



Crl.O.P.(MD)No.1052 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.11.2024

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD) No.1052 of 2023

and

Crl.M.P.(MD) No.965 of 2023

1. Ashok
2. Annakodi
3. Govindarasu @ Mannar ... Petitioners

Vs.

1. The Inspector of Police,
Perunazhi Police Station,
Ramanathapuram District.
(Crime No.35 of 2022)

2. Pandi ... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order passed by the Learned District Munsif cum Judicial Magistrate, Kamuthi in Cr.MP.No. 4595/2022 in CC No.352/2022 dated 11.11.2022.

For Petitioners : Mr.R.Velmurugan
For Respondent : Mr.B.Thanga Aravindh
Government Advocate (Crl.Side)
for R1
Mr.A.Ilayaraja for R2



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ORDER

This petition has been filed challenging the proceedings of the learned District Munsif-cum-Judicial Magistrate, Kamuthi, dated 11.11.2022, whereby, the learned Judicial Magistrate has taken cognizance of the offence and issued process to A1 to A7. The petitioners were arrayed as A5 to A7.

2.Heard Mr.R.Velmurugan, learned counsel for the petitioner and Mr.B.Thanga Aravindh, learned Government Advocate appearing on behalf of the second respondent and Mr.A.Ilayaraja, learned counsel appearing for the third respondent.

3.The main grievance that was expressed by the learned counsel for the petitioner is that the police after investigation dropped the names of the petitioners (A5 to A7) and in spite of the same, the Court proceeded to issue process to the petitioners also and they were included as accused even without affording them an opportunity.



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4.The FIR was registered in Crime No.35 of 2022 as against seven named accused persons. On completion of investigation, investigation officer found that there is no ground to proceed against A5 to A7 and therefore, their names were dropped in the final report. The final report was ultimately filed only as against four accused persons.

5.The defacto complainant filed the protest petition in Crl.M.P.No.459 of 2022 before the Court below. While dealing with this protest petition, the Court below found that there are *prima facie* materials even as against the petitioners and hence, cognizance was taken for offences under Sections 147, 148, 294(b), 323, 324, 506(ii) of IPC read with Section 149 of IPC and process was issued to A1 to A7.

6.The issue involved in the present petition is squarely covered by various judgments of the Apex Court. When a protest petition is filed questioning the closure report either in full or in part, the Magistrate has three options available. The law on this issue was discussed by this Court in *A.Rajendra Vs. The Deputy Inspector of*



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Police, Trichy reported in **2019-1-L.W. (Crl.) 771**. The Apex Court also had an occasion to deal with the same in ***Vishnu Kumar Tiwari v. State of Uttar Pradesh*** reported in **2019 (5) CTC 603**. The Magistrate does not act as a post office while dealing with the final report filed by the police. Taking cognizance is a judicial act which requires application of mind. Therefore, even if the police dropped the case as against some of the accused persons, the Magistrate is not bound by the same and if the Magistrate finds some materials, process can be issued even to those persons whose names have been dropped by the police. While doing so, the Magistrate need not issue any notice to the accused persons.

7. In the case in hand, the petitioners are expecting the Magistrate to issue notice to them before summons was issued to them. It must be kept in mind that the learned Magistrate was not exercising the jurisdiction under Section 319 of Cr.P.C. and adding the petitioners as accused. If that is the case, notice has to be given to the petitioners and they have to be heard before they are added as accused. In the case in hand, the petitioners were already shown as accused in the FIR and their names were dropped in the final report and the learned Magistrate found



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that there are *prima facie* materials to proceed against the petitioners also. Therefore, the process was issued as against A1 to A7. This procedure that was adopted by the Magistrate is perfectly in accordance with law and it does not require the interference by this Court.

8.If ultimately, according to the petitioners, no case is made out against them in the final report read with the materials that were collected by the police, the petitioners will have to question the proceedings itself independently by filing a petition under Section 482 of Cr.P.C. They cannot challenge the order passed by the Magistrate issuing summons to the petitioners independently.

9.In the result, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

18.11.2024

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



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To

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- 1.The Inspector of Police,
Perunazhi Police Station,
Ramanathapuram 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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