



Crl.O.P.No.32454 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.01.2025

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.O.P.No.32454 of 2024
and
Crl.M.P.No.18572 and 18573 of 2024

1. Purusoth Kumar
2. Ravichandra Raja

.. Petitioners

Vs.

1. State of Tamilnadu represented by
Inspector of Police,
CMBT Police Station,
Koyambedu, Chennai dt.
(Crime No.513 of 2023)

2. Paben Roy

.. Respondents

Criminal Original Petition is filed under Section 530 of Bharatiya Nagarik Suraksha Sanhita, 2023, praying to call for the records in C.C.No.1409 of 2024 under Section 392 IPC with Section 34 of the IPC on the file of Metropolitan Magistrate No.V, Egmore District and quash the same.

For petitioner : Mr.M.Selvam

For respondents: Mr.S.Sugendran, Addl.P.P. for R-1

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ORDER

This petition is filed to call for the records in C.C.No.1409 of 2024 under Section 392 IPC with Section 34 of the IPC on the file of Metropolitan Magistrate No.V, Egmore District and quash the same.

2. Learned counsel for the petitioners submitted that the first respondent/Police ought not to have registered a case as against the petitioners based on the complaint and the cognizance taken by the Metropolitan Magistrate No.V, Egmore, Chennai, based on the final report filed by the first respondent-Police, is not legally sustainable, as the same is untenable and liable to be quashed.

3. Further, registration of the FIR itself is also unsustainable and the same is liable to be quashed, as the same is against the principles of natural justice and that the charge-sheet did not disclose any cognizance against the petitioners.

4. Further, the trial Court failed to note that the petitioners are no way connected to the allegations mentioned in the FIR. On a clear reading of the FIR, it makes it clear that there is specification with regard to the phone, which was allegedly stolen and no receipt for the phone had been produced before the first respondent-Police to prove the ownership of the allegedly stolen mobile



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phone and that no CCTV footage was recovered from the scene of occurrence to prove the alleged robbery and that the respondent-Police without proper investigation, had laid the charge-sheet, based on which, the learned Magistrate, without application of mind, took cognizance of the offence(s) under the Calendar Case No.1409 of 2024 and hence, the same is not sustainable.

5. It is the further submission of the learned counsel for the petitioners that the trial Court had failed to notice that there are no ingredients in the said FIR to make out an offence under Section 390 of IPC and to prove the offence under Section 390 IPC, the condition under Section 390 IPC ought to have been fulfilled while committing or attempting theft, causing or attempting to cause immediate death, hurt, or wrongful restraint, and the intention to induce fear to facilitate the theft, but however, in the FIR, no such incident of threat or physical harm, was caused to the de-facto complainant, and no weapon was used during the said alleged incident, and in such circumstances, the offence under Section 309 IPC had not been made out as against the petitioners. Moreover, the trial Court did not consider the material facts to prove the offence as alleged by the de-facto complainant and no preliminary enquiry was conducted by the first respondent-Police to take cognizance of the offence and the first respondent-Police had taken cognizance of the offence based on the complaint by the de-facto complainant and the same has no legal sanctity in the eye of law.



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6. It is the further submission of the learned counsel for the petitioners that the trial Court did not notice the fact that there is no specification with regard to the manner of the alleged attack, which has been caused by the petitioners and from a plain reading of the charge-sheet, it is crystal clear that, neither the mobile receipt, nor the CCTV footage, was produced by the first respondent-Police to prove the commission of the said offence by the petitioner and merely based on the complaint given by the de-facto complainant, the first respondent-Police had registered the FIR and without enquiry, the charge-sheet had been filed as against the petitioners and the learned Magistrate, in a mechanical manner, had proceeded to take cognizance of the offence, without considering the material facts and hence, the said proceedings are liable to be quashed. Further-more, the trial Court did not notice the fact that the first respondent-Police failed to apply his mind and acted mechanically and registered the FIR in Crime No.513 of 2023 based on the complaint given by the de-facto complainant and without proper enquiry, the charge-sheet had been laid as against the petitioners. The plain reading of the charge-sheet itself is absurd, improbable and self-inconsistence and the same reveals any specific allegation, nor attract the offence under Section 392 IPC, and the same is against law.

7. Further, it is the main contention of the learned counsel for the petitioners that the first respondent-Police committed grave error in filing the



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charge-sheet itself, as the allegations made in the charge-sheet, are neither sustainable, nor maintainable in the eye of law and it has to be rejected in limine. The first respondent-Police ought to have made preliminary enquiry before registering the FIR and after registering the FIR, the first respondent-Police ought to have conducted proper investigation by examining the witnesses. There is no prima-facie case against the petitioners and filing of the charge-sheet is not maintainable in law.

8. Neither the FIR, nor the charge-sheet had disclosed the commission of the offence under Section 392 IPC by the petitioners. The complaint lodged by the de-facto complainant clearly shows that the allegations in the complaint, are false, motivated, resulting in wrong implication of the petitioners in the case, but only with ulterior motive.

9. Moreover, the proceedings against the petitioners are an abuse of process of Court and it had caused serious prejudice and hardship to the petitioners. The petitioners have no other way except to approach this Court by invoking the provisions of Section 482 Cr.P.C.

10. It is the next submission of the learned counsel for the petitioners that, in pursuant to the connivance of the de-facto complainant, the above mischievous case is filed and if it proceeds on further, the petitioners would be put to loss and hardship. Therefore, it is just and necessary to quash the



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proceedings in C.C.No.1409 of 2024 under Section 392 IPC, read with Section 492 IPC on the file of the Metropolitan Magistrate No.V, Egmore District, pending disposal of the present quash petition.

11. Per contra, the learned Additional Public Prosecutor appearing for the first respondent-Police submitted that the case is proceeded for trial and the summons to the witnesses have all been issued.

12. This Court, on a reading of the materials available on record, finds that there is prima-facie case is made out based on the allegations levelled against the petitioner to proceed the case further. Even the confession statement has already been recorded and the validity of the confession statement and the aforesaid allegations and the defence of the petitioners could be considered only after trial and not at this stage of quash proceedings. There is no ground made out to quash C.C.No.1409 of 2024.

13. Hence, for the reasons stated above, this petition is dismissed. The petitioners are at liberty to take all their defences before the trial Court during the course of trial. Consequently, the miscellaneous petitions are closed.

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To

1. The Inspector of Police,
CMBT Police Station,
Koyambedu, Chennai District. (Crime No.513 of 2023).
2. The Public Prosecutor, High Court, Madras.
3. The Metropolitan Magistrate-V, Egmore, Chennai.



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