



Crl.O.P.(MD)No.16057 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.10.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.16057 of 2024

and

Crl.M.P.(MD)Nos.10111 and 10112 of 2024

T.Hariharan

... Petitioner

Vs.

1.The State of Tamil Nadu rep. by
The Inspector of Police,
Vadaseri Police Station,
Kanyakumari District.
(Crime No.199 of 2022)

2.N.Subbaiyan

... Respondents

PRAYER : Criminal Original Petition filed under Section 528 B.N.S.S.,
to quash the proceedings in S.T.C.No.1933 of 2023 on the file of the
Judicial Magistrate No.II, Nagercoil, Kanyakumari District, in so far as
the petitioner concern.

For Petitioner : Mr.C.Sankar Prakash

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



Crl.O.P.(MD)No.16057 of 2024

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ORDER

The Criminal Original Petition has been filed, invoking Section 528 B.N.S.S., seeking orders to quash the charge sheet in S.T.C.No.1933 of 2023 pending on the file of the Judicial Magistrate No.II, Nagercoil, Kanyakumari District.

2. It is evident from the records that on the basis of the complaint lodged by the second respondent, FIR came to be registered in Crime No. 199 of 2022 for the alleged offences under Sections 427 and 447 IPC against one named person and two other persons and after completing the investigation, charge sheet came to be filed and the case was taken on file in S.T.C.No.1933 of 2023 against two persons including the petitioner for the alleged offences under Sections 294(b), 427 and 447 IPC and the same is pending on the file of the Judicial Magistrate No.II, Nagercoil.

3. The case of the prosecution is that since the petitioner/second accused has not paid the lease amount to the tune of Rs.1,22,484/-, the



Crl.O.P.(MD)No.16057 of 2024

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Corporation officials have closed and sealed the shop and that the petitioner along with the first accused on 16.07.2022 at about 20.00 hours had trespassed into the property and break open the seal and caused damages to the tune of Rs.100/- and when the same was questioned, the accused have abused them in filthy language.

4. The main contention of the petitioner is that though the occurrence was happened on 16.07.2022, the complaint came to be lodged with a delay of two days i.e. on 18.07.2022, that the petitioner's name does not find place in the FIR, that only on the basis of the complaint given by the Revenue Inspector, the present FIR came to be registered and that the complaint as well as the charge sheet averments does not attract the offence under Section 294(b) IPC.

5. Even assuming that there was a delay of two days in preferring the complaint, that by itself is not a ground to quash the charge sheet at this point of time and the other aspects / points canvassed by the petitioner, by no stretch of imagination, can be taken as reasons or grounds to impugn the charge sheet at this stage. Except the above, the



Crl.O.P.(MD)No.16057 of 2024

petitioner has not canvassed any other reason or ground to quash the charge sheet.

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 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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Crl.O.P.(MD)No.16057 of 2024

(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



CrI.O.P.(MD)No.16057 of 2024

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



Crl.O.P.(MD)No.16057 of 2024

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. 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 petitioner.



Crl.O.P.(MD)No.16057 of 2024

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10. Considering the above and also taking note of the fact that this is not a fit case to quash the charge sheet against the petitioner, this Court is not inclined to grant the relief claimed.

11. In the result, this Criminal Original Petition stands dismissed.
Consequently, connected Miscellaneous Petitions are closed.

03.10.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
csm

To

- 1.The Judicial Magistrate No.II,
Nagercoil.
- 2.The Inspector of Police,
Vadaseri Police Station,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.O.P.(MD)No.16057 of 2024

K.MURALI SHANKAR,J.

csn

Order made in
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