



Crl.O.P.(MD)No.23128 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.01.2023**

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.23128 of 2022

and

Crl.M.P.(MD)Nos.16413 and 16414 of 2022

1.Saravanan

2.Anupriay

... Petitioners

Vs.

1.The State represented by
The Inspector of Police,
District Crime Branch,
Theni District.
(Crime No.19 of 2021)

2.Vijaya Rani

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the entire records pertaining to the case in C.C.No.135 of 2022 on the file of the learned Judicial Magistrate, Theni, Theni District and quash the same.

For Petitioners : Mr.S.Balaji

For R1 : Mr.SS.Madhavan
Government Advocate (Crl. Side)



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ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the entire records pertaining to the case in C.C.No.135 of 2022 on the file of the learned Judicial Magistrate, Theni, Theni District and quash the same.

2. The case of the prosecution is that the petitioners along with other accused had received a sum of Rs.16,00,000/- from the second respondent and some other persons for securing government job and that the petitioners without securing the job, cheated them. Hence, the second respondent has lodged a complaint before the first respondent and on that basis, FIR came to be registered in Crime No.19 of 2021.

3. It is evident from the records that the first respondent, after completing the investigation, has laid the final report against three accused including the petitioners herein for the offences under Sections 120B and 420 IPC.



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4. Admittedly, the petitioners are husband and wife and the first petitioner is working as a Professor in Bharathidasan Institute of Technology-Anna University.

5. The learned counsel appearing for the petitioners would submit that there existed money transactions between the petitioners and the second respondent and on that basis, the above complaint came to be registered and that now charge sheet came to be filed.

6. The learned Government Advocate (Criminal Side) appearing for the first respondent would submit that it is a clear case of job racketing and that the second respondent in her complaint as well as in the statement recorded under Section 161 Cr.P.C. has specifically mentioned about the case of job racketing and for getting job, the amount was paid to the accused.

7. The Hon'ble Supreme Court in the case of ***State of Haryana and others Vs. Bhajan Lal and others*** reported in ***1992 SCC (Cri) 426*** has enumerated 7 categories of cases, where the power can be exercised



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under Section 482 of Code of Criminal Procedure and the same are extracted hereunder:-

“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,



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accompanying the F.I.R. 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 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. In ***Dr.Dhruvaram Murlidhar Sonar Vs. The State of Maharashtra and others*** reported in ***2019 (18) SCC 191***, the Hon'ble Apex Court has specifically held that exercise of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule. It is settled law that the inherent jurisdiction under Section 482 Cr.P.C. is wide but at the same time, the same is to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself.

9. The Hon'ble Supreme Court in ***Kaptan Singh Vs. The State of Uttar Pradesh and others*** reported in ***2021 (3) Crimes 247*** has stated that, that Court in catena of decisions has observed that the High Court is



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not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial and that question is required to be examined keeping in view, the contents of FIR and *prima facie* materials, if any, requiring no proof and at such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and materials relied on.

10. A cursory perusal of the complaint and the final report and the statements filed along with the final report would make it clear that there existed a *prima facie* case to proceed against the petitioners and the defence now taken by the petitioners is matter for trial.

11. Considering the above, this Court is not inclined to quash the charge sheet. Accordingly, this Criminal Original Petition stands dismissed. Consequently, connected Miscellaneous Petition in CrI.M.P. (MD)No.16413 of 2022 is closed.

12. Considering the facts and circumstances, the personal appearance of the petitioners before the trial Court is ordered to be



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dispensed with, on conditions that they shall appear at the time of initial questioning, proceedings under Section 313 of Cr.P.C., and at the time of passing judgment and on all 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 and that the Counsel representing them will cross examine the prosecution witnesses on the same day they are examined in chief. The petitioners shall not dispute the identity of the witnesses. The petitioners shall appear before the Court in the event their presence is insisted by the trial judge for the purpose of identification. If the petitioners adopts 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*.

02.01.2023

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

- 1.The Inspector of Police,
District Crime Branch,
Theni District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Order made in
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and
Crl.M.P.(MD)Nos.16413 and 16414 of 2022

Dated: 02.01.2023