



Crl.O.P.No.33507 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 08.12.2025**

CORAM:

**THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA**

**Crl.O.P.No.33507 of 2025**

**and**

**Crl.M.P.No.23368 of 2025**

Sivakumar.J

... Petitioner

Vs.

State Rep. by  
Sub-Inspector of Police,  
Thalaivasal Police Station,  
Salem District.  
(Crime No.303 of 2021)

... Respondent

**PRAYER:** Criminal Original Petition is filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, to call for the records pertaining to the case in Crime No.303 of 2021 on the file of Inspector of Police, Thalaivasal Police Station, Salem District and quash the same.

For Petitioner : Mr.S.Kalaikumar

For Respondent : Mr.S.Santhosh  
Government Advocate (Crl.Side)

**ORDER**

This criminal original petition has been filed seeking to quash the First Information Report in Cr.No.303 of 2021 on the file of the respondent



Crl.O.P.No.33507 of 2025

Police for the offences under Sections 379 and 511 of IPC, 1860.

WEB COPY

2. The case of the prosecution is that on 12.07.2021, at about 14.00 hours, the petitioner was allegedly preparing to excavate soil from Mutal lake and attempting to load the same into tipper lorries without obtaining requisite permit. Acting upon secret information, the respondent police registered a case against the accused for the aforesaid offences. Hence, the case.

3. The learned counsel for the petitioner submits that the respondent has registered a case for the offences under Sections 379 and 511 of IPC, 1860. He further submits that Section 511 of IPC, 1860 deals with attempt to commit the offence. It is well-settled that an attempt must involve an overt act beyond the preparation and must be proximate to the commission of the offence. However, in the present case, the allegations in the FIR, do not show any act beyond mere preparation.

4. He further placed reliance on a similar matter dealt with by the Madurai Bench of this Court in ***Crl.O.P.(MD)No.1247 of 2023, dated 04.11.2024***, in the case of ***Srinivasan V. The Inspector of Police***, wherein this Court quashed the impugned proceedings on the ground that the



CrI.O.P.No.33507 of 2025

prosecution has not made out a case, even if the allegations made in the FIR were taken at their face value.

5. The learned Government Advocate (CrI.Side) appearing for the respondent police submits that when the respondent police was conducting an investigation, they found that the accused No.5 was preparing to dig the lake soil and was trying to load the sand into the tipper lorries without any permit. The tipper lorries and a HITACHI earthmover were seized and thereby, a case in Cr.No.303 of 2021, was registered against the accused. He further submits that the investigation is yet to be completed.

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. This Court is of the considered view that the issue involved stands squarely covered by the decision of the Madurai Bench of this Court in CrI.O.P.(MD).No.1247 of 2023 dated 04.11.2024 mentioned *supra*. In the said case, the impugned proceedings were quashed on the ground that even if the allegations in the FIR were taken at their face value, no case was made out by the prosecution.



8. The relevant portion of the aforesaid order is extracted hereunder:

WEB COPY

*“4. Section 511 of IPC deals with attempt to commit the offence. On carefully reading the said provision, it can be seen that for the completion of an offence under Section 511 of IPC, the accused should have done some act towards commission of the main offence and such an attempt is not expressly covered as a penal provision in any of the provisions under IPC. Thus, attempt on the part of the accused is sine qua non for constituting an offence under Section 511 of IPC. It must be kept in mind that an attempt to commit an offence is distinguishable from a mere intention to commit an offence or a mere preparation made for committing an offence. Mere intention to commit an offence, not followed by an act, cannot constitute an offence. Insofar as the preparation to commit an offence is concerned, it consists of devising or arranging the means or measure which are necessary for commission of an offence. The dividing line between a mere preparation and an attempt is very thin and if an act has not crossed the realm of preparation and reached the stage of an attempt, it will not constitute an offence under Section 511 of IPC.*

*5. The learned Senior Counsel appearing for the petitioner relied upon the judgment of the Apex Court in **Malkiat Singh v. State of Punjab**, reported in **1969 1 SCC 157**, to substantiate his submissions. The paragraph Nos.6 and 7 of the judgment are extracted hereunder:*

*“The question to be considered in this appeal is whether*



WEB COPY



Crl.O.P.No.33507 of 2025

upon the facts found by the lower courts any offence has been committed by the appellants. It is not disputed that the truck carrying the paddy was stopped at Samalkha Barrier which is 32 miles from Delhi. It is also not disputed that the Delhi-Punjab boundary was, at the relevant point of time, at about the 18th mile from Delhi. It is therefore evident that there has been no export of paddy outside the State of Punjab in this case. The truck with the loaded paddy was seized at Samalkha well inside the Punjab boundary. It follows therefore that there was no export of paddy within the meaning of Para 2(a) of the Punjab Paddy (Export Control) Order, 1959. It was however argued on behalf of the respondent that there was an attempt on the part of the appellants to transport paddy to Delhi, 'and so there was an attempt to commit the offence of export. In our opinion, there is no substance in this argument. On the facts found, there was no attempt on the part of the appellants to commit the offence of export. It was merely a preparation on the part of the appellants and as a matter of law a preparation for committing an offence is different from attempt to commit it. The preparation consists in devising or arranging the means or measures necessary for the commission of the offence. On the other hand, an attempt to commit the offence is a direct movement towards the commission after preparations are made. In order that a person may be convicted of an attempt to commit 'a crime, he must be shown first to have had an intention to commit the offence, and secondly to have done an act which constitutes the actus reus of a criminal attempt. The sufficiency of the actus reus is a question of law which had led



WEB COPY



Crl.O.P.No.33507 of 2025

to difficulty because of the necessity of distinguishing between acts which are merely preparatory to the commission of a crime, and those which are sufficiently proximate to it to amount to an attempt to commit it. If a man buys a box of matches, he cannot be convicted of attempted, arson, however clearly it may be proved that he intended to set fire to a haystack at the time of the purchase. Nor can he be convicted of this offence if he approaches the stack with the matches in his pocket, but, if he bends down near the stack and lights a match which he extinguishes on perceiving that he is being watched, he may be guilty of an attempt to burn it. Sir James Stephen, in his Digest of Criminal Law, Article 50, defines an attempt as follows:

*"an act done with intent to commit that crime, and forming part of a series of acts which would constitute its actual commission if it were not interrupted. The point at which such a series of acts begins cannot be defined, but depends upon the circumstances of each particular case."*

The test for determining whether the act of the appellants constituted an attempt or preparation is whether the overt acts already done are such that if the offender changes his mind and does not proceed further in its progress, the acts already done would be completely harmless. In the present case it is quite possible that the appellants may have been warned that they had no licence to carry the paddy and they may have changed their mind at any place between Samalkha Barrier and the Delhi-Punjab boundary and not have proceeded further in their journey. Section 8 of the Essential Commodities Act



states that "any person who attempts to contravene, or abets a contravention of, any order made under Section 3 shall be deemed to have contravened that order". But there is no provision in the Act which makes a preparation to commit an offence punishable. It follows therefore that the appellants should not have been convicted under Section 7 of the Essential Commodities Act."

*6. The above judgment clearly substantiates the interpretation of Section 511 of IPC made by this Court supra.*

*7. In the case on hand, except for the fact that there was a JCB machine and a lorry parked in a waterbody, there was nothing more available to take this case from the stage of preparation to that of an attempt to commit an offence. In view of the same, the offence under Section 379 read with 511 of IPC is not made out."*

9. The ratio laid down therein squarely applies to the facts of the present case and in the light of the aforesaid discussion and in line with the aforesaid order, the FIR in Crime No.303 of 2021, pending on the file of the respondent police, is quashed insofar as the petitioner is concerned and this criminal original petition is accordingly allowed. Consequently, connected miscellaneous petition is closed.

**08.12.2025**

Neutral Citation: Yes/No  
*rap*



WEB COPY



Crl.O.P.No.33507 of 2025

**A.D.JAGADISH CHANDIRA, J.**

rap

To

1. The Sub-Inspector of Police,  
Thalaivasal Police Station,  
Salem District.
2. The Public Prosecutor,  
High Court of Madras.

**Crl.O.P.No.33507 of 2025**

***08.12.2025***