



Crl.O.P.(MD)No.20714 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.12.2024

CORAM

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.(MD)No.20714 of 2024

and

Crl.M.P.(MD)No.12799 of 2024

GopalaKrishnan

... Petitioner

Vs

1.The State of Tamilnadu represented by
The Superintendent of Police,
Madurai District.

2.The Deputy Superintendent of Police,
Melur,
Madurai District.

3.The Inspector of Police,
Melavalau Police Station,
Melur Taluk, Madurai District
(Crime No.39 of 2020)

4.Lakshmanan

... Respondents



Crl.O.P.(MD)No.20714 of 2024

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PRAYER : Criminal Original Petition filed under Section 447 of BNSS, to issue direction to the learned Judicial Magistrate, Melur to dispose of the protest petition filed by the petitioner in Crl.M.P.No.4054 of 2024 and consequently, direct the learned III Additional District Judge (PCR Act Cases), Madurai to keep the case, in Spl.S.C.No.25 of 2021, in abeyance as per the order of Full Bench in Crl.O.P.No.4587 of 2023 and batch dated 08.08.2024.

(Prayer has been amended vide Court order dated 18.12.2024, in Crl.M.P.(MD)No.13078 of 2024 in Crl.O.P.(MD)No.20714 of 2024, by MNKJ)

For Petitioner : M/s.K.Sivatharsana

For R1 to R3 : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

The present Criminal Original Petition has been filed to issue a direction to the learned Judicial Magistrate, Melur to dispose of the protest petition filed by the petitioner in Crl.M.P.No.4054 of 2024 and to direct the learned III Additional District Judge (PCR Act Cases), Madurai to keep the case, in Spl.S.C.No.25 of 2021, in abeyance as per the order of Full Bench in Crl.O.P.No.4587 of 2023 and batch dated 08.08.2024.



Crl.O.P.(MD)No.20714 of 2024

WEB COPY

2. The primary contention of the petitioner is that there is a civil dispute between the petitioner and the 4th respondent and his family members. On 24.02.2020, the 4th respondent and his family members had entered into the field of the petitioner and caused damages to the Papaya trees and other saplings. When it was questioned by the petitioner, he was assaulted. Later, in a preemptive manner, the 4th respondent had lodged a complaint against the petitioner, and a case in Crime No.39 of 2020 was registered on 24.02.2020 at about 21.45 hours. The petitioner had lodged a complaint on 26.02.2020, but no action was taken on the same. Then, the petitioner filed a complaint before the lower Court in Cr.M.P.No.4339 of 2023 and the same was forwarded to the jurisdictional police on 12.07.2024 directing the police to conduct an enquiry and to file a report. Thereafter, the Inspector of Police, Melur had submitted a report stating that no such incident had taken place and hence, the petitioner had filed a private complaint which is pending before the Judicial Magistrate, Melur.

3. The private complaint is pending. The contention of the petitioner is that it is a case and a case in counter. Hence, following the



Crl.O.P.(MD)No.20714 of 2024

WEB COPY

Full Bench order of this Court, the petitioner seeks a direction to transfer the protest petition to be heard by the learned III Additional District Judge (PCR Cases), Madurai, along with the case in Spl.S.C.No.25 of 2021, which is pending on its file. Till such time, the trial in Spl.S.C. No.25 of 2021 not to proceed, and after the protest petition of the petitioner is decided, both the cases to be tried simultaneously and judgment to be rendered on the same day.

4. The learned counsel for the 4th respondent/de-facto complainant filed a counter giving the details about the trajectory of the case, wherein, the petitioner is being a dominant person in the locality and is being controlling the marginalized people in the society and the occurrence had taken place only because of his dominance. Therefore, the 4th respondent had lodged a complaint. Based on his complaint, a case has been registered and now, the charge sheet has been filed and the trial is in progress. At this stage, the petitioner now wants to camouflage the private complaint showing that it is a case in counter. Further, he has filed a detailed counter which is scanned and extracted hereunder :



Cr.L.O.P.(MD)No.20714 of 2024

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IN THE HIGH COURT OF JUDICATURE MADRAS AT MADURAI
BENCH
(Criminal Original Jurisdiction)

Cr.L.O.P.(MD)No. 20714 of 2024

Gopalakrishnan
S/o. Meenakshikone,
Sanniranipatti,
Melur Taluk,
Madurai District.

...Petitioner

-Vs-

D. Lakshmanan
S/o. Durairajan
D.No. 9, South Street,
Singarayam Colony,
Narimedu,
Madurai District

...4th Respondent

COUNTER AFFIDAVIT FILED BY THE 4th RESPONDENT

I, Lakshmanan, Son of Durairajan, aged about 61 years, residing at D.No. 9, South Street, Singarayam Colony, Narimedu, Madurai District do hereby solemnly affirm and sincerely submit as follows:

1. I submit that I am the 4th respondent herein and de-facto complainant in First Information Report No.39/2020 on the file of the 2nd respondent as such I am well aware of the facts and circumstances of the case and competent to swear this affidavit.
2. I submit that the instant application filed by the petitioner / 1st accused is nothing but an abuse of process of law, vexatious and liable to be dismissed with exemplary costs as the same is devoid of merits.

D. Lakshmanan

Page No: 1
Corus: Nil



Crl.O.P.(MD)No.20714 of 2024

WEB COPY

-2-

3. I submit that at the outset I have denied all the averments made in the affidavit filed in support of the original petition filed by the petitioner except the fact of the cases mentioned in the affidavit and the brutal assault caused by the petitioner along with others followed by land dispute.
4. I submit that followed by a land dispute in the native village of my wife, on 24.02.2020 at about 17.30 hours, I along with two others namely Suresh and his father Dharmam were assaulted by deadly weapons. Immediately all the injured persons including myself were taken to Government Hospital, Melur by availing 108 ambulance services. Since the injury inflicted upon me and others are grievous in nature, immediately we were referred to Sri Maenakshi Mission Hospital, Madurai for further medical treatment in the very same ambulance. Accordingly, we got admitted and I was given treatment for the period of more than 15 days as inpatient, since I suffered with grievous injury on my backside of the head and also suffered with fracture on my left hand and inflicted punctured injuries on my back and also suffered with multiple injuries all over my body. At the same time, the other injured were also given treatment as inpatient for a period of nearly one week as they were also inflicted grievous injuries. However, on the very same day complaint statement was recorded from me and the aforesaid case was registered on 14.02.2020 for the offence under section 147, 148, 447, 341, 294(b), 323, 324, 307, 379 of IPC and Section 3(i) (v) (a) SC/ST Act. Inter charge sheet is filed as against A1 to A5 and A11. Subsequently, trial is commenced and the prosecution has examined PW-1 to PW-13 and the cases is posted for the examination and Doctor and Investigation Officer on 10.12.2019, on the file of the learned Jnd Additional District Sessions and (PCR) Court, Madurai in Spl S.C. No.25/2021. However, because of the

Page No: 2
Corus: Nil

B. Lakshmanan



Crl.O.P.(MD)No.20714 of 2024

WEB COPY

-3-

ab-sconding of the 3rd accused, case was split-up by assigning separate Spl.S.C No.89/2023.

5. I further submit that in the previous occasion all the accused were granted bail by the learned Trial Court. However pending investigation all the accused conspired together and thereby brutally murdered one of the injured witness (LW-2) namely Suresh in the middle of the village Manthai on 18.12.2022 in between 05.30 to 6.00 P.M. In this regard the case in First Information Report No.202/2022 registered by the 3rd respondent for the offence punishable under section 302 of IPC among other penal provisions. Now the case is pending for committal and because of the non-cooperation and arrogance shown by the accused, the said case is unable to commit to file the Learned Principal District Judge, Madurai.
6. I submit that since the order of bail was granted by the learned IIIrd Additional District Sessions and (PCR) Court, Madurai without considering the gravity of offence and also the grievous injuries inflicted upon me, I was constrained to file Crl.O.P.(MD)No. 10559 and 10560 of 2020 before this Hon'ble Court for the cancellation of the bail order in Cr.M.P.No. 447 of 2020 granted by the learned Trial court. However to my shock pending the aforesaid original petition, all the accused followed by conspiracy among them brutally murdered, by using the deadly weapons, one of the injured witness (LW-2). Hence, after elaborate enquiry, the order of bail dated 09.09.2020 granted by the Learned Special court was cancelled by this Hon'ble Court on 02.03.2023.
7. I further submit that in the meanwhile the 2nd respondent also preferred a petition before the learned IIIrd Additional District Sessions and (PCR)

Page No: 3
Date: 01

D. Laxkumar

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WEB COPY



CrI.O.P.(MD)No.20714 of 2024

-4-

Court, Madurai in Cr.M.P.No. 172, 242, 409 of 2023 for the cancellation of the bail granted to the petitioner and all other accused based on the reason that all the accused committed the offence of murdering the injured witness.

8. I further submit that followed by the order passed by this Hon'ble Court and Learned IIIrd Additional District Sessions and (PCR) Court, Madurai by cancelling the bail, the petitioner and other accused preferred Special Leave petition to Appeal (CrI) No. 7101 of 2023 before the Hon'ble Supreme Court. Considering the gravity of offence, the Hon'ble Supreme Court declined to interfere in the order passed by this Hon'ble Court and thereby dismissed the Special Leave Petition by the order dated 23.06.2023. Thereafter the petitioner and other accused have filed several petitions before Learned IIIrd Additional District Sessions and (PCR) Court, Madurai as well as this Hon'ble Court to stall the trial proceedings. Further, for easy reference all the petitions filed by the petitioner and other accused have been given as follows:

Bail petition

1. A1 Bail Petition in Cr.M.P.No.445/2020 dated 09.09.2020
2. A2, A3, A4 Bail Petition in Cr.M.P.No.447/2020 dated 09.09.2020
3. A11 Bail petition in Cr.M.P.No.3258/2023, CrI.O.P.(MD)No.4893/2020, 5163/2020 dated 05.12.2022

Bail cancellation

1. A1 Bail cancellation Cr.M.P.No.172/2023 dated 14.03.2023
2. A2, A3, A4 Bail cancellation Cr.M.P.No.242/2023 dated 14.03.2023
3. A11 Bail cancellation Cr.M.P.No.409/2023 dated 14.03.2023 D.S.P.
4. Defacto Complainant filed CrI.O.P.(MD)No.10559, 10561/2020 dated 31.03.2023.

Page No.4
Court No.

B. Lakshmanan



CrI.O.P.(MD)No.20714 of 2024

WEB COPY

-5-

Bail Petition

1. A3, A4, A5 Bail petition Cr.M.P.No.1336/2023 dismissed
2. A3 Bail Petition Cr.M.P.No.1798/2023 dismissed
3. A2, A4 discharge petition Cr.M.P.No.2342/2023 dismissed
4. A3 Discharge petition Cr.M.P.No.2341/2023 dismissed dated 13.12.2023.
5. A11 Discharge petition Cr.M.P.No.2603/2023 dismissed dated 13.12.2023
6. A2, A3, A4 discharge petition Cr.M.P.No.2604/2023 dismissed dated 13.12.2023

Bail petition

1. A2, A11 Bail petition Cr.M.P.No.2435/2023 dismissed
2. A1 Bail petition Cr.M.P.No.2436/2023 dismissed
3. A11 Bail petition Cr.M.P.No.2437/2023 dismissed
4. A11 Bail petition Cr.M.P.No.3111/2023 dismissed
5. A2, A4 Bail Petition Cr.M.P.No.3181/2023 dismissed
6. A1 Bail Petition Cr.M.P.No.Cr.M.P.No.3182/2023 dismissed
7. A3 Bail Petition Cr.M.P.No.3194/2023

Bail Petition

1. A2, A4, A11 Bail petition Cr.M.P.No.3620/2023 dismissed
2. A1 bail Petition Cr.M.P.No.3621/2023

Bail Petition

1. A2, A4 Bail petition Cr.M.P.No.267/2024 dismissed
2. A1 Bail Petition Cr.M.P.No.268/2024 dismissed
3. A3 Bail Petition Cr.M.P.No.

Page No: 5
Corus: Nil

D. Lakshmanan

5



WEB COPY



CrI.O.P.(MD)No.20714 of 2024

-6-

Discharge petition

AS Discharge Petition Cr.M.P.No.817/2024 dismissed dated 13.06.2024.

High Court

1. 06.04.2023 CrI.O.P.(MD)No.7198/2020 (Transfer the investigation in C.S.R.No.103/2020 along with Cr.No.39/2020 (A1))
2. 03.07.2023 CrI.O.P.(MD)No.11964/2021 (Speed disposal) Defacto Complainant not later than 4 months.
3. 18.07.2023 CrI.A.(MD)No.499/2023 (Bail A3) (Dismissed and complete trial 3 months)
4. 08.01.2024 CrI.A.(MD)No. 026/2023 (Bail A3) 08.12.2023 reserved dismissed.
5. 18.09.2024 CrI.O.P.(MD) No.14235/2024 (A1) Spl.S.C.No.25/2021, Cr.M.P.No.4339/2023 J.M. Liberty to proceed private complaint.

Supreme Court

6. S.L.P.Appeal (CrI) No.7101/2023 (A1 filed) 31.03.2023 for against CrI.O.P.(MD)No.10561/2020 Bail cancellation.

Melur J.M.

CrI.M.P.No.116/2024 pending

9. I submit that as the facts are being so, it is alleged by the petitioner that on 26.01.2020 that is after the period of two days, he lodged a complaint with the 5th respondent by way of registered post against me and some others as if we assaulted the petitioner and others and in this connection a C.S.R. Receipt No.103/2020 was issued. It is further alleged that since the police is

Page No: 6

Corns: Nil

E. Laxman



CrI.O.P.(MD)No.20714 of 2024

WEB COPY

-7-

not initiated legal action based on the complaint given by the petitioner, he preferred Criminal Original Petition in CrI.O.P.(MD)No.7198/2020 to transfer the investigation of the case in C.S.R.No.103/2020 pending on the file of the 3rd respondent to any other officer to investigate the case. However, the aforesaid CrI.O.P.(MD)No.7198/2020 was dismissed as infructuous since the case in C.S.R.No.103/2020 was closed as Mistake of Fact".

10.I submit that thereafter the petitioner filed another petition before the Learned Judicial Magistrate, Melur under section 156(3) Cr.P.C. in CrI.M.P.No.4339/2023 for legal action based on the complaint given in C.S.R.No.103/2020. The said application was disposed by the order dated 17.07.2024 by directing the 3rd respondent to conduct investigation and to file the final report within a period of one week. Accordingly, once again second investigation was conducted by the 3rd respondent in a detailed manner and filed final report by recording the fact that complaint given by the petitioner in C.S.R.No.103/2020 was totally false.

11.I submit that aggrieved over the closure of his complaint as Mistake of Fact, he preferred a Criminal Original Petition in CrI.O.P.(MD)No.14235/2024 before this Hon'ble Court and the same was disposed of by the order dated 18.09.2024 as follows:

At this juncture, the learned counsel appearing for the petitioner would submit that after getting information they have already filed a private complaint before the jurisdictional court and the same is pending."

Since the present petition has become infructuous, the petitioner is at liberty to proceed with the private complaint. The learned Judicial

Page No: 7
Coram: Nil

D. Lakshmanan

7



Crl.O.P.(MD)No.20714 of 2024

WEB COPY

-8-

Magistrate, Melur is directed to proceed with the private complaint. Accordingly, this criminal original petition is disposed of. Consequently, connected miscellaneous petitions are closed.

12.I submit that thereafter the petitioner filed a private complaint in CrI.M.P.No.4054/2024 on the file of the Learned Judicial Magistrate, Melur and summons has been issued, accordingly the matter is posted for further hearing 24.12.2024. As the facts are being so, now the present Criminal Original Petition is filed to withdraw the case in CrI.M.P.No.4054/2024 on the file of the Learned Judicial Magistrate, Melur and to transfer the said case filed of the Learned Jld Additional Subordinate Judge (PCR), Madurai and to try the same along with the proceeding Spl.S.C.No.25/2021 in order to conduct a joint trial.

13.I submit that the instant petition is not maintainable for the reason that the subject matter of the CrI.M.P.No.4054/2024 was already investigated by the 3rd respondent on two occasions, accordingly final report was filed before the court concerned. Therefore, it is clear that the complaint given in C.S.R.No.103/2020 on the file of the 3rd respondent is prima-facie found as false. However, by abusing the process of law and to make attempt to perpetuate the falsehood, the petitioner filed in CrI.M.P.No.4054/2024 with an oblique intention to stall the trial proceedings of Spl.S.C.No.35/2021. The proceedings in CrI.M.P.No.4054/2024 is belatedly initiated under chapter XV of the Cr.P.C., 1973, and since it is a private complaint, the examination of the complaint and his witnesses are imperative to take cognizance. Thereafter the procedure enumerated under chapter XIX of

Page No: 8
Corus: Nil

2. Late...

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CrI.O.P.(MD)No.20714 of 2024

WEB COPY

-9-

Cr.P.C. (That is the trial of warrant cases by Magistrates B- cases instituted otherwise than police complaint to be adhered). So, as of now it is uncertain as to whether the CrI.M.P.No.4054/2024 filed by the petitioner is to be entertained or not.

14.1 further submit that the complaint given by the petitioner in CSR No.103/2020 is totally false and the complaint was belatedly lodged to perpetrate the falsehood, as if I and others caused injury. No such incident was taken place as at the relevant point of time, we have been brutally assaulted with deadly weapon by the petitioner and other accused. At the same time, it is to be noted that though it is alleged that he along with others sustained injuries, no medical record is produced, so it is very clear that the filing of the instant petition is an attempt to dilute and to stall the legal proceeding in Spl.S.C.No.25/2021.

15.1 submit that it is clear that the petitioner is having had antecedents and he followed the same modes-operendi to stall that criminal cases registered against him. As a history shooter, he has involved in so many criminal cases and he is a notorious person in his locality.

16.1 further submit that under the above factual backgrounds, the question of the transfer of the case in CrI.M.P.No.4054/2024 pending on the file of the Learned Judicial Magistrate, Melur to the file of the Learned IIIrd Additional District Sessions and PCR Court, Madurai to try the same along with Spl.S.C.No.25/2021 would not arise, since offence of the said case is punishable under the Special Act in addition to the Penal Code.

Page No: 9
Coram: Nil

D. Lakshmanan

9



WEB COPY



Crl.O.P.(MD)No.20714 of 2024

-10-

17. I further submit that on 16.04.2013 Deputy Superintendent of Police Melur Sub Division Madurai district has issued the opening of history sheet in C.No.67/Pro/SEX).MLR/13 rawdy (H.S. No 86/2013) for above said petitioner Gopalakrishnan in the following cases:

- a) Melavalavu PS Crime No 42/2012 U/s 147,148,294(b),506(ii) of IPC and Section 4 TNWIJ Act.
- b) Crime No 93/2013 offence U/s 107 Cr.p.c.
- c) Crime No 6/2013 offence U/s 147,148 , 294(b), 323, 324 506(ii) of IPC.
- d) Crime No 15/2013 offence U/s 107 Cr.p.c
- e) Crime No 34/2013 Offence U/s 147,148, 341 , 323, 324 506(ii) of IPC.
- f) Crime No 4/2013 offence U/s 147, 430, 463, 506 (ii) of IPC

Therefore, I most respectfully pray that this Hon'ble Court may be pleased to dismiss the petition in Crl.O.P.No. 20714 of 2024, pending on the file of this Hon'ble Court with exemplary costs and to pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

Solemnly affirmed and signed after the contents are explained to him in Tamil and having understood the same on this the 11th day of December, 2024 and signed his name in my presence.

D. Lakshman

4th Respondent

Before Me
Advocate-Madurai

U. Raju Kumar
6-13
Advocate
Madurai
Gopalan & Co
Madurai
6-13-2024



Crl.O.P.(MD)No.20714 of 2024

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5. The learned Additional Public Prosecutor submitted the contention of the petitioner cannot be considered and it is not the case and case in counter, it is only a defence of the petitioner. The petitioner's complaint was considered by the Investigating Officer on the direction of the learned Magistrate and found that the petitioner lodged a false complaint. In this case, several things happened thereafter. One of the victims, in this case, was murdered in the center of the village showing the dominance of the petitioner's group. The petitioner is now attempting to stall the proceedings in the trial in Spl.S.C.No.25 of 2021 which cannot be permitted. In this case, the trial is at penultimate stage and almost 13 witnesses have been examined and only few more witnesses are left over and the same can be examined and the trial itself can be completed within a short period. If the petitioner's prayer is to be accepted, it would amount to granting stay for the trial of the case and further, it would take decades for the case in Spl.S.C.No.25 of 2021 to see its light.



Crl.O.P.(MD)No.20714 of 2024

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6. Considering the submission and on perusal of the materials, it is seen that the petitioner's complaint is in the nature of case and case in counter to the complaint in Spl.S.C.No.25 of 2021 is not correct. Now only a private complaint has been filed by the petitioner and summons have been issued which cannot stall the trial proceedings. The counter filed by the 4th respondent would clearly show that how the witnesses have been traumatized and one of them even be eliminated. In view of the same, this Court is not inclined to entertain this petition.

7. Accordingly, this Criminal Original Petition is dismissed, and the learned III Additional District Judge (PCR Cases), Madurai is directed to complete the trial in Spl.S.C.No.25 of 2021 within a period of three months from the date of receipt of a copy of this order. Consequently, the connected Criminal Miscellaneous Petition is closed.

18.12.2024
(2/2)

NCC : Yes / No
Index : Yes / No
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Crl.O.P.(MD)No.20714 of 2024

To
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- 1.The learned Judicial Magistrate,
Melur
- 2.The learned III Additional District Judge (PCR Act Cases),
Madurai
- 3.The Superintendent of Police,
Kanyakumari District, Nagercoil.
- 4.The Superintendent of Police,
Madurai District.
- 5.The Deputy Superintendent of Police,
Melur,
Madurai District.
- 6.The Inspector of Police,
Melavalau Police Station,
Melur Taluk, Madurai District
- 7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.O.P.(MD)No.20714 of 2024

M.NIRMAL KUMAR, J.

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Order in
Crl.O.P.(MD)No.20714 of 2024
and
Crl.M.P.(MD)No.12799 of 2024

18.12.2024
(2/2)