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Crl.O.P.(MD)No.17420 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.10.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **G.ILANGO VAN**

Crl.O.P.(MD) No.17420 of 2023

and

Crl.M.P(MD)No.13832 of 2023

Amarchakaravarthi

... Petitioner / Sole Accused

Vs.

1.State represented by
The Sub-Inspector of Police,
Sivagiri Police Station,
Tenkasi District.
(In Crime No.309/2023).

2.Sathish

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining in Crime No.309 of 2023 on the file of the 1st respondent police against this petitioner and quash the same as illegal.

For Petitioner : Mr.S.Veerapandi Selvaraj

For Respondents : Mr.M. Sakthi Kumar
Government Advocate (Crl.side)



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ORDER

This petition has been filed to call for the records pertaining to Crime No.309 of 2023 on the file of the first respondent police against this petitioner and quash the same as illegal.

2. The case of the prosecution in brief, is that the defacto complainant lodged a complaint stating that on 22.08.2023, at about 9.10 a.m., in the morning, over money transaction between one Kumar and his son namely Amarchakaravarthi and Durai, the above said occurrence has taken place. Kumar, Amarchakaravarthi caused assault to Durai. Amarchakaravarthi picked up a stone and throw the same. At that time, the defacto complainant's son got injured in the above said stone attack. On the basis of the occurrence, a case has been registered in Crime No. 309 of 2023. Seeking quashment of the same, this petition has been filed by the petitioner, stating that even as per the case of the prosecution as per the defacto complainant's version, this petitioner did not intend to cause any injury to the son of the defacto complainant. He alleged to have thrown the stone aimed at the above said attackers namely Kumar and Amarchakaravarthi only. But accidentally hit the defacto complainant's son.



3. Learned counsel for the petitioner referred Section 39 of IPC, which defines the word "Voluntarily".

"39. Voluntarily - A person is said to cause an effect "voluntarily" when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it."

Section 324 of IPC reads as follows:

"324. Voluntarily Causing hurt by dangerous weapons or means.--

Whoever, except in the case provided for by Section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. "

4. The combined reading of both Sections shows that there must be positive act on the part of the accused to cause hurt, not only that he must



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have knowledge that by doing such an act, is likely to cause hurt. It is not necessary that the act aimed, is something else, but the consequence is undesired one. Here, the petitioner did not intended to cause any hurt to the son of the defacto complainant, but by throwing the stone, he likely to know, it may hurt anyone. Here, the defacto complainant's son was standing in the near side area and he was hit by the said stone. It is technically called as *transfer of malice* or *trans migration of motive*. So the petitioner can not expected to argue what was aimed by him, is not the defacto complainant's son. Such a plea is a matter for consideration by the trial Court at the time of trial. Final report has also been filed. I find no reason to quash the proceedings at the initial stage.

5. Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petition stands closed.

12.10.2023

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

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G.ILANGOVA. J.

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To

- 1.The Sub-Inspector of Police, Sivagiri Police Station,
Tenkasi District. (In Crime No.309/2023).
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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