



Crl.O.P.(MD)No.18140 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.10.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.18140 of 2024

and

Crl.M.P.(MD)Nos.11249 and 11250 of 2024

Mohammed Raffi

... Petitioner

Vs.

1.The State of Tamil Nadu represented by
The Inspector of Police,
Sellur Police Station,
Madurai City.
(Crime No.78 of 2020)

2.Krishnan

... Respondents

PRAYER : Criminal Original Petition filed under Section 528 B.N.S.S., to call for the records pertaining in C.C.No.2274 of 2023 on the file of learned Judicial Magistrate No.II, Madurai and quash the same as illegal against the petitioner.

For Petitioner : M/s.A.Banumathy

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



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ORDER

This Criminal Original Petition has been filed, invoking Section 528 B.N.S.S., seeking orders to quash the charge sheet in C.C.No.2274 of 2023 pending on the file of the Judicial Magistrate No.II, Madurai.

2. On the basis of the complaint given by the second respondent, FIR came to be registered in Crime No.78 of 2020 on 18.01.2020 and after completing the investigation, charge sheet came to be filed for the alleged offences under Sections 468, 406 and 420 IPC against the petitioner and the same was taken on file in C.C.No.2274 of 2023 and is pending on the file of the Judicial Magistrate No.II, Madurai.

3. The case of the prosecution is that the petitioner and the second respondent are friends and that since the petitioner had demanded amount for business development, the second respondent has given Rs.3,75,000/- and the petitioner has created forged rent agreement and on that basis, received the amount and thereby cheated the second respondent.



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4. The main contention of the petitioner is that the petitioner has settled the entire amount and that only on that basis, anticipatory bail was granted to the petitioner. It is seen from the anticipatory bail order passed in Crl.O.P.(MD)No.1357 of 2020 that since the petitioner admitted his liability to the tune of Rs.3,50,000/- and expressed his willingness to pay Rs.1,00,000/- within a period of three weeks and on filing of affidavit, this Court has granted anticipatory bail. Just because, some amount has been paid to the second respondent and even assuming that the remaining amount is paid, that by itself is not a ground to quash the charge sheet at this point of time. Except the above, the petitioner has not canvassed any other reason or ground to quash the charge sheet.

5. 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



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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;



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(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 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



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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.”

6. 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.

7. 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



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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.

8. 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.

9. Considering the above and also the submission made by the learned Government Advocate (Criminal Side) 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.

10. At this juncture, the learned counsel appearing for the petitioner would submit that the personal appearance may be dispensed with.



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11. Considering the facts and circumstances, the personal appearance of the petitioner before the trial Court is ordered to be dispensed with, on conditions that he shall appear at the time of initial questioning, proceedings under Section 313 of Cr.P.C., and at the time of passing judgment and on all the hearings, specifically directed by the trial court. 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 they are examined in chief. The petitioner shall not dispute the identity 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 adopts any dilatorial tactics, it is open to the Trial Court to insist for his appearance and deal with the petitioner in accordance with the judgment of Supreme Court of India, *in State of Uttar Pradesh Vs. Shambunath Singh*, reported in *2001 (4) SCC 667*.

12. In the result, this Criminal Original Petition stands dismissed. Consequently, connected Miscellaneous Petition in Crl.M.P.(MD)No.



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11250 of 2024 is ordered and the petition in Crl.M.P.(MD)No.11249 of

2024 is closed.

25.10.2024

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

To

- 1.The Judicial Magistrate No.II,
Madurai.
- 2.The Inspector of Police,
Sellur Police Station,
Madurai City.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Order made in
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