



Crl.O.P.(MD)No.22732 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.01.2025

CORAM

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.(MD)No.22732 of 2024
and
Crl.MP(MD)No.14223 of 2024

Ramu ... Petitioner/Sole Accused

Vs.

1.The Inspector of Police,
Sakkottai Police Station,
Sivagangai District.
In Crime No.271 of 2024 ... 1st Respondent/Complainant

2.Chitra ... 2nd Respondent/Defacto Complainant

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, 2023, to call for the records in respect of FIR in Crime No.271 of 2024 on the file of the first respondent and quash the same as illegal.

For Petitioner : Mr.S.Srikanth
for Mr.M.Jeyakumar

For R1 : Mr.A.Thiruvadikumar
Additional Public Prosecutor



Crl.O.P.(MD)No.22732 of 2024

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ORDER

The petitioner/Accused in Crime No.271 of 2024 for the offences under Section 303(2) of BNS, 2023, had filed this quash petition.

2.The case of the prosecution is that on 21.11.2024, the defacto complainant locked her house and went to sleep and on the next day, when she woke up and came out of the house, she found that the empty Indane gas cylinder worth about Rs.2,000/- was missing. Hence, she lodged a complaint before the respondent police.

3.The contention of the petitioner is that the petitioner and the defacto complainant are neighbours. They had some boundary dispute, and they were not on friendly terms. The petitioner had been falsely implicated in this case as if he had committed a theft of an empty Indane gas cylinder. He further submitted that the proviso to sub-section (2) of Section 303 of BNS provides that in a case of theft, where the value of theft property is less than Rs.5,000/- and a person is convicted for the first time, the punishment that is provided is community service. He



Crl.O.P.(MD)No.22732 of 2024

further submitted that this Court in Crl.O.P.(MD)No.19623 of 2024, dated 13.11.2024, the learned Single Judge of this Court has passed the following order:

“5.The specific case of prosecution as stated supra is that the value of the stolen property is Rs.3,000/-. Hence, it will come within the scope of non-cognizable offence. If that is so, as per Section 174 of BNSS Act (hereinafter referred to as 'New Procedure Code') the FIR can be registered only after getting an appropriate order from the learned Magistrate, who is having power to try such a case. In the absence of the same, the very registration of FIR is illegal. The law on the issue is too well settled.”

4.In view of the above, in this case, admittedly, no order or permission has been obtained from the learned Magistrate. Hence, the respondent has got no authority to register and investigate the non-cognizable offence.

5.The learned Additional Public Prosecutor submitted that in this case, no order or permission has been obtained from the learned



Crl.O.P.(MD)No.22732 of 2024

WEB COPY

Magistrate to register the FIR. The complaint is for the missing gas cylinder worth about Rs. 2,000/-. Further, the petitioner and the second respondent are neighbours and they had some dispute. He further submitted that the investigation is not yet completed.

6.This Court finds that the respondent police had registered and investigated a case of non-cognizable offence without any order or permission from the learned Magistrate. Hence, the conclusion of the investigation is not sustainable. In this case, the points raised by the learned counsel for the petitioner are on legal issues. Hence, notice to the second respondent is dispensed with, since it serves no purpose.

7.For the above reasons, this Criminal Original Petition is allowed and the FIR in Crime No.271 of 2024 is hereby quashed. Consequently, connected miscellaneous petition is closed.

NCC : Yes / No
Index : Yes / No
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02.01.2025



Crl.O.P.(MD)No.22732 of 2024

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To

- 1.The Inspector of Police,
Sakkottai Police Station,
Sivagangai District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.O.P.(MD)No.22732 of 2024

M.NIRMAL KUMAR, J.

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Crl.O.P.(MD)No.22732 of 2024

02.01.2025