



Crl.O.P.(MD)No.13837 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 23.08.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.13837 of 2024

and

Crl.M.P(MD)Nos.8562 and 8563 of 2024

1.Sekar @ Gnana Sekar

2.Jerin @ Jerin Vintila

... Petitioners/A1 & A3

Vs.

1.The Inspector of Police,
Thenthamaraikulam Police Station,
Kanyakumari District.
Crime No.272 of 2011.

2.Yasuthasan

... Respondents

PRAYER : Criminal Original Petition filed under Section 528 of B.N.S.S., to call for the records pertaining to the proceedings in C.C. No.162 of 2012 on the file of the learned Judicial Magistrate No.III, Nagercoil and quash the same is so far as the petitioner is concerned.

For Petitioners : Mr.Fazil kirmani,
for Mr.M.Karunakaran.

For Respondents : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor.



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ORDER

This Criminal Original Petition has been filed, invoking Section 528 of B.N.S.S., seeking orders, to call for the records pertaining to the proceedings in C.C.No.162 of 2012 on the file of the learned Judicial Magistrate No.III, Nagercoil and quash the same is so far as the petitioner is concerned.

2. The case of the prosecution is that there arose dispute between the petitioners and the defacto complainant with regard to the compound wall; that on 17.08.2011 at about 09.00 am, the petitioners and others had attacked the defacto complainant with wooden log and caused criminal intimidation.

3. On the basis of the complaint lodged by the second respondent, FIR came to be registered in Crime No.272 of 2011 for the alleged offences under Sections 323 and 506(ii) IPC and after completing the investigation, final report came to be filed and the case was taken on file in C.C.No.162 of 2012 and the same is pending on the file of the learned Judicial Magistrate No.III, Nagercoil.



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4.The main contention of the petitioners is that the FIR as well as the charge sheet does not attract the offence, with which the petitioners were charged; that there are no specific allegations and that there are no incriminating materials/evidences against the petitioners to constitute the alleged offences.

5. The learned Additional Public Prosecutor would submit that the defacto complainant sustained injury and was taking inpatient treatment in the hospital and that they have taken a statement from the Medical Officer, who had treated the defacto complainant. He would further submit that NBW is pending as against the second accused.

6. The Hon'ble Supreme Court in the case of ***State of Haryana and others Vs. Bhajan Lal and others*** reported in ***1992 SCC (Cri) 426*** has enumerated 7 categories of cases, where the power can be exercised under Section 482 of Code of Criminal Procedure and the same are extracted hereunder:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV



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and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in



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support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”



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7. In ***Dr.Dhruvaram Murlidhar Sonar Vs. The State of Maharashtra and others*** reported in ***2019 (18) SCC 191***, the Hon'ble Apex Court has specifically held that exercise of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule. It is settled law that the inherent jurisdiction under Section 482 Cr.P.C. is wide but at the same time, the same is to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself.

8. The Hon'ble Supreme Court in ***Kaptan Singh Vs. The State of Uttar Pradesh and others*** reported in ***2021 (3) Crimes 247*** has stated that, that Court in catena of decisions has observed that the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial and that question is required to be examined keeping in view, the contents of FIR and *prima facie* materials, if any, requiring no proof and at such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and materials relied on.



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9. A cursory perusal of the final report and the statements filed along with the final report would make it clear that there existed a *prima facie* case to proceed against the petitioners and it is a matter for trial.

10. Considering the facts and circumstances of the case, the personal appearance of the petitioners before the trial Court is ordered to be dispensed with, on conditions that they shall appear at the time of initial questioning, proceedings under Section 313 of Cr.P.C., and at the time of passing judgment and on the hearings, specifically directed by the trial court. The petitioners are further directed to give an undertaking in the form of affidavit that they will be duly represented by a counsel on all hearing dates and that the Counsel representing them will cross examine the prosecution witnesses on the same day they are examined in chief. The petitioners shall not dispute the identity of the witnesses. The petitioners shall appear before the Court in the event their presence is insisted by the trial judge for the purpose of identification. If the petitioners adopt any dilatorial tactics, it is open to the Trial Court to insist for their appearance and deal with the petitioners in accordance with the judgment of Supreme



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Court of India, *in State of Uttar Pradesh Vs. Shambunath Singh*, reported in *2001 (4) SCC 667*.

11. In the result, the Criminal Original Petition is dismissed. The respondent police is directed to take necessary steps for executing the warrant as against A2 and on their failure to execute the warrant within a reasonable time, the police is directed to take necessary steps to split up the case as against the second accused and after splitting up the case, the trial Court is directed to complete the trial in respect of the petitioners and dispose of the case in C.C.No.162 of 2012 as expeditiously as possible. Consequently, Crl.MP(MD)No.8563 of 2024 is ordered and Crl.M.P. (MD)No.8562 of 2024 is dismissed.

23.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Judicial Magistrate No.III,
Nagercoil.
- 2.The Inspector of Police,
Thentharamaikulam Police Station,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

DAS

Order made in
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and
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