



Crl.O.P.(MD)No.1247 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.11.2024

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD)No.1247of 2023
and Crl.M.P.(MD) No.1102 of 2023

1.Srinivasan
2.Subramaniam

... Petitioners/
Accused Nos.1 & 2

Vs.

1.State through the Inspector of Police,
Siruganur Police Station,
Trichy District.
(In Crime No.51 of 2022)

... Respondent/
Complainant

2.Elangovan

... Respondent/
De-facto Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records of FIR in Crime No.51 of 2022 on the file of the first respondent police and quash the same as illegal.

For Petitioners : Mr.N.Ananthapadmanabhan
for M/s.A.P.N.Law Associates

For Respondents : Mr.B.Thanga Aravindh
Government Advocate (Crl.Side)
for R1



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ORDER

This petition has been filed to quash the FIR in Crime No. 51 of 2022 pending investigation on the file of the first respondent police.

2.The case of the prosecution is that the Village Administrative Officer was informed on 19.02.2022 about the presence of a JCB machine and a tipper lorry parked in a waterbody. Immediately, the VAO and Village Assistant went to the spot and found the JCB machine and the lorry present in the waterbody. Based on the same, an FIR came to be registered in Crime No.51 of 2022 for offences under Sections 379 and 511 of IPC.

3.Heard Mr.N.Ananthapadmanabhan, learned Senior Counsel for the petitioner and Mr.B.Thanga Aravindh, learned Government Advocate (Crl. Side) appearing on behalf of the first respondent.



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4. Section 511 of IPC deals with attempt to commit the offence. On carefully reading the said provision, it can be seen that for the completion of an offence under Section 511 of IPC, the accused should have done some act towards commission of the main offence and such an attempt is not expressly covered as a penal provision in any of the provisions under IPC. Thus, attempt on the part of the accused is *sine qua non* for constituting an offence under Section 511 of IPC. It must be kept in mind that an attempt to commit an offence is distinguishable from a mere intention to commit an offence or a mere preparation made for committing an offence. Mere intention to commit an offence, not followed by an act, cannot constitute an offence. Insofar as the preparation to commit an offence is concerned, it consists of devising or arranging the means or measure which are necessary for commission of an offence. The dividing line between a mere preparation and an attempt is very thin and if an act has not crossed the realm of preparation and reached the stage of an attempt, it will not constitute an offence under Section 511 of IPC.



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5.The learned Senior Counsel appearing for the petitioner relied upon the judgment of the Apex Court in ***Malkiat Singh v. State of Punjab***, reported in ***1969 1 SCC 157***, to substantiate his submissions.

The paragraph Nos.6 and 7 of the judgment are extracted hereunder:-

“The question to be considered in this appeal is whether upon the facts found by the lower courts any offence has been committed by the appellants. It is not disputed that the truck carrying the paddy was stopped at Samalkha Barrier which is 32 miles from Delhi. It is also not disputed that the Delhi-Punjab boundary was, at the relevant point of time, at about the 18th mile from Delhi. It is therefore evident that there has been no export of paddy outside the State of Punjab in this case. The truck with the loaded paddy was seized at Samalkha well inside the Punjab boundary. It follows therefore that there was no export of paddy within the meaning of Para 2(a) of the Punjab Paddy (Export Control) Order, 1959. It was however argued on behalf of the respondent that there was an attempt on the part of the appellants to transport paddy to Delhi, 'and so there was an attempt to commit the offence of export. In our opinion, there is no substance in this argument. On the facts found, there was no attempt on the part of



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the appellants to commit the offence of export. It was merely a preparation on the part of the appellants and as a matter of law a preparation for committing an offence is different from attempt to commit it. The preparation consists in devising or arranging the means or measures necessary for the commission of the offence. On the other hand, an attempt to commit the offence is a direct movement towards the commission after preparations are made. In order that a person may be convicted of an attempt to commit 'a crime, he must be shown first to have had an intention to commit the offence, and secondly to have done an act which constitutes the actus reus of a criminal attempt. The sufficiency of the actus reus is a question of law which had led to difficulty because of the necessity of distinguishing between acts which are merely preparatory to the commission of a crime, and those which are sufficiently proximate to it to amount to an attempt to commit it. If a man buys a box of matches, he cannot be convicted of attempted arson, however clearly it may be proved that he intended to set fire to a haystack at the time of the purchase. Nor can he be convicted of this offence if he approaches the stack with the matches in his pocket, but, if he bends down near the stack and lights a match which he extinguishes on perceiving that he is being watched, he may be guilty of an



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attempt to burn it. Sir James Stephen, in his Digest of Criminal Law,

Article 50, defines an attempt as follows:

"an act done with intent to commit that crime, and forming part of a series of acts which would constitute its actual commission if it were not interrupted. The point at which such a series of acts begins cannot be defined, but depends upon the circumstances of each particular case."

The test for determining whether the act of the appellants constituted an attempt or preparation is whether the overt acts already done are such that if the offender changes his mind and does not proceed further in its progress, the acts already done would be completely harmless. In the present case it is quite possible that the appellants may have been warned that they had no licence to carry the paddy and they may have changed their mind at any place between Samalkha Barrier and the Delhi-Punjab boundary and not have proceeded further in their journey. Section 8 of the Essential Commodities Act states that "any person who attempts to contravene, or abets a contravention of, any order made under Section 3 shall be deemed to have contravened that order". But there is no provision in the Act which makes a preparation to commit an offence punishable. It follows therefore that the



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*appellants should not have been convicted under Section 7 of the
Essential Commodities Act.”*

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6.The above judgment clearly substantiates the interpretation of Section 511 of IPC made by this Court supra.

7.In the case on hand, except for the fact that there was a JCB machine and a lorry parked in a waterbody, there was nothing more available to take this case from the stage of preparation to that of an attempt to commit an offence. In view of the same, the offence under Section 379 read with 511 of IPC is not made out.

8.The learned Government Advocate (Crl. Side), on instructions, submitted that the investigation has been completed and final report has been filed before the Judicial Magistrate, Lalgudi, in this case.

9.Taking into consideration the facts and circumstances of the case and the above discussions, this Court finds that the prosecution



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has not made out a case even if the allegation made in the FIR are taken as it is. Therefore, the continuation of the criminal proceedings will result in abuse of process of law which requires the interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

10.In the result, the FIR in Crime No.51 of 2022, pending investigation on the file of the first respondent/Inspector of Police, Siruganur Police Station, Trichy District, is quashed insofar as the petitioners are concerned and this Criminal Original Petition is accordingly allowed. Consequently, connected criminal miscellaneous petition is closed.

04.11.2024

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

Note: A copy of this order shall be marked to the Judicial Magistrate, Lalgudi.



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To

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- 1.The Inspector of Police,
Siruganur Police Station,
Trichy District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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N.ANAND VENKATESH,J.

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