



Crl.O.P.(MD)No.15752 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.09.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.15752 of 2024

and

Crl.M.P(MD)No.9916 of 2024

1.Rajappa

2.Manikanda Eswaran

3.Rajagopal

4.Chithirai Selvan @ Selvan

... Petitioners/A1 to A4

Vs.

1.The State of Tamil Nadu rep.by
The Inspector of Police,
Suchindram Police Station,
Kanyakumari District.
Crime No.294 of 2024.

2.K.Rajasekar

... Respondents

PRAYER : Criminal Original Petition filed under Section 528 of BNSS,
to call for the records relating to the impugned FIR in Crime No.294 of
2023, dated 16.10.2023 on the file of the first respondent police and
quash the same as against the petitioners.



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For Petitioners : Mr.A.Arun Ramnatha

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

ORDER

The Criminal Original Petition has been filed, invoking Section 528 B.N.S.S., seeking orders, to call for the records relating to the impugned FIR in Crime No.294 of 2023, dated 16.10.2023 on the file of the first respondent police and quash the same as against the petitioners.

2. On the basis of the complaint lodged by the second respondent, FIR came to be registered in Crime No.294 of 2023 for the alleged offences under Sections 341, 294(b), 323, 506(ii) and 379 IPC.

4. The case of the prosecution is that the first petitioner, who was the former President of Bhadrakali Amman Temple Trust, Nainaputhoor, while functioning as the trustee, has invested his money for functioning of the said Trust and he was promised by the defacto complainant that his money will be reimbursed by collecting Vari from Varidharars of the



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village, that since the same was not done, the first petitioner has filed the suit for recovery of money and that due to that enmity, the petitioners abused the defacto complainant in filthy language and also attacked him. Hence, the complaint.

5. The main contention of the petitioner is that the first petitioner was admitted in R.I. Government Medical College Hospital, Asaripallam on 15.10.2023 at 06.30 pm, and he was discharged on 21.10.2023; that the first petitioner has lodged a complaint on 15.10.2023 from the Hospital against the defacto complainant and others and FIR came to be registered in Crime No.295 of 2023, only on the next day and that subsequently, the present FIR came to be lodged falsely, though no injury was caused to the defacto complainant and that the allegations levelled in the FIR are false and untenable. He would further submit that though the first petitioner was admitted at 06.30 pm on 15.10.2023, the police has shown that the incident was occurred at 07.25 pm.

6. As rightly contended by the learned Government Advocate (Criminal Side), the above aspects canvassed by the petitioners cannot be



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gone into in the present proceedings and are matter for investigation. In case, if the petitioners produce any material or evidence to prove their contentions, the respondent police is directed to consider the same, while conducting investigation. Except the above aspects, the learned counsel for the petitioners has not canvassed any other reason or ground to quash the FIR.

7. 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



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



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(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



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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.”

8. 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.

9. 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,



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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.

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

11. 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 528 of BNSS., for quashing the FIR at this stage and the same is liable to be dismissed.

12. In the result, this Criminal Original Petition stands dismissed. The petitioner is at liberty to produce the documents to show that he was not available at the place of occurrence before the first respondent and on



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such receipt, the respondent police is directed to consider the same during investigation. Consequently, connected Miscellaneous Petition is closed.

23.09.2024

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

To

- 1.The Inspector of Police,
Suchindram Police Station,
Kanyakumari District.
- 2.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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