



CRL OP(MD) Nos.4931 & 8788 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 05.07.2024
Pronounced on: 22.07.2024

PRESENT

THE HON'BLE MR.JUSTICE B.PUGALENDHI

CRL OP(MD) Nos.4931 and 8788 of 2024
and
CRL MP(MD)Nos.3861, 3862, 6019 and 6020 of 2024

CRL OP(MD)No.8788 of 2024

1.Jeyakarna

2.Mohammed Yaboob

3.Raghuram

... Petitioners in
CrOP(MD)No.8788 of 2024 /
Accused 5, 8 & 30

CRL OP(MD)No.4931 of 2024

1.Vengaimaran

2.Solaimanikandan @
Manikandan

3.Manickam

4.Dhanalakshmi

5.Manimala

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6.Shanthi

7.T.Vinoth Kumar

8.R.Vasu

9.Gajendran

10.Jothi Mani Vannan @
Mani Vannan

11.S.R.Ilangomani

12.Thirumalsamy @
Thirumal

... Petitioners in

CrIOP(MD)No.4931 of 2024 /
Accused No.1,3,12,16,17,19, 21,
22, 23,28,29 &32

Vs

1.The State represented by
The Inspector of Police,
Avaniyapuram Police Station,
Madurai City, Madurai.

2.N.Dilipan

... Respondents in both petitions

Common Prayer : Petitions filed under Section 482 Criminal Procedure Code to call for the entire records in connection with case in CC.No.2402 of 2022 on the file of the Judicial Magistrate-VI, Madurai and quash the same as against the petitioners.

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For Petitioners : Mr.Niranjan S.Kumar

For Respondent : Mr.T.Senthil Kumar,
Additional Public Prosecutor
in both petitions

COMMON ORDER

The petitioners in CrIOP(MD)No.4931 of 2024 are accused Nos.1, 3, 12, 16, 17, 19, 21, 22, 23, 28, 29 and 32 and the petitioners in CrIOP(MD)No.8788 of 2024 are accused Nos.5, 8 and 30 in CC.No.2402 of 2022, which is pending on the file of the learned Judicial Magistrate No.VI, Madurai. Since both these petitions are arising out of the same crime number, these petitions are heard together and are disposed of by this common order.

2.The respondent Police has registered a case in Crime No.498 of 2022 for the occurrence took place on 13.08.2022 and filed a final report for the offence under Sections 147, 341, 294(b), 355, 506(2) IPC and Section 7(1)(a) of the Criminal Law Amendment 1932 @ into Sections 147, 341, 294(b), 355, 353,



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506(2), 149 and 352 IPC and Section 7(1)(a) of Criminal Law Amendment Act 1932 and Section 2 of Prevention of Insult to National Honour Act 1971 in Crime No.2402 of 2022. Challenging the final report and to quash the proceedings pending against them these criminal original petitions have been filed.

3.The learned Counsel appearing for the petitioners submits that it is a case registered due to political vendetta and the occurrence had taken place due to a sudden provocation. The mortal remains of a jawan namely Mr.Laxman was brought from Jammu and Kashmir to Madurai airport. The mortal was kept in the airport for the State to pay its respect. The petitioners belonging to a national political party were also present to pay respect to the deceased jawan. At that time, a Hon'ble Minister for State arrived to the airport to pay homage to the deceased jawan. The petitioners' party members were on their way to pay homage and therefore, there was a commotion between them. The minister has criticised their party members for being present at the scene and questioned their



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locus standi, which provoked the petitioners and other members.

In a heat of moment, a member of the political party waylaid the minister's car and one person is said to have thrown a footwear on the car of the minister. Hence the complaint was lodged.

4.He further submits that 32 persons from the national political party has been arrayed as accused. The respondent police has filed the final report based on the vague statement of the witnesses. When some of the accused were produced for remand, the learned Magistrate after viewing the video clipping produced before him found that the accused have not committed any offence, has refused to remand those accused by order dated 15.08.2022 and the same was not challenged by the respondent Police. The observations of the learned Magistrate in the remand report would expose as to how this case has been foisted as against these petitioners and others. He has also submitted that one Saravanakumar on whose instigation the entire occurrence had taken place, but he has been arrayed as an accused in the final report.



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5.The learned counsel for the petitioners has also relied on the judgment of Hon'ble Supreme Court in K.Anbazhagan Vs Superintendent of Police, reported in 2004 3 SCC 767. Since there was no specific allegation in the case, which has been registered in a similar manner, the entire proceedings was quashed by the Hon'ble Supreme Court.

6.The leaned Counsel has also relied on the Inspector of Police Vs. D.Senthil Kumar reported in 2021 2 MLJ CrI 255 and submits that the *actus rea* and *mens rea* should be established for any act to be termed as offence under Section 2 of the Prevention of Insults to National Honour Act, 1971. He has also relied on Anandaraj Vs. State by the Inspector of Police and Another reported in 2020 SCC Online Mad 18629 ; Mathivanan Vs The Inspector of Police, Vadipatti Police Station and others [CrI OP(MD)No.18337 of 2021, dated 17.12.2021]



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7.The case of the prosecution is that the body of the deceased jawan one Laxman was brought from Jammu and Kashmir on 13.08.2022 and was kept in Madurai Airport. The Hon'ble Finance Minister arrived at the Airport to pay tribute to the deceased on behalf of the State. During his visit, the petitioners and others accused waylaid the Minister's car and prevented him from paying the State honour to the deceased jawan. However the police officials at duty cleared the way. When the Minister was returning after paying the tribute, the petitioners and other accused formed a mob and prevented the Minister and abused him, they have also attacked the police officials, criminally intimidated them. One of them from the mob had also thrown slipper on the national flag flown in the Minister's car. However with great difficulty, the Minister was escorted and sent off by the police officials. Therefore, the case came to be registered.

8.The learned Additional Public Prosecutor by referring the pleadings of the petitioner in both these criminal original petitions



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submits that the petitioners themselves have admitted that they waylaid the Hon'ble Minister's car, however, the car left the place with the help of the police officials and they are justifying their act that it had occurred on a heated moment. The person, who was waylaid is a cabinet Minister for of the state of Tamil Nadu. The petitioners, who belong to a national political party with an intention to defame the Minister, created problem, abused him, insulted him and also thrown a footwear on the national flag on the minister's car. He further submits that therefore, the respondent police have registered the case and after the investigation they have filed the final report before the learned Judicial Magistrate No.VI, Madurai for the offence under Sections 147, 341, 294(b), 355, 506(2) IPC and Section 7(1)(a) of the Criminal Law Amendment 1932 @ into Sections 147, 341, 294(b), 355, 353, 506(2), 149 and 352 IPC and Section 7(1)(a) of Criminal Law Amendment Act 1932 and Section 2 of Prevention of Insult to National Honour Act 1971 and it has also been taken on file in C.C.No.2402 of 2022. Further during the investigation the respondents came to know that one



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Saravanan, Sundar, S.S.D.Manoharan and Isaakki Meenal have not involved in the offence and therefore, their names were deleted in the final report and the deletion report has also been filed before the Court concerned. From the grounds raised by the petitioners, it clearly discloses and it is admitted that the occurrence have been committed by the petitioners along with other accused. Further the petitioners herein filed these quash petitions without making any averments as to how the charges levelled against them are baseless. At the same time they raised a ground just by justifying their act claiming that no offence has been made out against them. It can be appreciated analysing the facts through evidence let in by the prosecution and defence by the trial court. Therefore, all the grounds raised by the petitioners in these quash petitions shall be agitated only before the trial court, but not by way of quash applications under Section 482 CrPC. Therefore the learned Additional Public Prosecutor prays for dismissal of these criminal original petitions.



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8.This Court has considered the rival submissions made and perused the materials placed on record.

9.The petitioners are accused in CC.No.2402 of 2022. The case of the prosecution is that the accused are members of a national political party. On 13.08.2022 around 11.30 am the body of a jawan, who lost his life in Jammu and Kashmir was brought to Madurai airport. The petitioners' party members were on their way to pay homage to the deceased jawan. The Hon'ble Minister for Finance Department of Tamil Nadu arrived at the airport to pay the respect on behalf of the State. When the minister was returning after paying the respect, the petitioners waylaid the minister's car, abused him in filthy language and also thrown footwear at the national flag of the Car. Therefore the case has been registered. The mortal of the jawan was kept in the airport for the purpose of providing state honour. Airport is not a place for paying for paying homage.

10.The petitioners belong to a national political party. They



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were in the airport to pay homage to the deceased jawan. The Hon'ble Minister has also come there to pay homage on behalf of the State. At that time a commotion occurred and as a consequence this incident has taken place. The petitioners have not denied the occurrence. However, they are justifying that this occurrence had taken place on the spur of the moment. The petitioners have waylaid a cabinet minister's car from leaving the airport. It is also admitted that the minister left the place with the help of police personnel. The deceased jawan, who died in Jammu and Kashmir was brought to Madurai airport, through a special flight was about to be taken to his native place.

11.The petitioners claim that they were present in the airport to pay respect to the deceased jawan. Even as per the contention of the petitioners they were on the way to pay homage as per the protocol and at that time minister has come, has questioned the authorities how these persons have been permitted there, out of commotion, the leaders and the cadres of the particular political party have waylaid



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the minister's car, abused with filthy words, criminally intimidated and also thrown footwear on the car holding the national flag.

12. Whoever wrongfully restrains any person is an offence as per Section 341 IPC. Admittedly the petitioners have waylaid the minister's car. The police was also present. The police managed to send the minister's car from the place of occurrence with some difficulty. This would certainly attract an offence under Section 353 IPC. The place of occurrence is airport, which is a public place where there are several persons including the passengers were present. The police has filed the final report with 29 witnesses. Whether the witnesses, who were present were annoyed, the manner in which the minister was abused is a matter to be decided only during the trial and it cannot be decided in the quash application based on the grounds raised by the petitioners whether the case was registered based on the vague statements or not can be ascertained only examination of the witnesses.



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13.The national flag is not a piece of cloth. It symbolises and represents a nation. Hoisting national flag itself is an honour and a pride. Having national flag in the vehicle is restricted only to the Constitutional Authorities. A cabinet minister / a constitutional authority is permitted to have the national flag in the car. As per the Flag Code of India, 2002, whoever insults the national flag is liable to be punished under Section 2 of the Prevention of Insults to National Honour Act, 1971 and the same is extracted as under:

“2.Insult to Indian National Flag and Constitution of India: Whoever in any public place or in any other place within public view burns, mutilates, defaces, defiles, disfigures, destroys, tramples upon or [otherwise shows disrespect to or brings] into contempt (whether by words, either spoken or written, or by acts) the Indian National Flag or the Constitution of India or any part thereof, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.”



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14. Whether the footwear was thrown on the car or on the flag, has to be decided only during the trial. Throwing footwear on the flag and throwing footwear on the car, which is holding flag pole with the flag, would not make any difference. Throwing footwear on the flag mast cannot be excused that it was only an attempt on the flag mast, but not on the flag. The minister was on his way as a representative of the State to pay State's honour to the deceased jawan. The petitioners' political party members are not having any protocol as claimed by them to pay homage at airport. The deceased jawan was brought to Madurai airport from Jammu and Kashmir and was kept in the airport only for the purpose of paying State honour. The airport is not a place, for paying homage to a jawan. If the petitioners really had an intention to pay homage to the deceased jawan, they ought to have visited the native place of the jawan at Pudhupatti, Madurai, which is a few kilometres away from Madurai airport. The petitioners cannot claim any immunity that its only one person had thrown his footwear. As the leaders and the members of the party, everyone is responsible for the offence. If the



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leaders have gathered the cadres, they must also have the responsibility for the act of their cadres. The leaders must have control over the cadres, otherwise they cannot be leaders. The petitioners herein have attempted that they have waylaid the car of the cabinet minister. The relevant paragraph of the affidavit of the petitioners are extracted as hereunder:

“b....It is true that the accused persons waylaid the minister's car, but his car left the place immediately with the help of the police officials.

e...In the case in hand, it has been clearly established that there was a sudden quarrel between the parties and the due outcome was the waylaid”

15.A cabinet minister is having a protocol and having his own security. Despite the security they have waylaid the minister's car, the officials who were in the process of providing security have been prevented from discharging their duty. Therefore the prosecution has relied on 29 witnesses to speak about the conduct of the petitioners



in abusing and intimidating the minister. All these can be appreciated only during the trial and not by way of these quash petitions.

16.It would be relevant to refer to the following judgments of the Hon'ble Supreme Court with regard to the scope under Section 482 of CrPC:

(i) ***Saranya Vs Bharathi and Another reported in (2021) 8 SCC 583;***

“11.In Deepak, to which one of us (Dr D.Y. Chandrachud, J.) is the author, after considering the other binding decisions of this Court on the point, namely, Amit Kapoor v. Ramesh Chander³, State of Rajasthan v. Fatehkaran Mehdu, and Chitresh Kumar Chopra v. State (NCT of Delhi), it is observed and held that at the stage of framing of charges, the Court has to consider the material only with a view to find out if there is a ground for "presuming" that the accused had committed the offence. It is observed and held that at that stage, the High Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclose the existence of all the



ingredients constituting the alleged offence or offences. It is further observed and held that at this stage the High Court is not required to appreciate the evidence on record and consider the allegations on merits and to find out on the basis of the evidence recorded the accused charge sheeted or against whom the charge is framed is likely to be convicted or not.”

(ii) Chilakamarathi Vs Venkateswaralu and another Vs State of Andhara Pradesh reported in **(2020) 17 SCC 595;**

“15. In exercising jurisdiction under Section 482 it is not permissible for the Court to act as if it were a trial court. The court is only to be prima facie satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the court can evaluate materials and documents on record, but it cannot appreciate the evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

16. The High Court should not, in exercise of jurisdiction under Section 482, embark upon an enquiry into whether the evidence is reliable or not, or whether on a reasonable appreciation of the evidence the allegations are not sustainable, for this is the function of the trial Judge. This proposition finds support from the judgment of this Court in Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque³.



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(iii)Supriya Jain Vs State of Haryana and another reported in
(2023) 7 SCC 711;

“16. This is a case where the charges have been framed and the accused are awaiting trial. Having regard to the totality of the facts and circumstances, noticed above, we are of the considered opinion that the investigation and the follow-up steps are not so patently and unobtrusively defective or erroneous (except to the extent we propose to mention before concluding our judgment) that allowing the trial to progress might cause a miscarriage of justice. This is also not an appropriate stage to delve deep into the records. It is no part of the business of any of the courts to ascertain what the outcome of the trial could be, conviction or acquittal of the accused. The small window that the law, through judicial precedents, provides is to look at the allegations in the FIR and the materials collected in course of investigation, without a rebuttal thereof by the accused, and to form an opinion upon consideration thereof that an offence is indeed not disclosed from it. Unless the prosecution is shown to be illegitimate so as to result in an abuse of the process of law, it would not be proper to scuttle it.

17. The principles to be borne in mind with regard to quashing of a charge/proceedings either in exercise of jurisdiction under Section 397 CrPC or Section 482 CrPC or together, as the case may be, has engaged the attention of this Court many a time. Reference to each and every precedent is unnecessary.



However, we may profitably refer to only one decision of this Court where upon a survey of almost all the precedents on the point, the principles have been summarised by this Court succinctly. In Amit Kapoor v. Ramesh Chander, this Court laid down the following guiding principles: (SCC pp. 482-84, para 27)

"27. ... 27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might



be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a "civil wrong" with no "element of criminality" and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is



concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full- fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental



legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae i.e. to do real and substantial justice for administration of which alone, the courts exist.

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence."

17. In the result, in view of the above discussion and in view of the above guidelines of the Hon'ble Supreme Court, these criminal original petitions are dismissed with liberty to the petitioners to raise all these grounds before the trial Court. The trial Court shall also decide the matter on its merits and in accordance with law without



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being influenced by any of the observations made herein.

Consequently connected miscellaneous petitions are closed.

(B P J)
22 .07.2024

DSK

To

1. The Inspector of Police,
Avaniyapuram Police Station,
Madurai City, Madurai.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Date : 22.07.2024