



Crl.O.P(MD) No.18098 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 10.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE **M. NIRMAL KUMAR**

Crl.O.P.(MD) No.18098 of 2024

and

Crl.M.P(MD) Nos.11212 and 11213 of 2024

Sureshmerlin

...Petitioner

Vs.

1. The Inspector of Police
Arumanai Police Station
Kanyakumari District

2. Rajkumar
(R2 impleaded as per the order of the Court
dated 05.11.2024 in Crl.M.P(MD) NO.11737 of 2024) ...Respondents

PRAYER: Criminal Original Petition filed under Section 528 of BNSS to call for the records pertaining to the impugned proceedings in STC No.714 of 2023 on the file of the learned Judicial Magistrate No.I, Kuzhithurai and to quash the same.

For Petitioners : Mr.R.Sreenivasan

For Respondents : Mr.A.Thiruvadi Kumar
No.1 Additional Public Prosecutor
No.2 : Mr. A.Robinson



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ORDER

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This petition has been filed to quash the proceedings in STC No.714 of 2023 on the file of the learned Judicial Magistrate No.I, Kuzhithurai

2. The contention of the petitioner is that the defacto complainant who is a police officer had encroached upon the public road and constructed a wall which was questioned by the petitioner for which a false case has been registered against the petitioner. The petitioner submitted that the injuries are simple in nature. A trivial issue has been thrown out of the person and charge sheet has been filed

3. The learned counsel appearing for the second respondent/defacto complainant would submit that in this case there was a wordy altercation on 30.05.2024 and thereafter for 15 days the petitioner has been waiting to assault the defacto complainant and on 15.06.2024 assaulted the defacto complainant and he sustained serious injuries which was witnesses by three witnesses. Further he was taken to hospital and taken treatment. Hence strongly opposed the quashing of the charge sheet.



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4. The learned Additional Public Prosecutor submitted that there was dispute with regard to the damage of the compound wall between the petitioner and the defacto complainant. On 15.06.2024 when the defacto complainant was accosted and thereafter he was assaulted. This assault has been witnessed by three witnesses.

5. In this case on the complaint of the defacto complainant a case has been registered, final report has been filed listing eight witnesses. All the points raised by the petitioner are factual in nature which cannot be decided in the quash petition.

6. In view of the same, this court finds that the points raised by the learned counsel appearing for the petitioner is factual in nature which has to be necessarily decided by the trial Court during trial.

7. In view of the same the Criminal Original Petition stands dismissed. Consequently connected miscellaneous petition in Crl.M.P(MD) No.11212 of 2024 stands dismissed and Crl.M.P(MD) No.11213 of 2024 stands allowed.



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8. At this juncture, the learned counsel appearing for the petitioner submitted that the petitioner is a ward councillor and he has to attend public duty. Hence his personal appearance before the trial Court may be dispensed with prayed that the personal appearance of the petitioner before the trial Court, may be dispensed with.

9. Accepting the said submission, the presence of the petitioner before the trial Court shall be dispensed with on condition that he shall be present on the first day of appearance, on the date fixed for receiving the copies, initial questioning, reply to charges and questioning under Section 313 of Cr.P.C., and at the time of passing judgment and whenever insisted upon by the trial court.

10. 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 when they are examined in chief. The petitioner shall not dispute his identity and 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 adopt any dilatorial tactics, it is open to the Trial Court to insist for his appearance and deal with the petitioner in



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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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Internet: Yes
Index: Yes/No
Speaking/Non speaking order
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To

1. The Judicial Magistrate No.I, Kuzhithurai

2. The Inspector of Police
Arumanai Police Station
Kanyakumari District

3. The Additional Public Prosecutor
Madurai Bench of Madras High Court
Madurai



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M. NIRMAL KUMAR.J.,

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