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Crl.O.P.(MD)No.15691 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.09.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.15691 of 2024

and

Crl.M.P.(MD)No.9874 of 2024

Ramprasath

: Petitioner/A4

Vs.

1.State through the Inspector of Police,
Pattiveeranpatti Police Station,
Dindigul District.
Crime No.249 of 2024.

2.Kishor Raj

: Respondents

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, to call for the records of the impugned FIR in Crime No.249 of 2024, dated 03.07.2024 on the file of the first respondent police and quash the same.

For Petitioner : Mr.S.Sivaprakash

For Respondents : Mr.P.Kottai Chamy,
Government Advocate (Criminal Side)
for R1.

ORDER

This Criminal Original Petition is filed under Section 528 of BNSS., seeking orders, to call for the records of the impugned FIR in Crime No.249 of



2024 on the file of the first respondent police, dated 03.07.2024 and quash the same.

2. It is seen from the records that on the basis of the complaint given by the second respondent, FIR came to be registered in Crime No.249 of 2024, for the alleged offences under Sections 191(2), 296(b), 115(2), 118(1), 351(3) of BNS.

3. The case of the prosecution is that the defacto complainant is having ancestral properties near Sevugampatti Village; that the land belonged to the defacto complainant's grandfather for the past 60 years; that the petitioners had created the forged documents and tried to encroach the land and hence, there arose some dispute between the parties; that a suit in O.S.No.35 of 2024 is pending before the District Munsif Court, Nilakottai and the accused 1 and 2 had also filed a writ petition in W.P.(MD)No.4242 of 2024 seeking orders to survey the land and that the surveyor and the Thasildar, Nilakottai had come on 02.07.2024 to survey the land and at that time, the accused persons have entered into the land and damaged the iron sheet and abused the defacto complainant in filthy language and also attacked him and threatened him with dire consequences. Hence, the complaint.



Crl.O.P.(MD)No.15691 of 2024

WEB COPY

4. The main contention of the petitioner/Accused No.4 is that he was not at all present at the time of occurrence and he was in Chennai and that the petitioner is having ample records to show that the petitioner was in Chennai at the relevant time and not at the occurrence place.

5. As rightly contended by the learned Government Advocate (Criminal Side), the points that are canvassed by the petitioner are matter for trial and the same cannot be gone into in the present proceedings. Moreover, the plea of alibi cannot be considered in the quash petition as the petitioner can very well produce the material and evidence available with him to the Investigating Officer and upon such production, the Investigating Officer is directed to consider the same.

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 and of the



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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 support of



WEB COPY



Crl.O.P.(MD)No.15691 of 2024

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.”



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.

9. It is pertinent to note that if the petition under Section 482 Cr.P.C. was filed at the stage of FIR, the allegations in the FIR/complaint only are



Crl.O.P.(MD)No.15691 of 2024

required to be considered and whether a cognizable offence is disclosed or not is required to be considered.

10. In the case on hand, as rightly contended by the learned Government Advocate (Criminal Side), a cursory perusal of the FIR makes out a *prima facie* case against the accused and it is a matter for investigation and as such, the question of quashing the FIR at this stage does not arise at all. Hence, this Court concludes that this is not a fit case to invoke Section 482 Cr.P.C., for quashing the FIR at this stage and the same is liable to be dismissed.

11. In the result, this Criminal Original Petition stands dismissed. The petitioner is at liberty to produce all the materials available with him with regard to alibi plea before the investigating officer and the investigating officer/first respondent is directed to consider the same at the investigation. Consequently, connected Miscellaneous Petition is closed.

20.09.2024

NCC : Yes/ No
Index : Yes/No
Internet : Yes/ No
das



WEB COPY



Crl.O.P.(MD)No.15691 of 2024

K.MURALI SHANKAR,J.

Das

To

- 1.The Inspector of Police,
Pattiveeranpatti Police Station,
Dindigul District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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Crl.M.P.(MD)No.9874 of 2024

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