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Crl.O.P.No. 10220 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2025

CORAM:

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

Crl.O.P.No.10220 of 2025 and
Crl.M.P.Nos.6785 and 6786 of 2025

1.Chinnamalai
2.Ponmani

... Petitioners

Vs.

1.The State rep by
Inspector of Police,
Velankanni Police Station,
Nagapattinam District.
(Crime No.214 of 2024).

2.Rani

..Respondents

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 to call for the records in C.C.No.428 of 2024 on the file of the District Munisf cum Judicial Magistrate Court at Kilvelur and quash the same.

For Petitioners : Mr.M.Kalaiyaran



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Crl.O.P.No. 10220 of 2025

For R1

: Mr.R.Vinothraja,
Government Advocate (crl.side)

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.428 of 2024 on the file of the District Munisf cum Judicial Magistrate Court at Kilvelur.

2. The case of the prosecution is that on 21.08.2024 at about 7:00 A.M., the second respondent was carrying out construction work on her property. At that time, the petitioners allegedly trespassed into the property and obstructed the ongoing construction. A verbal altercation ensued between the parties, which escalated into a physical confrontation, during which both sides allegedly attacked each other, resulting in internal injuries. That apart, it is alleged that the petitioners issued life threats to the second respondent. Based on this incident, an FIR was registered in Crime No. 214 of 2024 for the offences punishable under Sections 329(4), 296(b), 74, 115(2), and 351(2) of the BNS, 2023. After the completion of investigation, a final report was filed before the



Crl.O.P.No. 10220 of 2025

WEB COPY

District Munsif-cum-Judicial Magistrate Court, Kilvelur, and the same was taken cognizance in C.C.No.428 of 2024.

3. The learned counsel for the petitioners submitted that the allegations made against the petitioners are false, fabricated, and politically motivated. It was argued that there is no *prima facie* material to proceed as against the petitioners and that the entire case is civil in nature, relating to a property dispute. The learned counsel for the petitioners contended that the petitioners have been falsely implicated due to previous enmity with the second respondent. He further submitted that even if the allegations in the charge sheet are taken at face value, they do not make out the ingredients of the offences alleged. Hence, he prays to quash the proceedings.

4. The learned Government Advocate (Criminal Side) opposed the quash petition, stating that the investigation has been completed and the final report has been filed based on sufficient materials collected during the course of investigation. It was submitted that there are specific



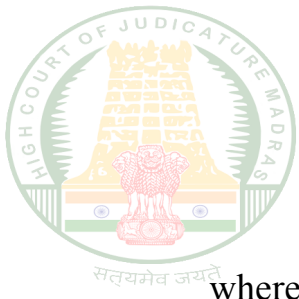
Crl.O.P.No. 10220 of 2025

WEB COPY

allegations made as against the petitioners regarding trespass, obstruction of construction, physical assault, and issuance of life threats. The injuries sustained and the gravity of the incident are supported by witness statements and medical records. Therefore, it was contended that the matter involves triable issues which require full-fledged trial, and that the quash petition is premature and liable to be dismissed.

5. Heard both sides and perused the materials placed before this Court.

6. After hearing both sides carefully, this Court is of the considered view that there are specific and *prima facie* allegations made as against the petitioners, which attract the ingredients of the offences under Sections 329(4), 296(b), 74, 115(2), and 351(2) of the BNS. The final report is based on the statements of witnesses and other supporting evidence, and cannot be said to be inherently improbable or devoid of legal substance. The power under Section 528 of BNSS., to quash the criminal proceedings must be exercised sparingly, as provided, in cases



Crl.O.P.No. 10220 of 2025

WEB COPY

where the complaint does not disclose any offence or is manifestly attended with *mala fide*. In the present case, the dispute involves questions of fact which require appreciation of evidence during the trial. Therefore, this Court, at this stage, cannot undertake a detailed examination of the veracity of the allegations.

7. 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. (Criminal Appeal No.579 of 2019, dated 02.04.2019)***, while dealing with a petition to quash the entire criminal proceedings, held that the High Courts have no jurisdiction to appreciate the statements of witnesses and record a finding that there were inconsistencies in their statements, and therefore, no *prima facie* case was made out against the accused. Such an exercise can be done only by the Trial Court while deciding the case on merits or by the Appellate Court while deciding the appeal arising out of the final order. The charge sheet having been laid on the basis of inconsistent statements under Section 180 of the Bharatiya Nagarik Suraksha Sanhita, 2023, is not a



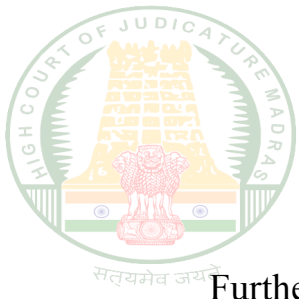
Crl.O.P.No. 10220 of 2025

ground for quashing at the pre-trial stage.

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8. Further, 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 (Criminal Appeal No.1572 of 2019, dated 17.10.2019)***, held that the High Courts cannot record findings on disputed facts. The defence of the accused is to be tested after appreciation of evidence by the Trial Court during trial. Therefore, this Court has no power to consider disputed facts under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

9. The Hon'ble Supreme Court of India, in another judgment ***dated 02.12.2019*** passed in ***Criminal Appeal No.1817 of 2019*** in the case of ***M. Jayanthi vs. K.R. Meenakshi & Anr.***, held that while considering a petition for quashing a complaint or charge sheet, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should examine is whether the allegations in the complaint form the basis of the ingredients constituting the offences complained of.



Crl.O.P.No. 10220 of 2025

WEB COPY

Further, the Court can also examine whether the preconditions required for taking cognizance have been complied with, and whether the allegations contained in the complaint, even if accepted in their entirety, would constitute the offence alleged. Whether the accused will be able to disprove the allegations is a matter to be determined during trial.

10. Further, this Court cannot, at this stage, observe that the initiation of criminal proceedings is malicious. Whether the proceedings are malicious or not is a matter to be considered only at the conclusion of the trial. Therefore, the ground raised by the petitioners to quash the final report/charge sheet cannot be entertained for quashing the entire proceedings at this stage.

11. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.428 of 2024 on the file of the District Munisf cum Judicial Magistrate Court at Kilvelur. The petitioners are at liberty to raise all the grounds before the Trial Court. The personal appearance of the second petitioner is dispensed with and she shall be



Crl.O.P.No. 10220 of 2025

WEB COPY

represented by a counsel after filing appropriate application. However, the second petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 351 of BNSS and at the time of passing judgment. The Trial Court is directed to complete the trial within a period of six months from the date of receipt of copy of this Order.

12. Accordingly, the Criminal Original Petition stands dismissed.

Consequently, connected miscellaneous petitions are closed.

07.04.2025

Neutral citation : Yes/No
Speaking/non-speaking order
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Crl.O.P.No. 10220 of 2025

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To

1. District Munsif-cum-Judicial Magistrate Court, Kilvelur
2. Inspector of Police,
Velankanni Police Station,
Nagapattinam District
3. The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN, J.

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