/petitioner to be present for answering the charges, 313 examination and for any such purposes, at any stage of the case for smooth progression of the trial. Consequently, connected Miscellaneous Petitions are closed.

Speaking : Yes / No  
NCC : Yes / No  
Internet : Yes / No  
Index : Yes / No

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To

- 1.The Inspector of Police,  
All Women Police Station,  
Rajapalayam,  
Virudhunagar District.
- 2.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.



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**DR.D.NAGARJUN. J.**

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