



Crl.O.P.(MD)No.20721 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.11.2024

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THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.(MD)No.20721 of 2024

and

Crl.M.P.(MD)No.12801 of 2024

Vanaraj @ Suruliappan

... Petitioner

Vs.

1.State of Tamil Nadu,
The Inspector of Police,
Kombai Police Station,
Theni District
(In Crime No.128 of 2014)

2.T.Raja

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records pertaining to the impugned charge sheet in S.T.C.No.33 of 2019 so far the criminal proceedings against the petitioner initiated consequently on the file of the learned Judicial Magistrate Court, Bodinayakanur and consequently, quash the same as illegal forthwith.

For Petitioner
For R1

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



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Crl.O.P.(MD)No.20721 of 2024

ORDER

This Criminal Original Petition has been filed seeking to quash the charge sheet in S.T.C.No.33 of 2019 on the file of the learned Judicial Magistrate Court, Bodinayakanur.

2.The contention of the petitioner is that the respondent police has filed the petition under Section 319 Cr.P.C., with bereft of facts. The only ground taken by the respondent police is that when the defacto complainant was examined as P.W.1 on 01.08.2018, in his evidence he has referred the name of the petitioner, who is also stated to be present in the scene of occurrence. Hence, the petition was allowed and the charge sheet taken on file. Thereafter, on 16.05.2024 summons were sent to the petitioner for his appearance on 25.05.2024 stating that he had been arrayed as an accused along with Natarajan in S.T.C.No.33 of 2019.

3.He further submitted that in the petition filed by the respondent police, it is stated that on 26.07.2014, the defacto complainant was attacked and threatened. Hence, the petitioners's names were also included as accused in the FIR. Later, the Investigation Officer finding



Crl.O.P.(MD)No.20721 of 2024

that there is no evidence against the petitioner herein had deleted the petitioner's name and filed charge sheet against Natarayan alone.

Thereafter, on 01.08.2018, the defacto complainant was examined as P.W.1 and he has stated about the petitioner's involvement in the attack. Hence, the respondent police filed a petition under Section 319 Cr.P.C., and the same was allowed without any reason.

4. According to the petitioner, the order passed by the trial Court is not sustainable. From the statement of the defacto complainant, it is clear that it was the petitioner's brother Natarayan, who is said to have assaulted the defacto complainant and the petitioner was merely present independently in the scene of occurrence. The other eye witnesses, who were with the defacto complainant, namely Siva, Easwaran and Kanagaraj, have given as statement that the petitioner's brother Natarayan had come to the scene of occurrence and questioned the defacto complainant and the petitioner was standing near western side of the Karuppasamy temple and it was the other accused and his brother Natarayan, who had assaulted the said defacto complainant. He has also relied upon the judgment made by the Hon'ble Supreme Court in ***Hardeep Singh vs. State of Punjab & Ors.*** reported in [2014 (2) SCC



Crl.O.P.(MD)No.20721 of 2024

(CRI) 8]. In the case on hand, the provisions set out under Section 319 Cr.P.C., had not been fulfilled. Hence, arraying the petitioner as an accused under Section 319 Cr.P.C., is not sustainable and it is nothing but an abuse of process of law. Hence, prayed for quash this petition.

5.The learned Government Advocate (Crl.side) submitted that the defacto complainant had stated about the petitioner's presence in his complaint. The respondent police also reported that FIR includes the petitioner's name and thereafter during investigation, it was found there is no overtake of the petitioner against the defacto complainant and it was his brother, who had assaulted the defacto complainant. The eye witnesses present with the defacto complainant confirmed the same and thereafter, the Investigation Officer deleted the name of the petitioner. Later, when P.W.1 was examined on 01.08.2018, he had deposed that Natarayan had attacked him and the petitioner was present there and threatened him that within two days, the defacto complainant will be done away. Hence, the petition under Section 319 Cr.P.C., was filed and based upon the evidences adduced, the trial Court had allowed the petition filed by the prosecution.



Crl.O.P.(MD)No.20721 of 2024

WEB COPY

6.Heard the submissions made on either side and perused the materials placed on record.

7.Perusal of the materials placed before this Court, it is seen that the order of the trial Court is scriptive in nature without any reasons. Further, going by the un-controverted statement of the witnesses as well as the evidence of the P.W.1, it is seen that the petitioner had questioned the defacto complainant and he was present in the scene of occurrence. There is no specific overtact as to whether the petitioner has gone near P.W.1 or made any attack against the defacto complainant.

8.The charges framed as against the first accused are repeated in the summons issued to the petitioner. There is no specific charge of overtact of the petitioner. From the evidence, it is seen that there is no materials to proceed against the petitioner. Therefore, committing him to undergo trial along with the other accused is not proper and it is a clear violation of principles and the guidelines given by the Apex court in the the case of *Hardeep Singh (supra)*.



Crl.O.P.(MD)No.20721 of 2024

WEB COPY

9. In view of the above, the order passed by the trial Court cannot be sustained in the eye of law and accordingly, the same stands quashed. This Criminal Original Petition is allowed. consequently, connected miscellaneous petition is closed.

NCC : Yes / No

28.11.2024

Index : Yes / No

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To

1. The Judicial Magistrate Court, Bodinayakanur

2. The Inspector of Police,
Kombai Police Station,
Theni District.

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



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Crl.O.P.(MD)No.20721 of 2024

M.NIRMAL KUMAR, J.

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Crl.O.P.(MD)No.20721 of 2024

28.11.2024