



Crl.O.P.No.3608 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.3608 of 2025
and Crl.M.P.No.2370 of 2025

1. Sakthivel
2. Kanakavel @ Kanagaraj
3. Karthi
4. Selvaraj
5. Murugan
6. Sathasivam
7. Uthaiyakumar
8. Srinivasan
9. Nanthakumar
10. Suresh

... Petitioners

Vs.

1. State Rep. by
The Inspector of Police,
Anthiyur Police Station,
Erode District.
Cr. No.475 of 2024

2. Satheesh

... Respondents

Prayer: Criminal Original petition filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records relating to the final report in C.C.No.150 of 2024 on the file of the learned Judicial Magistrate No.II, Bhavani, Erode District, quash the same.



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Crl.O.P.No.3608 of 2025

For Petitioners : Mr.S.Senthilnathan

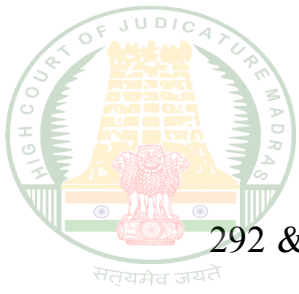
For Respondents

For R1 : Mr.K.M.D.Muhilan
Government Advocate (Crl.Side)

ORDER

This petition has been filed to quash the proceeding in C.C.No.150 of 2024 pending on the file of the learned Judicial Magistrate No.II, Bhavani, Erode District, thereby taken cognizance for the offences under Sections 279, 280, 292 & 293 of BNS Act and Section 15(1) of the Environment Protection Act, 1986, as against this petitioners.

2. The case of the prosecution is that as directed by this Court in W.P.No.4940 of 2021 dated 03.03.2021, the Thasildar, Anthiyur had sent communication dated 18.04.2022 to the villagers not bury the dead bodies in the aforesaid place. However, on 25.09.2024, the accused had buried the body of one Periyakutti in the tank bund of Poiyerikarai Tank situated at SF No.906/2, Anthiyur A revenue Village, Anthiyur Taluk, Erode District. On the complaint lodged by the Village Administrative Officer, viz., second respondent herein, the first respondent registered the FIR in Crime No.475 of 2024 for the offences under Sections 279, 280,



Crl.O.P.No.3608 of 2025

292 & 293 of BNS Act and Section 15(1) of the Environment Protection Act, 1986. After completion of investigation filed final report and the same has been taken cognizance in C.C.No.150 of 2024 on the file of the learned Judicial Magistrate No.II, Bhavani, Erode District.

3. The learned counsel appearing for the petitioners submitted that this Court by an order dated 03.03.2021 in W.P.No.4940 of 2021, directed the District Collector District, Erode and Thasildar, Anithiyur, Erode District, to consider the representation submitted by one Karuppusamy seeking not to allow anyone to bury the dead bodies on the tank bund of Poiyerikarai tank existing at SF No.906/2 at Anthiyur A revenue Village, Erode District and pass final orders, within a period of twelve weeks. However, without passing any orders by the District Collector, straight away the Thasildar, passed order not to bury any dead body in the aforesaid place. Therefore, there is absolutely no bar to bury any dead body and as such the entire proceeding is liable to be quashed.

4. Heard the learned counsel appearing on either side and perused the materials placed before this Court.



Crl.O.P.No.3608 of 2025

WEB COPY 5. It is seen that after the directions issued by this Court in W.P.No.4940 of 2021, dated 03.03.2021, the Thasildar, Anthiyur, had conducted detailed enquiry and passed orders on 18.04.2022, thereby ordered not to encroach water catchment area and tank bund of Poiyerikarai lake comprised in re-survey No.906/2, to an extent of 1.60 acres, since it is classified as government poramboke and water catchment poramboke. Two of the petitioners viz., the petitioners 7 & 8 had participated on the enquiry conducted by the Thasildar, Athiyur, Erode District and they were also duly served with the copy of the order dated 18.04.2022. Even then, the petitioners violated the said order and buried the body of Periyakutti in the tank bund of Poiyerikarai tank, situated at Anthiyur A revenue Village, Erode District. Therefore, the second respondent rightly lodged the complaint and the first respondent registered the FIR in Crime No.475 of 2024. After completion of investigation, the final report has been filed and the same has been taken cognizance by the trial Court and pending for trial. This Court finds no illegality committed by the second respondent by lodging the complaint on the burial of dead body in the water catchment area and the tank bund.

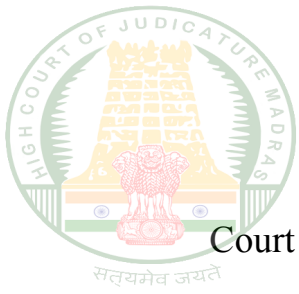


Crl.O.P.No.3608 of 2025

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6. That apart, the Hon'ble Supreme Court of India in the judgment reported in **2019 (4) SCC 351** in the case of ***Devendra Prasad Singh Vs. State of Bihar & Anr., (Crl.A.No.579 of 2019 dated 02.04.2019)*** while dealing with the petition to quash the entire criminal proceedings held that the High Courts have no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and therefore, there was no *prima facie* case made out as against the accused. It could be done only by the trial Court while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order that the charge sheet has been laid on the basis of the inconsistency statement under Section 180 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

7. Fruther, the Hon'ble Supreme Court of India in the judgment reported in **2019 (10) SCC 686** in the case of ***Central Bureau of Investigation Vs. Arvind Khanna, (Crl.A.No.1572 of 2019 dated 17.10.2019)*** held that the High Courts cannot record the findings on the disputed facts. The defence of the accused is to be tested after appreciation of evidence by the trial Court during the trial. Therefore, this

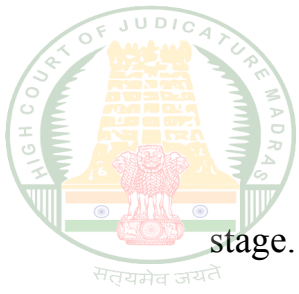


Crl.O.P.No.3608 of 2025

Court has no power to consider the disputed facts under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

8. The Hon'ble Supreme Court of India in another judgment dated **02.12.2019** passed in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, held that while considering the petition for quashment of complaint or charge sheet, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. Further, the Court can also see whether the preconditions requisite for taking cognizance have been complied with or not and whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged. Whether the accused will be able to prove the allegations in a manner known to law would arise only at a later stage i.e., during trial.

9. Further this Court cannot observe at this stage that the initiation of criminal proceeding itself is malicious. Whether the criminal proceeding is malicious or not, is not required to be considered at this



Crl.O.P.No.3608 of 2025

stage. The same is required to be considered at the conclusion of the trial.

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Therefore, the ground raised by the petitioners to quash the final report/charge sheet cannot be entertained to quash the entire proceedings.

10. In view of the above discussions, this Court is not inclined to quash the proceedings in C.C.No.150 of 2024 pending on the file of the learned Judicial Magistrate No.II, Bhavani, Erode District. The petitioners are at liberty to raise all the grounds before the trial Court. The trial Court is directed to complete the trial as early as possible.

11. Accordingly, the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is also closed.

12.02.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order

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To

1. The Judicial Magistrate No.II,
Bhavani, Erode District

2. The Inspector of Police,
Anthiyur Police Station,
Erode District.

3. The Public Prosecutor,
Madras High Court,
Chennai.



Crl.O.P.No.3608 of 2025

G.K.ILANTHIRAIYAN. J.

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