



Crl.O.P.(MD)No.2588 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.02.2025

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THE HON'BLE MR.JUSTICE P.DHANABAL

Crl.O.P.(MD)No.2588 of 2025

Sudha

.. Petitioner

Vs.

The Inspector of Police
Pazhvoor Police Station
Tirunelveli District

.. Respondent

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, to call for the records pertaining to the impugned returned order dated 22.01.2024 in unnumbered S.R.No.3348 Crl.M.P.No. Of 2024 in Crime No. 9 of 2023 to set aside the same as illegal and direct the learned Judicial Magistrate, Valliyur to number the application under Section 173(8) of Cr.P.C and to dispose the same in accordance with law.

For Petitioner	: Mr.R.L.Dilipan Pandian
For Respondent	: Mr.M.Sakthi Kumar
	Government Advocate(Crl.Side)

ORDER

This Criminal Original Petition has been filed to set aside the impugned order dated 22.01.2024 and number the S.R.No.3348 Crl.M.P.No. Of 2024 in Crime No. 9 of 2023.



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2. The learned counsel appearing for the petitioner would submit that the petitioner is the defacto complainant in this case and based on the complaint given by him the respondent police registered a case in Crime No. 9 of 2023 for the offences under Sections 294(b), 323, 427, 397 and 506 (ii) of IPC and Section 4 of TNPHW Act but they omitted to mention the offence under Section 379 of IPC. Thereafter filed a petition under Section 173(8) of Cr.P.C before the trial Court for further investigation but the trial Court returned the petition for the reason of maintainability since Crl.M.P No. 2801 of 2020 was disposed of, which was filed for RCS notice in respect of deletion of section.

3. The learned Government Advocate(Crl.Side)appearing for the respondent would submit that already investigation was completed and after completion of investigation they filed final report for the offences under Sections 294(b), 323, 427, 379(NH) and 506 (i) of IPC and Section 4 of TNPHW Act and if at all any section is omitted it is for the trial Court to take appropriate steps if any materials available. Therefore for this purpose the petitioner cannot seek further investigation.

4. Heard both sides and perused the materials available on record.



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5. The main grievance of the petitioner is that the First Information Report was registered for the offences under Sections 294(b), 323, 427, 379(NH) and 506 (i) of IPC and Section 4 of TNPHW Act and while filing final report they left to mention about Section 379 of IPC, therefore the present petition has been filed. It is well settled law that if some offence is omitted in the charge sheet, the petition under Section 173(8) of Cr.P.C for further investigation cannot be ordered and it is for the trial Court to verify which offence is made out while taking cognizance as per the final report. Even while taking cognizance if some of the offences were left out, at the time of framing charges the trial Court can verify all the materials as to what are the offences made out. Therefore for the reason the omission of particular offence in the charge sheet the petition under Section 173(8) of Cr.P.C by the defacto complainant is not maintainable. Already the trial Court had disposed of Crl.M.P.No.2081 of 2023 in respect of protest petition, therefore filing of this petition is not necessary and it is for the trial Court to decide what are all the offences are made out.



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6. Therefore this Court without going into the merits of the case decides that this petition is unnecessary at this stage and the same is liable to be closed.

7. Accordingly, this Criminal Original Petition stands closed.

17.02.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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Note: Registry is directed to return the original impugned order after substituting with xerox copy.

To

1. The Inspector of Police
Pazhvoor Police Station
Tirunelveli District
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL,J.

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