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Crl. O.P. No. 19004 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.19004 of 2024

and

Crl.MP.No.11225 of 2024

1. R.Bhaghyaraj

... Petitioner

Vs.

1. The State

Represented by
The Inspector of Police,
Konganapuram Police Station,
Salem District.

2. M.Gandhimathi

... Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C, to quash the summon issued under Section 35(3) of Bharatiya Nagarik Suraksha Sanhita, 2023 by the 1st respondent herein in pending to the Cr.No.449 of 2021 on the file of the Inspector of Police, Konganapuram Police Station, Salem pending on the file of the 1st respondent as abuse of process of law.

For Petitioner : Dr.A.Thiyagarajan
Senior Counsel
for Mr.S.Ramesh Kumar

For Respondents : Mr.S.Udaya Kumar
Government Advocate (Crl. Side)
for R1



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ORDER

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The petitioner herein, aggrieved by the summons issued under Section 35(3) of BNSS Act for enquiring the case registered in Cr.No.449 of 2021 under Sections 420,465, 468, 471, 120B and 109 of IPC is before this Court stating that the offence which is under investigation in Cr.No.449 of 2021 committed prior to 01.07.2024, the day on which BNSS Act 2023 came into effect. While so, under Section 531(2) of BNSS Act, all enquiry, inquiry proceedings appeal arising under IPC offence should be deal only under the Criminal Procedure Code. The respondent police cannot cause summon under BNSS Act for enquiry of an offence registered under IPC.

2. This Court, concurs the objection raised by the learned counsel for the petitioner that summons issued under BNSS is not sustainable for enquiry regarding offence committed under IPC.

3. After the transition from the old code to BNSS Act, the investigating agencies must be aware of the saving provisions found in Section 531(2) of BNSS Act and Section 4 of the said Act, the error has crept due to improper understanding of the BNSS. However, the intention



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to call the petitioner for further enquiry in Cr.No.449 of 2021 cannot be faulted. Therefore, Crl.OP.No.1904 of 2024 is disposed of with direction to the respondent police to cause summon under the Cr.P.C to the petitioner and continue the investigation bearing in mind the earlier direction of this Court issued on 23.04.2024 in WP.No.10876 of 2024.

4. With this observation, this Criminal Original Petition is disposed of. Consequently, the connected miscellaneous petition is closed.

08.08.2024

Vv

To

1.The Inspector of Police,
Konganapuram Police Station,
Salem District.

2.The Public Prosecutor,
High Court of Madras.



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Dr.G.JAYACHANDRAN,J.

Vv

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