



Crl.O.P.(MD)No.703 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.11.2024

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CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD) No.703 of 2023

and

Crl.M.P.(MD).No.648 of 2023

1.Prince @ Francies

2.Vijin @ Nirmal

3.George

... Petitioners

Vs.

1.State represented by
The Inspector of Police,
Thiruvattar Police Station,
Kanyakumari District.
(Crime No.344 of 2019)

2.Rajesh

...Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to set aside the docket order of summoning the petitioners / Accused Nos.2 to 4 passed by the learned Judicial Magistrate No.II, Padmanabhapuram in C.C.No.443 of 2022 dated 07.10.2022.

For Petitioners

: Mr.K.P.Narayanakumar

For R-1

: Mr.B.Thanga Aravindh,
Government Advocate
(Criminal Side)



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For R-2

: No Appearance

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ORDER

This petition has been challenging the order of cognizance passed by the learned Judicial Magistrate No.II, Padmanabhapuram, dated 07.10.2022, issuing process to the petitioners, who have been arrayed as Accused Nos.2 to 4 along with Accused No.1.

2. Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Criminal Side) appearing for the first respondent.

3. The second respondent gave a complaint to the first respondent Police stating that on 21.10.2019 at about 06.30 hours, when the *defacto* complainant was proceeding towards his house, Accused No.1 along with the other accused persons came to the spot and Accused No.1 is said to have assaulted the *defacto* complainant with iron-rod and Accused Nos.2 to 4 are said to have abused and assaulted the *defacto* complainant with hands and caused injuries. Based on this complaint, an FIR came to be registered in Crime No.344 of 2019.



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4. The investigation was carried out and ultimately, a final report came to be filed before the learned Judicial Magistrate No.II, Padmanabhapuram, only as against Accused No.1 and the names of the petitioners (Accused Nos.2 to 4) were dropped.

5. Aggrieved by the above, the *defacto* complainant filed Crl.M.P.No.1509 of 2021 before the learned Judicial Magistrate No.II, Padmanabhapuram seeking for further investigation under Section 173 (8) of Cr.P.C. This petition was dismissed on 07.10.2022. However, the learned Magistrate proceeded to take cognizance of the offence under Sections 294(b), 324, 323 and 506(ii) IPC and issued process to all the accused persons through order dated 07.10.2022. Aggrieved by the same, the present petition has been filed before this Court.

6. In the considered view of this Court, when a final report is filed by the Police by dropping the names of some of the accused persons, three options are available to the learned Magistrate. The first option is to take the final report as it is and proceed further only against the accused persons, who have been named in the final report. While adopting this process, the learned Magistrate has to necessarily consider the protest petition filed by the *defacto* complainant and take a decision.



The second option that is available to the Magistrate is that the Magistrate can disregard the opinion of the Investigating Officer and can proceed to issue process to all the accused persons including those whose names have been dropped. This is in view of the fact that the learned Magistrate will not act as a Post Office and the process of taking cognizance involves application of mind and it is a judicial process. The third option that is available to the learned Magistrate is to order for further investigation under Section 173(8) of Cr.P.C. This can be done *suo motu* by the learned Magistrate or it can be based on the protest petition filed by the *defacto* complainant.

7. In the case in hand, the Magistrate has taken the option of issuing process to all the accused persons. While adopting this process, there is no requirement for the learned Magistrate to issue notice to the accused persons whose names have been dropped from the final report. It must be kept in mind that the process that has been issued to the accused persons whose names have been dropped in the final report, cannot be equated to adding accused persons in exercising the power and jurisdiction under Section 319 of Cr.P.C. Here the accused persons are not added and they are accused even at the time when the FIR was registered.



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8. This Court does not find any ground to interfere with the cognizance order passed by the Court below. Ultimately, if according to the petitioners, no offence has been made out against the petitioners and the proceedings itself is an abuse of process of law, the petitioners will have to challenge the proceedings under Section 482 of Cr.P.C. (528 of BNS Act).

9. Except giving this clarity, no further orders can be passed in this petition.

10. This Criminal Original Petition is disposed of in the above terms. Consequently, the connected miscellaneous petition is closed.

19.11.2024

Index : Yes/No

Internet : Yes/No

TSG

To

1.The Judicial Magistrate No.II,
Padmanabhapuram.

2.The Inspector of Police,
Thiruvattar Police Station,
Kanyakumari District.



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

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N.ANAND VENKATESH. J.

TSG

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