



CrI.OP(MD).No.4912 of 2026

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 15.06.2026

ORDER PRONOUNCED ON : 19.06.2026
CORAM

THE HONOURABLE MR JUSTICE R.VIJAYAKUMAR

CrI.OP.(MD)No.4912 of 2026
and
CrI.M.P(MD)Nos.5263 & 5264 of 2026

1. T.Anthony Arul Visuvasam @ Visuvasam
2. S.AS Arul @ Arul
3. T.Jeya Anand Muthu @ Vairamuthu
4. Thommai Arulananda Savarimuthu @ Baskaran
5. P.Selvaraj ...Petitioners/Accused Nos.2 to 6

Vs

- 1.The State of Tamilnadu,
Rep. by Inspector of Police,
Sayalkudi Police Station.
Ramanathapuram District.
(Crime No. 12 of 2023). ...1st Respondent/Complainant

2. Rabin ...2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 528 of BNSS, 2023, to call for the records and quash the impugned order passed in



Crl.OP(MD).No.4912 of 2026

Crl.M.P.No.1078 of 2025 in Crime No.12 of 2023 on the file of the District
Munsif Cum Judicial Magistrate, Kadaladi.

WEB COPY

For Petitioners : Mr.D.Deepak Arasu
For Respondents : Mr.B.Arun
Government Advocate(Crl.side) for R1
:Mr.S.Krishnan for R2

ORDER

The present petition has been filed by Accused Nos.2 to 6 in Crime No. 12 of 2023 on the file of the first respondent police seeking to set aside the order passed by the trial Court in the protest petition wherein the trial Court has passed an order to include the deleted accused persons (A2 to A6) and to issue summons to them.

(A).Factual Matrix:

2.The petitioners herein along with A1 were arrayed as accused in Crime No.12 of 2023 on the file of the first respondent police which was registered on 13.01.2023 for alleged offences under Sections 147, 148, 341, 294(b), 323, 506(2) I.P.C and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002.

3.On 14.01.2023, the investigating agency filed an alternation report wherein A2 to A6 were deleted and the provisions were altered to Sections 341, 294(b), 323, 324 and 506(ii) I.P.C. Thereafter, the charge sheet was laid



Crl.OP(MD).No.4912 of 2026

on 20.10.2023 as against A1 alone.

WEB COPY

4.The defacto complainant had filed Crl.M.P.No.1078 of 2025 as a protest petition on 04.06.2025 raising objections to the alteration of Section and for deletion of A2 to A6. In the said application, the defacto complainant has prayed for reinvestigation and for filing a fresh charge sheet.

5.The trial Court after considering the protest petition, had passed an order on 16.06.2025 to the effect that there is a prima facie case as against the deleted accused persons and therefore, in the interest of justice, they should also face the trial and allowed the protest petition. Challenging the said order, the present petition has been filed by Accused Nos. 2 to 6.

(B).Submissions of the Counsels:

6.According to the learned counsel appearing for the petitioners, the trial Judge has not assigned any reason whatsoever to arrive at a finding that there is a prima facie case as against the petitioners herein. Merely because objections were raised in the protest petition with regard to the alteration of Section or deletion of the accused, the same would not confer any power upon the trial Court to pass an order to include the present petitioners as accused and issue summons to them.

7.The learned counsel for the petitioners had further submitted that none of the statements recorded under Section 161 Cr.P.C reflects that the petitioners' name could be implicated. He relied upon a decision of this Court



Crl.OP(MD).No.4912 of 2026

reported in *2022 (2) MLJ (Criminal) 401 (Senthilkumar and others*

Vs.State represented by the Inspector of Police and others) in support of his contention.

8.Per contra, the learned counsel appearing for the second respondent/defacto complainant submitted that the investigation has not been conducted in a fair manner and due to collusion, the name of the accused Nos.2 to 6 have been deleted by way of alteration report. In fact, Section 161 Cr.P.C statement recorded by the witnesses would clearly implicate the petitioners herein also. Merely because, the same is not reflected in the impugned order, the order cannot be set aside. He had further submitted that this Court can go through the statement recorded under Section 161 Cr.P.C of various witnesses, which would clearly point out the criminal liability on the part of the petitioners herein. Hence, he prayed for dismissal of the petition.

9.Heard the learned counsel appearing on either side and perused the material records.

(C).Discussion:

10.A perusal of the F.I.R registered on 13.01.2023 reveals that the petitioners herein are arrayed as accused Nos.2 to 6. The alteration report filed by the investigating agency on 14.01.2023 reveals that the name of the petitioners have been deleted and the F.I.R was retained only as against A1. At the time of filing of the charge sheet on 20.10.2023, the name of the A1



Crl.OP(MD).No.4912 of 2026

alone has been retained. These facts are not in dispute.

WEB COPY

11.A perusal of the protest petition especially Paragraph Nos.6 and 7 clearly reveal that the petitioners had simply raised strong objection to the deletion of the accused persons without conducting proper investigation. The defacto complainant had prayed for reinvestigation and for filing of a supplementary charge sheet. Therefore, it is clear that the defacto complainant has not pointed out any specific flaw or defect in the investigation process.

12.On the other hand, no new materials have been placed in the protect petition. Hence, it is clear that the defacto complainant has neither found out any defect in the investigation nor produced any fresh material before the trial Court, but has simply raised objection with regard to the conclusion arrived at by the investigating agency. Since the defacto complainant did not have any new material, he had prayed for reinvestigation and for filing of a supplementary charge sheet.

13.A perusal of the impugned order reveals that the trial Court has not independently considered the final report and the annexure to the final report in order to arrive at a different conclusion for inclusion of petitioners' herein as accused persons. The trial Court has simply stated that prima facie is made out as against the Accused Nos.2 to 6 and therefore, in the interest of justice, the trial should be conducted as against them also.



WEB COPY 14.The Hon'ble Supreme Court in a judgment reported in (2004) 7

SCC 768 (Gangadhar Janardan Mhatre Vs. State of Maharashtra and others) in Paragraph No.9 has held as follows:

“9. The position is, therefore, now well-settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(l)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the Investigating Officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the Investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise of his powers under Section 190(l)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(l)(a) though it is open to him to act under Section 200 or Section 202 also.”



Crl.OP(MD).No.4912 of 2026

15.As per the judgment of the Hon'ble Supreme Court, the Magistrate has to take into account the statement of witnesses examined and if he is satisfied, he can ignore the conclusion arrived at by the investigating agency and that too after independently applying his mind to the fact emerging from the investigation. Only, in such circumstances, the Magistrate can exercise his power under Section 190(1)(b) and direct the issuance of summons to the accused persons. In the present case, the impugned order does not reflect that the Magistrate has taken into consideration the statement of witnesses and had not independently arrived at any conclusion.

16.Though a finding is rendered that there are prima facie materials for taking cognizance as against Accused Nos.2 to 6, the learned Judge has not pointed out any specific materials as against Accused Nos.2 to 6. Such a finding is clearly in violation of the judgement of the Hon'ble Supreme Court cited supra. Unless a specific finding is recorded, on an independent analysis of the charge sheet and the statement of the witnesses, the Magistrate cannot invoke Section 190(1)(b) of the Code. Therefore, the order impugned in the petition is liable to be set aside.

(D).Conclusion:

17.The order passed by the District Munsif Cum Judicial Magistrate, Kadaladi in Crl.M.P.No.1078 of 2025 in Crime No.12 of 2023 on 16.06.2025



Crl.OP(MD).No.4912 of 2026

is hereby set aside. This Criminal Original Petition stands allowed and the matter is remitted back to the file of the trial Court for fresh consideration in the light of the above said observation. Consequently, connected miscellaneous petitions are closed.

19.06.2026.

Internet : Yes/No
Index : Yes/No
NCC : Yes/No
msa

To

- 1.The District Munsif Cum Judicial Magistrate, Kadaladi
- 2.The Inspector of Police,
Sayalkudi Police Station.
Ramanathapuram District.
- 3.The Additional Public Prosecutor
Madurai Bench of Madras High Court
Madurai



WEB COPY



CrI.OP(MD).No.4912 of 2026

R.VIJAYAKUMAR, J.

msa

CrI.OP.(MD)No.4912 of 2026
and
CrI.M.P(MD)Nos.5263 & 5264 of 2026

19.06.2026