



Crl.O.P.(MD)No.14560 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.09.2024

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THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.14560 of 2024

and

Crl.M.P.(MD)Nos.9087 & 9088 of 2024

Ramalingam

... Petitioners

Vs.

1.The Inspector of Police,
Orathanadu Police Station,
Orathanadu,
Thanjavur District.
(Crime No.1437 of 2020)

2.Kumar

... Respondents

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, to call for the records relating to the case in C.C.No.61 of 2023 on the file of the District Munsif cum Judicial Magistrate, Orathanadu and quash the same.

For Petitioners : Mr.K.Guhan

For R1 : Mr.K.Sanjai Gandhi,
Government Advocate (Crl. Side)



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ORDER

This criminal original petition has been filed seeking orders to quash the charge sheet in C.C.No.61 of 2023 on the file of the District Munsif cum Judicial Magistrate, Orathanadu.

2.The case of the prosecution is that there existed property dispute between the parties, due to which, the accused abused the second respondent in filthy language, attacked him and also threatened him with dire consequences and hence, the second respondent lodged a complaint.

3.It is seen that on the basis of complaint given by the second respondent, FIR in Cr.No.1437 of 2020 came to be registered, that after completing investigation, the first respondent filed the final report for the offences punishable under Sections 341, 294(b), 352 and 506(2) IPC and that the case was taken on file in C.C.No.61 of 2023 by the District Munsif cum Judicial Magistrate, Orathanadu.

4.The learned counsel appearing for the petitioner would submit that the petitioner is a retired Professor and the second respondent is his



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brother, that the petitioner at the time of alleged occurrence was at his house situated at Thanjavur, that the second respondent and others have threatened the petitioner with dire consequences, that the second respondent has lodged the complaint falsely and that the first respondent without conducting any enquiry, has registered FIR. He would further submit that the petitioner has already lodged a complaint against the second respondent and others, but, without investigation, the same was closed and that though civil dispute is pending between the parties, without considering the same, the first respondent has filed the final report.

5.The learned Government Advocate (CrI.side) appearing for the first respondent would submit that trial was already commenced, that four witnesses have already been examined and that the grounds raised by the petitioner is a matter for trial.

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



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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 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



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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 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



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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;

1. 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.”

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



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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.

9.As rightly contended by the learned Government Advocate(Crl.side), plea of alibi is a matter for trial and that the pleas raised/canvassed by the petitioner, by no stretch of imagination, can be considered as reasons/grounds to quash the charge sheet and the same are matter for trial. Except the above, the petitioner has not shown any other valid reason or ground to quash the charge sheet. Therefore, this petition is devoid of merit and the same is liable to be dismissed.

10.At this juncture, the learned counsel appearing for the petitioner would submit that the personal appearance of the petitioner may be dispensed with.



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11.Considering the age of the petitioner, the personal appearance of the petitioner before the trial Court is ordered to be dispensed with, on conditions that he 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 petitioner is further directed to give an undertaking in the form of affidavit that he will be duly represented by a counsel on all hearing dates and that the counsel representing him will cross examine the prosecution witnesses on the same day they are examined in chief. The petitioner shall not dispute the identity of the witnesses. The petitioner shall appear before the Court in the event his presence is insisted by the trial judge for the purpose of identification. If the petitioner adopts any dilatorial tactics, it is open to the Trial Court to insist for his appearance and deal with the petitioner in accordance with the judgment of Supreme Court of India, *in State of Uttar Pradesh Vs. Shambunath Singh*, reported in **2001 (4) SCC 667**.



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12.In the result, this criminal original petition is dismissed.

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Consequently, connected miscellaneous petitions are closed.

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

- 1.The District Munsif cum Judicial Magistrate,
Orathanadu.
- 2.The Inspector of Police,
Orathanadu Police Station,
Orathanadu,
Thanjavur 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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