



CrI.O.P.(MD) No.1491 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.03.2024

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P (MD) No.1491 of 2024

and

CrI.M.P.(MD)No.1032 of 2024

P.Selva Sathish

... Petitioner/ Accused No.16

Vs.

1.The Inspector of Police

Central Police Station,

Thoothukudi District.

(Crime No.350 of 2019)

... 1st Respondent / Complainant

2.S.Karthika

... 2nd Respondent / Defacto complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying, call for the records in S.C.No.36 of 2023 on the file of the learned I Additional District Judge, Tuticorin, Tuticorin District and quash the same against this Petitioner/Accused No.16.

For Petitioner : Mr.Ka.Raamakrishinan

**For R1 : Mr.M.Veeranthiran
Government Advocate (CrI.side)**

For R2 : Mr.S.S.P.Ashok



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CrI.O.P.(MD) No.1491 of 2024

ORDER

The learned Counsel for the Petitioner submits that the Petitioner is arrayed as Accused No.16. This Petition had been filed by the Petitioner to quash the charge sheet in S.C.No.36 of 2023. The Petitioner herein, who was then a Student of Law College, has no role in the alleged offences.

2. The learned Counsel for the Petitioner further submits that the Petitioner, was at the relevant point of time, was a Student of Law College. He was implicated in this case, based on the confession of Accused Nos.3 and 7. It is the submission of the learned Counsel for the Petitioner that the deceased in this case was history sheeter. The Accused Nos.1 to 6 are also history sheeter. As per the prosecution case, the Accused Nos.1 to 6 trespassed into the house of the deceased and murdered him. After committing murder, the Accused Nos.3 and 7 came to Madurai. At that time, the Petitioner herein, who is arrayed as Accused No.16 was a Student of Law College. The Accused Nos. 3 and 7 met the Petitioner/A16 and he



Crl.O.P.(MD) No.1491 of 2024

gave them money to stay elsewhere. As he is a Student of Law College, he is residing in Hostel. He asked them to stay elsewhere. After 2 days, he advised them to surrender before the learned Judicial Magistrate, Sivakasi. Accordingly, they provided money for their Stay and Food and they went to the Court of learned Judicial Magistrate, Sivakasi and surrendered.

3. On their surrender, the Inspector of Police, Central Police Station, Thoothukudi District, filed application and obtained the police custody of Accused Nos.3 and 7, to investigate their role in the murder of the deceased. After obtaining the police custody by the Inspector of Police, Central Police Station, Thoothukudi District, Accused Nos.3 and 7, both had, in their confession to the Investigation Officer, stated that they came to Madurai and met the Petitioner /A16 and the Petitioner / A16 advised them to stay away elsewhere and to surrender before the learned Judicial Magistrate, Sivakasi. Accordingly, they had stayed for 2 days and left Madurai by bus from Mattuthavani Bus Stand reached Sivakasi and surrendered before the learned Judicial Magistrate, Sivakasi.



Crl.O.P.(MD) No.1491 of 2024

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4. It is the further submission of the learned Counsel for the Petitioner that the confession statement does not indicate any role for the Petitioner to have harboured Accused Nos.3 and 7 and hidden them from the Investigation Officer. He had done his duty as a lawful Citizen, directing the Accused Nos.3 and 7 to surrender before the learned Judicial Magistrate. There is no incriminating material to implicate the Petitioner herein as A16. The Petitioner herein can be implicated only after trial, when the Accused Nos.1 to 8 are convicted. The Petitioner can be implicated for harbouring a criminal. The charges against the Petitioner cannot be framed with the available materials to attract Section 212 I.P.C. Therefore, he seeks to quash the final report filed by the Inspector of Police, Central Police Station, Thoothukudi District, which is taken on file as S.C.No.36 of 2023 on the file of the learned I Additional District Judge, Thoothukudi, Thoothukudi District. The learned Counsel for the Petitioner relied on the orders passed in similar matters of this Court in Crl.O.P.No.18411 of 2010 (S.Dhanavel V. State: Inspector of Police, Villupuram District), dated 27.01.2011, particularly, Paragraph No.8 of the judgment reported in ***A.I.R (33)1946 Patna 74 (Ram Rahj Chaudhury and another V. Emperor).***



CrI.O.P.(MD) No.1491 of 2024

Also, the learned Counsel for the Petitioner relied on the materials collected by the Investigation Officer from another witness, who claimed to be a Manager of the Lodge at Madurai. It cannot be believed that a Manager of a Lodge had memory regarding the details of persons, who had stayed in the Lodge. The said statement of the Manager had been recorded by the Investigation Officer, only to implicate the Petitioner herein. To support the statement of the Manager of the Lodge, no register had been seized giving the name of the Accused Nos. 3 and 7, who are alleged to have stayed in the Lodge.

5. The learned Counsel for the Petitioner relied upon the Judgment reported in ***A.I.R (33)1946 Patna 74 (Ram Rahj Chaudhury and another V. Emperor)***, wherein it is held that the first thing to be proved in a case under Section Section 212 I.P.C. is that an offence has been committed by the person harboured. Jand Bhadur's trial, however, has not yet been concluded. Until actually convicted, he is, like every one else, entitled to the presumption that he is innocent. The learned Government Advocate (Criminal Side) on instructions of the first Respondent, submits that the Petitioner as a Law Student and as a lawful Citizen of this Country,



Crl.O.P.(MD) No.1491 of 2024

ought to have directed them to surrender before the Respondent Police, instead he had hiding them for two days. Therefore, the provisions under Section 212 I.P.C, ought to have been considered by the trial Court and not in this case, this Court can exercise the extraordinary power of the High Court.

6. The learned Government Advocate (Criminal Side), on instructions of the first Respondent, vehemently objected stating that the submission of the learned Counsel for the Petitioner is not at all accepted, since the Petitioner is alleged to have harboured the Accused Nos.3 and 7.

7. Mr.S.S.P.Ashok (Enroll No:1499/2008; Mobile No:99446 92333), learned Counsel for the second Respondent / Defacto complainant appeared and filed vakalat and submitted that there is no grievance against the Petitioner-A16. Therefore, he has no objection to quash the charge sheet, pending in S.C.No.36 of 2023 against Accused No.16.

8. Considering the submission of the learned Counsel for the Petitioner, learned Counsel for the defacto complainant /second Respondent



Crl.O.P.(MD) No.1491 of 2024

and the learned Government Advocate (Criminal Side), the submission of the learned Government Advocate (Criminal Side) is found unacceptable.

Considering the fact that the Petitioner had no role in the alleged crime, the Petitioner if forced to face rigors of trial for no fault of his, he has to face the consequence of being prevented from enrolling as an Advocate before the Bar Council of Tamil Nadu and Puducherry. The alleged occurrence took place, when the Petitioner was a Law College Student at Madurai. Only the statement of the accused arrested in this case was that he was staying with the Petitioner, after committing the crime. When the Petitioner came to know about it, the Petitioner directed him to surrender before the Law Enforcing Agency. So, he acted as a Citizen of this Country as a Law Student. The prosecution by including his name as though he is responsible in heinous crime, will damage his reputation and the career in the law profession. Therefore, the points for consideration is answered in favour of the Petitioner against the prosecution.

9. In the result, this ***Criminal Original Petition*** is allowed. The final Report filed by the Inspector of Police, Central Police Station, Thoothukudi District and pending in S.C.No.36 of 2023 on the file of the



Crl.O.P.(MD) No.1491 of 2024

learned I Additional District Judge, Thoothukudi, is hereby quashed against this Petitioner / Accused No.16 only. The learned I Additional District Judge, Thoothukudi, is directed to proceed with the trial of the case against the other Accused. Consequently, connected Miscellaneous Petition is closed.

Internet :Yes./No

27.03.2024

Index :Yes/No

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To

- 1.The I Additional District Judge,
Thoothukudi.
- 2.The Inspector of Police
Central Police Station,
Thoothukudi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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CrI.O.P.(MD) No.1491 of 2024

SATHI KUMAR SUKUMARA KURUP, J.

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CRL.O.P (MD) No.1491 of 2024

27.03.2024