



Crl.O.P.No.2970 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2026

CORAM:

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

Crl.O.P.No.2970 of 2026
and Crl.MP.Nos.2042 and 2043 of 2026

1. Mohammed Rafiq
2. K.Abdul Samad
3. Abuthagir
4. I.Mohamed Rafick
5. E.Hussain
6. Ameer @ Hameed
7. Abdullah
8. H.Riyaz
9. Kalif
10. Alameen
11. Ismail
12. Abuthagir
13. M.S.Hussain

... Petitioners

Vs.

1. The State represented by
The Inspector Police,
B-1 Ooty Town Central Police Station,
The Nilgiris.
(Crime No. 87 of 2021)



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2. Subramani,
The Sub Inspector of Police,
B-1 Ooty Town Central Police Station,
The Nilgiris.

... Respondents

Criminal Original Petition is filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita/Section 482 Cr.P.C., to call for the records in C.C.No. 4 of 2025 on the file of the Judicial Magistrate Court, Udthagamandalam, the Nilgiris and quash the same.

For petitioners : Mr.M.Mohamed Riyaz
for Mr.H.Thameen Ansari

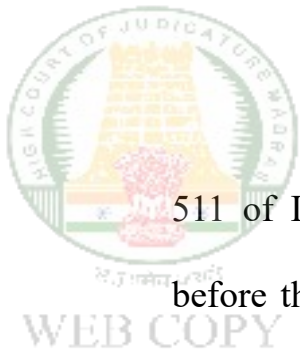
For R1 : Mr.S.Santhosh
Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been filed to call for the records relating to C.C.No. 4 of 2025 on the file of the Judicial Magistrate Court, Udthagamandalam, the Nilgiris and to quash the same.

2. The case of the prosecution is that on 03.02.2021, the accused had come to the Central Bus Stand, holding an object which was made of a combustible material with kerosene smell and attempted to cause damage to the public property. Consequently, a case in Crime No.87 of 2021 was registered by the respondent Police for the offences under Sections 435 and

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511 of IPC. After completion of investigation, the final report was filed before the Court of Judicial Magistrate, Udthagamandalam and the learned Magistrate took cognizance of the same and numbered it as C.C.No. 4 of 2025, which is now sought to be quashed.

3. Mr.M.Mohamed Riyaz, the learned counsel appearing for the petitioners advanced the following submissions:

- a) mere possession of the alleged combustible material will not be enough to prove that the petitioners were either preparing to commit the offence or they attempted to commit the offence and hence, Section 435 IPC cannot be attracted;
- b) the petitioners have not ignited or attempted to ignite anything, so as to cause damage or they have also not attempted to throw the combustible material on any public property and they were said to be arrested even prior to the commission of offence/the alleged attempt and hence, the offences under Sections 435 and 511 of IPC cannot be made out;
- c) though the alleged offences are said to have taken place near the Central Bus Stand, no independent witness has been cited and all the witnesses are police officials; and



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d) preparation for committing an offence is different from attempting to commit it and when no material is available to show that the petitioners either prepared or attempted to commit the offence, the ingredients of offences under Sections 435 and 511 of IPC cannot be made out.

4. In support of this contention, learned counsel appearing for the petitioner relied on the judgments in **Malkiat Singh and Another vs. State of Punjab [(1969) 1 SCC 157]** and **Koppula Venkat Rao vs. State of A.P. [(2004) 3 SC 602]**.

5. On the basis of the above submissions, learned counsel for the petitioners sought quashment of the impugned proceedings.

6. *Per contra*, Mr.S.Santhosh, learned Government Advocate (Crl.Side) appearing for the first respondent, made the following submissions:

- a) the petitioners were found in possession of a combustible material in order to cause damage to the public property; and
- b) the witnesses being police officials, by itself, cannot be a ground for quashing the proceedings pending against the petitioners.



7. Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Criminal Side) appearing for the first respondent.

8. At the outset, for the sake of convenience and ready reference, it is profitable to extract Sections 435 and 511 IPC.

“435. Mischief by fire or explosive substance with intent to cause damage to amount of one hundred of (in case of agricultural produce) ten rupees. -

Whoever commits mischief by fire or any explosive substance intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards [or (where the property is agricultural produce) ten rupees or upwards], shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

“511. Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment - *Whoever attempts to commit an offence punishable by this Code with [imprisonment for life] or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished [with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence], or with such fine as is provided for the offence, or with both.”*

9. Since Section 435 IPC deals with mischief, it is profitable to extract Section 425 IPC also as under:

“425. Mischief.- *Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits “mischief”.*”



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10. To be noted, the offence under Section 435 IPC will come into play only when the petitioners have committed any mischief as defined under Section 425 IPC. In this case, other than merely being in possession of the alleged combustible material, the petitioners have not either attempted to light the combustible material or destroy anything by the combustible material. To attract the offence under Section 425 of IPC, the following ingredients are necessary:

- (a) an intention, or knowledge or likelihood, to cause wrongful loss or damage to the public or to any other person;*
- (b) causing the destruction of some property or any change in it or in situation; and*
- (c) such change must destroy or diminish its value or utility, affect it injuriously.*

11. Further, to establish a charge under Section 435 IPC, the prosecution must prove that:

- (a) the accused committed mischief (section 425, IPC);*
- (b) the said mischief was caused by fire or by an explosive substance;*
- (c) the damage caused thereby amounted to:*
 - (i) Rs 10 or upwards if it was agricultural produce, or*
 - (ii) Rs 100 or upwards if property is of any other kind.*



12. In this context, the relevant paragraphs of the judgments relied on by the learned counsel for the petitioners are worthy of reference and they come to the aid of the petitioners:

Malkiat Singh and Another Versus State of Punjab [(1969) 1 SCC 157]

“6.....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 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.”

7. 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....”

Koppula Venkat Rao Versus State of A.P. [(2004) 3 SC 602]:

“9. A culprit first intends to commit the offence, then makes preparation for committing it and thereafter attempts to commit the offence. If the attempt succeeds, he has committed the offence; if it



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fails due to reasons beyond his control, he is said to have attempted to commit the offence. Attempt to commit an offence can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence. The word “attempt” is not itself defined, and must, therefore, be taken in its ordinary meaning. This is exactly what the provisions of Section 511 require. An attempt to commit a crime is to be distinguished from an intention to commit it; and from preparation made for its commission. Mere intention to commit an offence, not followed by any act, cannot constitute an offence. The will is not to be taken for the deed unless there be some external act which shows that progress has been made in the direction of it, or towards maturing and effecting it. Intention is the direction of conduct towards the object chosen upon considering the motives which suggest the choice. Preparation consists in devising or arranging the means or measures necessary for the commission of the offence. It differs widely from attempt which is the direct movement towards the commission after preparations are made. Preparation to commit an offence is punishable only when the preparation is to commit offences under Section 122 (waging war against the Government of India) and Section 399 (preparation to commit dacoity). The dividing line between a mere preparation and an attempt is sometimes thin and has to be decided on the facts of each case. There is a greater degree of determination in attempt as compared with preparation.”

13. As stated above, in this case, the prosecution has not proved that the petitioners either attempted to light the combustible material or caused damage to anything. To expatiate, when they have not lit the combustible material, the question of mischief having been committed as required under Section 425 IPC does not arise at all. Under such circumstances, the offences under Sections 435 and 511 IPC cannot be attracted. *Ex consequenti*, the entire proceedings in C.C.No.4 of 2025, on the file of the Court of the Judicial Magistrate, Udthagamandalam, the Nilgiris, is liable to be quashed.



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14 Accordingly, the proceedings pending against the petitioners in C.C.No.4 of 2025, on the file of the Court of the Judicial Magistrate, Udhagamandalam, the Nilgiris, is hereby quashed and as a sequitur, this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petitions are closed.

09.02.2026

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A.D.JAGADISH CHANDIRA, J.

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To

1. The Judicial Magistrate, Udthagamandalam,
Nilgiris.
2. The Inspector Police,
B-1 Ooty Town Central Police Station,
The Nilgiris.
3. The Public Prosecutor,
High Court of Madras.

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