



Crl.O.P.No.24107 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2025

CORAM:

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

**Crl.O.P.No.24107 of 2024**  
**and Crl.M.P.No.13578 of 2024**

1.Ebineshar

2.E.Deepa

... Petitioners

Vs.

1. The State Represented by  
Inspector of Police,  
Chidambaram Taluk Police Station,  
Cuddalore District.

2. M.Kalisthamery

... Respondents

**PRAYER:** Criminal Original Petition filed under Section 528 of BNSS/Section 482 of Cr.P.C praying to call for the records and quash the proceedings in FIR No.406 of 2022 dated 31.12.2022 on the file of the 1<sup>st</sup> respondent against the petitioners.

For Petitioner : Ms.C.Jayachithra

For R1 : Mr.R.Vinothraja  
Government Advocate (Crl. Side)



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**ORDER**

This Criminal Original Petition has been filed to quash the FIR in Crime No.406 of 2022 on the file of the first respondent.

2. The case of the prosecution is that the de-facto complainant has two sons and one daughter namely Mrs.Prasanna. The de-facto complainant had married her daughter to one Mr.Abi, who is the de-facto complainant's brother's son. After the marriage, the daughter of de-facto complainant gave birth to a child. After 12 days of child birth, her husband's family members did not come to visit the child. Thereafter, on 30.12.2022, the de-facto complainant in person, visited her son-in-law's house and insisted their family members to visit her grandchild at her residence. Thereafter, on the same day at around 8.00 p.m., her son-in-law's elder brother (1<sup>st</sup> petitioner) Mr.Ebinesher and his wife Deepa ( the 2<sup>nd</sup> petitioner) came down to defacto complainant's house and knocked the doors. When the de-facto complainant opened the front door, the 1<sup>st</sup> petitioner shouted uttering filthy words against the de-facto complainant and punched her on the mouth. The 2<sup>nd</sup> petitioner, who had accompanied the 1<sup>st</sup> petitioner had hit the de-facto complainant on the back of her shoulder. Thereafter, on the next day 31.12.2022, the de-facto



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complainant got admitted in Government General Hospital for loss of one tooth and gave a complaint to the 1<sup>st</sup> respondent against the petitioners and the same was registered as FIR in Crime No.406 of 2022 under Sections 294(b), 323 324 of IPC r/w Section 4 of TNPWH Act.

3. The learned Counsel appearing for the petitioners would submit that the petitioners are innocent persons and they have not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No.406 of 2022 under Sections 294(b), 323 324 of IPC r/w Section 4 of TNPWH Act, as against the petitioners. Hence, he prayed to quash the same.

4. Heard the learned counsel for the petitioners and the learned Government Advocate (Crl.side) for the first respondent and perused materials available on record.

5. It is to be noted that while exercising the power under Section 482, the Court should be slow, at the same time, if the Court finds that from the entire materials collected by the prosecution taken as a whole, would not



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constitute any offence, in such situation, directing the parties to undergo ordeal

of trial will be a futile exercise and it will infringe the right of the persons and

in this regard, the Apex Court in ***State of Haryana and others Vs. Bhajan Lal***

***and Others*** reported in ***1992 Supp (1) Supreme Court Cases 335***, has been

held as follows:

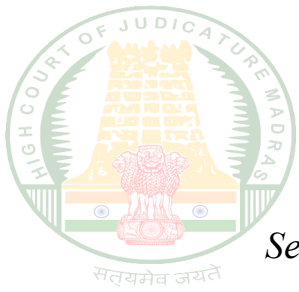
“.....

*(a) 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;*

*(b) 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;*

*(c) 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;*

*(d) 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*



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Section 155(2) of the Code;

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*(e) 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;*

*(f) 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;*

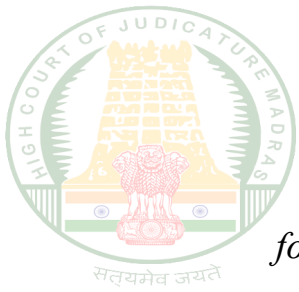
*(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

6. It is also relevant to note the definition of Unlawful Assembly:

*“Unlawful Assembly-*

*An assembly of five or more persons is designated an ? unlawful assembly?, if the common object of the persons composing that assembly is -*

*(i) to overawe by criminal force, or show of criminal*



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*force, the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or*

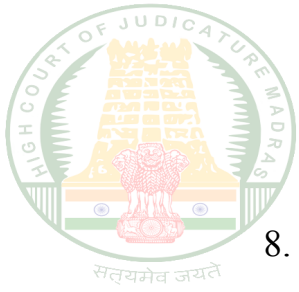
*(ii) to resist the execution of any law, or of any legal process; or*

*(iii) to commit any mischief or criminal trespass, or other offence; or*

*(iv) by means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or*

*(v) by means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.-*

7. Only when the assembly fit into any of the above circumstances, it could be construed as unlawful. The accused had not shown any criminal force to commit any mischief, crime or any offence or by way of criminal force or tried to take possession of the property or right to use of incorporeal right which is in possession of enjoyment of others or rights.



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8. Accordingly, this Criminal Original Petition stands allowed and

the FIR in Crime No.406 of 2022 registered by the first respondent police for the offences under Sections 294(b), 323 324 of IPC r/w Section 4 of TNPWH Act, is hereby quashed. Consequently, connected miscellaneous petition is closed.

26.03.2025

Internet : Yes / No

Index : Yes / No

Speaking / Non Speaking order  
kkd

**To**

1. The Inspector of Police,  
Chidambaram Taluk Police Station,  
Cuddalore District.
2. The Public Prosecutor,  
High Court, Madras.



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**G.K.ILANTHIRAIYAN, J.**

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