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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2025

CORAM:

THE HON'BLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.25400 of 2024
and Crl.M.P. No.14254 of 2024

1.Mr.C.Arunagiri

2.Mr.A.Udhayakumar

3.Mr.A.Chandrashekar

... Petitioners

Vs.

1.A.Umapathy

2.The State Rep. By Inspector of Police,
R-1 Mambalam Police Station,
Chennai – 600 017.

... Respondent

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code, to set aside the order of issuing summons to the Petitioners in Crl.M.P. No.6864 of 2024 dated 22.08.2024 by XVII Metropolitan Magistrate, Saidapet.

For Petitioner	: Mr.Rajarathinam, Senior Counsel for Mr.J.Nandagopal
For Respondent	: Mr.R.Udayakumar for R1 Mr.A.Gopinath, Government Advocate (Criminal Side) for R2

ORDER



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This petition has been filed challenging the notices issued in CrI.M.P. No.6864 of 2024 dated 22.08.2024 by XVII Metropolitan Magistrate, Saidapet.

2. The petitioners are proposed accused in the private complaint filed by the first respondent in CrI.M.P. No.6864 of 2024. After recording the sworn statement of the first respondent, the learned XVII Metropolitan Magistrate issued notices to the petitioners to hear them before taking cognizance.

3. The learned Senior Counsel Mr.R.Rajarathnam, appearing for the petitioners pointed out that the Police report filed by the second respondent dated 09.07.2024, in which, the second respondent police confirmed the fact that as against the first respondent, the petitioners have filed a complaint in Cr. No.145 of 2021, under Sections 408 & 420 IPC as per the order of the XVII Metropolitan Magistrate. The very same Magistrate issued a direction to the second respondent to enquire about the petitioner's complaint and file a report. The second respondent enquired the complaint and reported before the learned Magistrate that no prima facie case is made out to register the case on the complaint filed by the first respondent, without considering the same, the learned



Magistrate issued notices to the petitioners.

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4. Section 223 (1) of BNSS Act, 2023, says that no cognizance can be taken by the Magistrate without giving opportunity to the accused being heard. Therefore, whether or not the learned Magistrate taking consideration of the police report submitted by the second respondent, after recording the sworn statement of the complainant, viz., the first respondent, the petitioners were issued notices for the purpose of giving audience as contemplated under the provisions of Section 223 of BNSS Act, 2023. Accordingly, the petitioners can very well appear before the learned Magistrate and explain about the happenings on the complaint lodged by the first respondent and also about the police report.

5. In view of the above facts and circumstances, the Trial Court had rightly dismissed the petition and this Court finds no infirmity or illegality in the notices issued to the petitioners in CrI.M.P. No.6864 of 2024 dated 22.08.2024 on the file of XVII Metropolitan Magistrate, Saidapet and this petition is devoid of merits and is liable to be dismissed.

6. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous petition is closed.



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18.02.2025

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order
rkp

To

1. The Inspector of Police,
R-1 Mambalam Police Station,
Chennai – 600 017.
2. The XVII Metropolitan Magistrate, Saidapet
3. The Public Prosecutor,
High Court, Madras.

G.K.ILANTHIRAIYAN, J.

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