



Crl.O.P.(MD)No.16077 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.09.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.16077 of 2024

and

Crl.M.P.(MD)Nos.10130 & 10132 of 2024

1.Mercy

2.Sony @ Sony Joye Alex

... Petitioners

Vs.

1.The Inspector of Police,
District Crime Branch Police Station,
Kanyakumari District.
(Crime No.78 of 2022)

2.Siva Kala

... Respondents

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, to call for the entire records in relating to the impugned charge sheet in C.C.No.539 of 2023 on the file of the learned Judicial Magistrate No.II, Kuzhithurai and to quash the same insofar as the petitioners are concerned.

For Petitioners : Mr.M.S.Jeyakarthik



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

For R2 : Mr.K.Jeyamohan

ORDER

This criminal original petition has been filed seeking orders to quash the impugned charge sheet in C.C.No.539 of 2023 on the file of the learned Judicial Magistrate No.II, Kuzhithurai.

2.It is evident from the records that on the basis of the complaint given by the second respondent, FIR came to be registered in Cr.No.78 of 2022 and that after completion of investigation, charge sheet came to be filed and the case was taken on file in C.C.No.539 of 2023 for the offence under Sections 406, 420 and 120B IPC and the same is pending on the file of the Judicial Magistrate No.II, Kuzhithurai.

3.The case of the prosecution is that the accused had taken loan from the second respondent as if the third accused has to continue his education in abroad and they have taken loan to the tune of



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Rs.2,85,41,700/- and 204 sovereigns of gold jewels, that the accused had pledged the jewels, that the accused had purchased several properties within the amount received, that thereafter failed to repay the same and that they had cheated the complainant and hence, the second respondent lodged a complaint.

4.The learned counsel appearing for the petitioners would submit that there existed money transaction dispute between the parties and civil suit is also pending and that the first respondent Police, without considering the above aspects has filed the final report.

5.The learned Government Advocate(Crl.side) appearing for the first respondent would submit that charges are already framed and the case is pending for trial.

6.As rightly pointed out by the learned counsel appearing for the second respondent, the petitioners received 204 sovereigns of gold jewels and they had pledged the same. According to them, the second respondent has already filed a revision in Crl.R.C.(MD)No.164 of 2024 and this Court directed SBI, Kuzhithurai Branch as well as another



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private finance company not to alienate the jewels in question till the disposal of the revision.

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 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.



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(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 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



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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;

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.”

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



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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/charge sheet 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/charge sheet and materials relied on.

10.A cursory perusal of the charge sheet and the document produced would make it clear that there existed a *prima facie* case to proceed against the petitioners and the grounds now raised by the petitioner are all matter for trial and the same cannot be canvassed before this Court in the present proceedings. Except the grounds now raised,



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the petitioners have not shown any other reason or ground to impugn the charge sheet.

11.Considering the above and also taking note of the fact that this is not a fit case to quash the charge sheet in C.C.No.539 of 2023 on the file of the learned Judicial Magistrate No.II, Kuzhithurai against the petitioners, this Court concludes that this petition is devoid of merit and the same is liable to be dismissed.

12.In the result, this Criminal Original Petition stands dismissed.
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 Judicial Magistrate No.II, Kuzhithurai
 - 2.The Inspector of Police,
District Crime Branch Police Station,
Kanyakumari 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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