



Crl.O.P.(MD)No.13860 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.09.2024

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THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.13860 of 2024

and

Crl.M.P.(MD)Nos.8578 & 8579 of 2024

1.Modikarthick

2.Palanivel

... Petitioners

Vs.

1.The Inspector of Police,
Uthamapalayam Police Station,
Theni District.
(Crime No.257 of 2016)

2.Suresh,
Flying Squad,
Cumbum Assembly Constituency,
Bodinayakkanur, Theni District.

... Respondents

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, to call for the records relating to the proceedings in S.T.C.No.29 of 2024 on the file of the Judicial Magistrate, Uthamapalayam and quash the same as against the petitioner.

For Petitioners : Mr.M.Karuppasamy Pandian

For R-1 : Mr.E.Antony Sahaya Prabahar,
Additional Government Pleader



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ORDER

This criminal original petition has been filed seeking orders to quash the proceedings in S.T.C.No.29 of 2024 on the file of the Judicial Magistrate, Uthamapalayam.

2.It is seen that on the basis of the complaint given by the second respondent, FIR came to be registered in Cr.No.257 of 2016 for the offences under Sections 4A(1)(a) of the Tamil Nadu Open Places (Prevention of Disfigurement) Act 1959 and after completing investigation, charge sheet came to be filed and the case was taken on file in STC.No.29 of 2024 by the Judicial Magistrate, Uthamapalayam.

3.The main contention of the petitioners is that FIR came to be registered on 28.04.2016, that since the final report has not been filed, the learned Magistrate has closed the FIR by invoking power under Section 468(2) Cr.P.C. and that subsequently, the first respondent Police has filed final report for the very same offences and the case was also taken on file in STC.No.29 of 2024.



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4.The learned counsel appearing for the petitioner would submit that after closure of FIR, without getting any orders for re-opening the case, the first respondent Police has absolutely no power or jurisdiction to file the final report and that the petitioners were not given any notice of hearing before recalling the earlier closure order.

5.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 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



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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 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



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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.”

6.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



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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.

7.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.

8.It is evident from the records that in FIR, concerned Court affixed rubber stamp for closure of FIR under Section 468(2) Cr.P.C.,



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but, the learned Magistrate has not signed the same. Similarly, in the complaint also, they have affixed rubber stamp and the the signature of the learned Magistrate does not find place. The petitioners have not shown any order that FIR came to be closed by the learned Judicial Magistrate. No doubt, the first respondent has filed the final report and the case was taken on file on 04.01.2024.

9.As rightly pointed out by the learned Additional Public Prosecutor, even assuming that Section 468 Cr.P.C. is applicable, cognizance can be taken by condoning the delay.

10.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.

11.The petitioners have not canvassed any other valid ground or reason to impugn the charge sheet and hence, this Court concludes that this petition is devoid of merits and the same is liable to be dismissed.



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10.At this juncture, the learned counsel appearing for the petitioners would request that the personal appearance of the petitioners before the trial Court may be dispensed with.

11.Considering the above, 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 all 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 Court of India, *in State of Uttar Pradesh Vs. Shambunath*



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Singh, reported in *2001 (4) SCC 667*.
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12.In the result, this criminal original petition is dismissed.

Consequently, connected miscellaneous petitions are closed.

20.09.2024

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

- 1.The Judicial Magistrate,
Uthamapalayam.
- 2.The Inspector of Police,
Uthamapalayam Police Station,
Theni District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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