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Crl.O.P.No.3854 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2026

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.3854 of 2023
and
Crl.M.P.Nos.2433 & 2434 of 2023

Palanisamy @ Palani

.... Petitioner

Vs

Selvamani

.... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Code of Criminal Procedure, to call for the entire records pertaining to the private complaint vide C.C.No.3 of 2011 pending on the file of the learned Judicial Magistrate, Mahila Court, Dharmapuri, and quash the same as illegal.

For Petitioner : Mr.Navaneetharaja

For Respondent : Mr.P.M.Jayachandran

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.3 of 2011 on the file of the Judicial Magistrate, Mahila Court, Dharmapuri, thereby taken cognizance for the offences punishable under Sections 429 and 506(ii) of IPC.



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2. The respondent herein filed a complaint under Section 200 of Code of Criminal Procedure against ten accused, in which the petitioner is arrayed as A7, alleging that the respondent had entered into an agreement for sale in respect of the property admeasuring 80 cents from one Thanikachalam. While being so, one Dhanalakshmi @ Baby filed a suit for bare injunction before the District Munsif Court against the respondent in respect of the very same property. On 26.07.2010, at about 1.30 p.m., all the accused persons unauthorisedly trespassed into the respondent's property with deadly weapons and attacked five goats owned by the respondent in which four goats died and one was in serious condition. When it was questioned by the respondent, she was also threatened with dire consequences by the accused showing the deadly weapons.

3. Based on the complaint lodged by the respondent, the Inspector of Police, Thoppur Police Station, registered an FIR in Crime No.481 of 2010 for the offences punishable under Sections 429 and 506(ii) of IPC. After completion of the investigation, a final report was filed as against four persons, and deleted the other accused persons. The same has been taken cognizance by the Trial Court in C.C.No.116 of 2010 on the file of the Judicial Magistrate No.II, Dharmapuri and it is pending for trial. It is the case of the respondent



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that the police, after receipt of bribe from the accused, had wantonly deleted six accused persons and filed the final report only against four accused. Thereafter, in the private complaint, the learned Judicial Magistrate had taken cognizance on 08.03.2011 in C.C.No.3 of 2011 as per Section 210(2) of Cr.P.C in respect of the very same occurrence for which the police report under Section 173 of Cr.P.C had already been filed.

4. The learned counsel appearing for the petitioner submitted that the learned Magistrate ought not to have taken cognizance under Section 210(2) of Cr.P.C. which deals with the procedure to be followed when there is a complaint case and a police investigation in respect of the same offence. It is further submitted that, after deletion of certain accused persons in the final report, the respondent did not take any steps to challenge the same by filing a protest petition and straight away filed a private complaint, that too as against all the accused persons. He further submitted that the cognizance of the private complaint is nothing but *double jeopardy* and no person shall be prosecuted and punished for the same offence more than once. Some of the accused persons are already facing trial in C.C.No.116 of 2010 for the offences under Sections 429 and 506(ii) of IPC. The present private complaint has been filed for the very same set of allegations against the very same accused persons. Therefore, the entire proceedings initiated against the petitioner cannot be sustained and liable



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to be quashed. In support of his contention, he relied upon the Judgment of this Court and the Hon'ble Supreme Court of India.

5. Per contra, the learned counsel appearing for the respondent submitted that the police, after receipt of bribe from the accused, had deleted some of the accused persons from the final report. Therefore, the second respondent was constrained to file a private complaint and the same has been taken cognizance by the Trial Court. In fact, some of the accused persons had earlier approached this Court by filing Crl.O.P.No.23146 of 2012 and the same was dismissed by order dated 31.07.2013. Thereafter, the very same accused filed another quash petition, which was also dismissed as withdrawn on 08.03.2023. Further, the grounds raised by the petitioner can be considered only during trial. He further submitted that the present petition has been filed after a lapse of twelve years from the date of taking cognizance. All the accused persons approached this Court and stalled the entire proceedings. In fact, while dismissing the quash petition, this Court directed the Trial Court to conduct joint trial of both C.C.No.116 of 2010 and C.C.No.3 of 2011 and complete the same as expeditiously as possible.

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



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7. Admittedly, the respondent lodged a complaint in respect of the aforesaid allegations before the Inspector of Police, Thoppur Police Station and the same was registered in Crime No.481 of 2010 for the offences under Sections 429 and 506(ii) of IPC as against ten accused persons. After completion of the investigation, a final report was filed only against four accused persons and deleted the other accused persons. However, the respondent did not file any protest petition, challenging the deletion of the remaining accused persons. Aggrieved by the said final report, instead of filing the protest petition, the respondent straight away filed a private complaint as against all the accused persons, including the persons who are facing charges for the very same offence under Section 200 of Cr.P.C. The learned Magistrate has taken cognizance in the private complaint as per Section 210(2) of Cr.P.C in respect of the very same occurrence for which a police report had already been filed under Section 173 of Cr.P.C. In this regard, the learned counsel for the petitioner relied upon the Judgment of this Court in ***Crl.R.C.No.1795 of 2024*** in the case of ***S.Anbu Vs. The State, rep. by the Inspector of Police, MKB Nagar Police Station, Pulianthope, Tamil Nadu***, dated 05.02.2025, wherein this Court held as follows :

“11.It is well settled that the protest petition can be treated as a complaint only if it fulfils the requirement of a complaint and then deal with the same under Section 200 r/w 202 of the Cr.P.C. This position was reiterated by the Hon'ble Supreme



Court in *Vishnu Kumar Tiwari vs. State of Uttar Pradesh*, reported in (2019) 8 SCC 27 and the relevant paragraph reads as follows :

“46.If a protest petition fulfills the requirements of a complaint, the Magistrate may treat the protest petition as a complaint and deal with the same as required under Section 200 read with Section 202 of the Code. In this case, in fact, there is no list of witnesses as such in the protest petition. The prayer in the protest petition is to set aside the final report and to allow the application against the final report. While we are not suggesting that the form must entirely be decisive of the question whether it amounts to a complaint or liabel to be treated as a complaint, we would think that essentially, the protest petition in this case, is summing up of the objections the second respondent against the final report.”

8. It is relevant to extract the provisions under Section 210 of the Cr.P.C, which reads as follows :

“210.Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.

(1)When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.



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(2) If a report is made by the investigating police officer under Section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.

9. Thus, it is clear that in order to invoke Section 210 of the Cr.P.C, there must be a complaint case pending for enquiry or trial and also an investigation must be in progress in relation to the same offence and the further condition is that the Magistrate must have already taken cognizance of an offence against the persons, who are accused in the private complaint. In the case on hand, based on the police report, the Trial Court had already taken cognizance as against four accused persons. At the time of filing the private complaint, there was no complaint pending as against the accused persons. Though a protest petition is treated as a private complaint, the respondent failed to file any such protest petition challenging the deletion of certain accused persons. Therefore, the learned Magistrate ought to have invoked the



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provisions under Section 210 of Cr.P.C., to summon additional accused on the basis of the private complaint. In fact, the learned Magistrate has taken cognizance as against all the accused persons including the accused persons who are facing charges in C.C.No.116 of 2010 on the file of the very same Court. Therefore, the order of taking cognizance in C.C.No.3 of 2011 cannot be sustained and is liable to be quashed.

10. That apart, the respondent lodged a complaint and the same has been investigated and a final report was filed as against four accused persons. For the very same set of allegations, the respondent filed a private complaint. Though the learned counsel for the respondent submitted that the police personnel, after receipt of bribe, deleted six accused persons out of ten accused persons, the respondent failed to take any steps against the police officials and also failed to add them as accused in the private complaint. Therefore, the present complaint is nothing but a clear abuse of process of law. The principles of double jeopardy is squarely applicable to the case on hand. The accused persons, for the very same set of allegations, cannot be prosecuted twice. Therefore, the entire proceedings in C.C.No.3 of 2011 is clearly attracted the double jeopardy and it is impermissible in law. Though the co-accused filed quash petitions and the same were dismissed by this Court for the reason that the ground was not raised before this Court at any point of time. Therefore, this



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Court did not have any opportunity to deal with the grounds raised in the present case.

11. In view of the above, the entire proceedings cannot be sustained and are liable to be quashed. Accordingly, the proceedings in C.C.No.3 of 2011 on the file of the Judicial Magistrate, Mahila Court, Dharmapuri, is hereby quashed as against the petitioner and the Criminal Original Petition stands allowed. Consequently, connected miscellaneous petitions are closed.

04.03.2026

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
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To

The Judicial Magistrate,
Mahila Court, Dharmapuri.



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G.K.ILANTHIRAIYAN, J.

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