



Crl.OP(MD)No.22124 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.12.2025

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Crl.O.P.(MD).No.22124 of 2025

and

Crl.M.P.(MD)Nos.19043 and 19044 of 2025

Rajesh

... Petitioner

Vs.

The State of Tamilnadu,
Rep. by the Inspector of Police,
Kottar Police Station,
Kanyakumari District.
(Cr.No.281 of 2023)

... Respondent

Prayer: Criminal Original Petition is filed under Section 528 of BNSS, 2023, to call for the records relating to the impugned proceedings of the charge sheet in P.R.C.No.78 of 2025 on the file of the learned Judicial Magistrate No.II, Nagercoil, Kanyakumari District, dated 30.06.2025 and quash the same as illegal.

For Petitioner : Mr.K.Chengizhkhan

For Respondent : Mr.M.Sakthi Kumar,
Government Advocate (Crl. side)

ORDER

Preface:

This Criminal Original Petition is filed invoking the inherent jurisdiction of this Court under Section 482 of the Code of Criminal



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Procedure, 1973 (corresponding to Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023), seeking to quash the charge sheet in P.R.C.No.78 of 2025, dated 30.06.2025, on the file of the Judicial Magistrate No.II, Nagercoil, arising out of Crime No.281 of 2023, in so far as the petitioner / Accused No.2 is concerned.

2. The petitioner stands charged for the alleged offences under Sections 447 and 379 of IPC (corresponding to Sections 329 and 303 of BNS, 2023) and Section 3(1) of the Tamil Nadu Public Property (Prevention of Damage & Loss) Act, 1992. The grievance of the petitioner is that he has been roped into the criminal proceedings without any overt act, without any legal evidence, and only on account of collateral motives, thereby warranting interference at the threshold to prevent abuse of the process of law.

Case of the prosecution:

3. The prosecution case, as emerging from the FIR and the final report, is that on 24.09.2023, one Senthil Kumar lodged a complaint alleging that while he was riding his motorcycle on the beach road proceeding towards Kottar, a four-wheeler came from



behind, hit him, and fled away without stopping. Since the details of the offending vehicle were allegedly not traceable through online platforms, the police were on the lookout for the said vehicle. It is stated that on 26.09.2023 at about 12.45 p.m., one Narayanan, stated to be a relative of the injured Senthil Kumar, informed the police that the offending vehicle was parked in front of the Traffic Investigation Wing office at Kottar.

4. The prosecution further alleges that as no person came to claim the vehicle till 2.45 p.m., the police personnel put a wheel lock and tied the vehicle with police ribbon, purportedly to mark the scene of occurrence, and thereafter went for other official duties. It is alleged that thereafter the owner of the vehicle, namely Accused No. 1, contacted the SSI, Sekar over phone and it was informed that the vehicle was detained in connection with the accident and that he should wait.

5. According to the prosecution, when the police officials returned, it was found that the vehicle had been taken away by Accused No.1 along with others, by breaking the wheel lock and



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removing the police ribbon, thereby committing criminal trespass, theft, and damage to public property. On the complaint of the second respondent / defacto complainant, the case was registered in Crime No.281 of 2023, investigated, and a final report was laid, arraying the petitioner herein as Accused No.2, which culminated in cognizance being taken in P.R.C.No.78 of 2025.

Case of the petitioner:

6. The petitioner contends that he is a practising Advocate and had accompanied Accused No.1 to the Kottar Police Station only in connection with an enquiry relating to his client. According to the petitioner, the vehicle was parked near the Traffic Investigation Wing office in the normal course and no wheel lock was fastened, nor was any ribbon tied to the vehicle. It is the specific case of the petitioner that after completion of the enquiry, Accused No.1 and the petitioner left the place by taking the vehicle without any obstruction or resistance, and that the story of wheel lock and ribbon is a subsequent fabrication.



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7. It is further contended that the Inspector of Police concerned had previous animosity with Accused No.1 in some other enquiry and, using that motive, the present false case has been foisted, unnecessarily implicating the petitioner. The petitioner would further submit that his name does not find place in the FIR and that he has been mechanically included in the final report without attributing any overt act. Out of the ten witnesses cited, except the *de facto* complainant and formal official witnesses, there is no independent eye-witness to support the prosecution version regarding the alleged acts attributed to the petitioner.

Grounds for quash:

8. The petitioner has raised several grounds, *inter alia*, contending that the charge sheet is illegal, arbitrary, and unsustainable in law. No *prima facie* case is made out against the petitioner. The petitioner's name does not figure in the FIR. There is no material to establish his participation in the alleged occurrence. The alleged offences under Sections 447/329 BNS and 379/303 BNS are not attracted even on the prosecution version. The alleged wheel lock was never fastened and no public property was damaged. The



proceedings are actuated by mala fides and amount to abuse of process of law.

Submissions:

9. The learned counsel for the petitioner submitted that mere presence of the petitioner along with Accused No.1 cannot constitute the offences alleged. It was argued that for an offence of theft, there must be dishonest removal of property out of the possession of another, which ingredient is conspicuously absent, as the vehicle belonged to Accused No.1 himself. It was further argued that the police had no lawful custody of the vehicle and hence, the question of criminal trespass or theft does not arise. The learned counsel contended that continuation of proceedings against a practising Advocate without any *prima facie* material would cause serious prejudice and amounts to harassment.

10. The learned Government Advocate (Criminal Side) submitted that the allegations disclose commission of cognizable offences and that the petitioner's involvement would have to be tested only during trial. It was contended that the act of removing



the vehicle after putting wheel lock constitutes theft and damage to public property and, therefore, this Court should not interfere at the threshold.

11. Heard the learned counsels on either side and carefully perused the materials available on record.

12. *Points for consideration:*

The following points arise for consideration:

- i) Whether the materials in the charge sheet disclose a *prima facie* case against the petitioner.
- ii) Whether the essential ingredients of the alleged offences are made out against the petitioner.
- iii) Whether continuation of proceedings against the petitioner would amount to abuse of process of law.

Analysis:

13. It is a settled principle that while exercising inherent powers, this Court is not expected to conduct a mini trial. However, it is equally settled that where the allegations do not disclose the



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commission of any offence, interference is not only permissible but necessary. In the present case, admittedly, the vehicle belongs to Accused No.1. The prosecution itself does not dispute the ownership.

14. For an offence under Section 379 IPC / Section 303 BNS, the essential ingredient of dishonest intention to take movable property out of the possession of another is mandatory. When the owner himself takes his own vehicle, the offence of theft is *prima facie* not attracted. Likewise, for an offence under Section 447 IPC / Section 329 BNS, there must be unlawful entry into property in possession of another. The prosecution materials do not disclose any lawful seizure or possession of the vehicle by the police.

15. The alleged fastening of wheel lock and tying of ribbon, even assuming to be true, does not confer lawful custody upon the police in the absence of statutory seizure or confiscation proceedings. As regards Section 3(1) of the TNPPDL Act, except a bald allegation regarding breaking of wheel lock, there is no material to show damage to public property or its value.



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16. Significantly, the petitioner's name does not appear in the FIR and no specific overt act is attributed to him in the final report. The prosecution witnesses, barring official witnesses, do not speak about the active participation of the petitioner in the alleged acts. In such circumstances, permitting the prosecution to proceed against the petitioner would result in unwarranted harassment and abuse of the criminal process.

17. This Court is of the considered view that the continuation of proceedings against the petitioner in P.R.C.No.78 of 2025 does not serve the ends of justice and is liable to be quashed in exercise of inherent jurisdiction.

18. Criminal law cannot be permitted to be used as a tool for vengeance or arm-twisting, especially when the foundational ingredients of the alleged offences are absent. The inherent power of this Court exists precisely to interdict such proceedings at the threshold and to ensure that the process of law does not itself become a punishment.



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19. In the result, this Criminal Original Petition is allowed. The proceedings in P.R.C.No.78 of 2025, dated 30.06.2025, on the file of the learned Judicial Magistrate No.II, Nagercoil, arising out of Crime No.281 of 2023, are quashed in so far as the petitioner / Accused No.2 is concerned. Consequently, the connected miscellaneous petitions are closed.

15.12.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
Sml

To

- 1.The Judicial Magistrate No.II,
Nagercoil, Kanyakumari District.
- 2.The Inspector of Police,
Kottar Police Station,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

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