



CrI.O.P.(MD)No.2574 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **27.01.2026**

CORAM:

THE HONOURABLE **MRS.JUSTICE L.VICTORIA GOWRI**

CrI.O.P.(MD)No.2574 of 2024
& CrI.M.P.(MD)No.1977 of 2024

1.Appathurai
2.A.Sivaram

... Petitioners

Vs.

1. The State represented by its
The Inspector of Police,
Ethamozhi Police Station,
Kanyakumari District.
Crime No.23 of 2023

2. T.Bharathi Priya

... Respondents

PRAYER : Petition filed under Section 528 of BNSS, 2023 to call for the records relating to CC.No.716 of 2023 dated 19.06.2023 pending on the file of the Judicial Magistrate No.II, Kanyakumari at Nagercoil and quash the same.

For Petitioners : Mr.V.Sukumar

For Respondents : Mr.M.Sakthi Kumar (R1)

Government Advocate

Mr.S.Vashik Ali (R2)



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ORDER

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The petitioners seek for quash of the Charge Sheet in CC.No.716 of 2023 dated 19.06.2023 pending on the file of the Judicial Magistrate No.II, Kanyakumari at Nagercoil.

2. The learned counsel appearing for the petitioners submitted that petitioners herein are the accused Nos.1 and 2 before the trial Court. The case of the prosecution is that the defecto complainant / second respondent is the first petitioner's brother's daughter. It is alleged that the petitioners with an intention to grab the property of the second respondent illegally entered into the compound wall, damaged the same and committed theft by taking materials including cement stone, granite stone, etc., worth of Rs.1,20,000/-. In this regard, on the complaint given by the second respondent, an FIR in Crime No. 23 of 2023 came to be registered for the offences under Section 474, 427 and 379 of IPC as against the petitioners by the respondent police and the same culminated in laying a charge sheet in CC No.716 of 2023 for the same offences, before the learned Judicial Magistrate No.III, Kanyakumari at Nagercoil.

3. The learned counsel appearing for the petitioners limited his prayer as



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far as the second petitioner is concerned and pointed out that the offences under Sections 474, 427 and 379 of IPC would not be clearly made out as against the second petitioner herein and that on the particular date of occurrence as alleged by the defacto complainant, the second petitioner was very well present in his place of work in a private company, for which he had placed before this Court the biometric attendance report of the said company. He also relied upon the written statement filed by the defacto complainant in a pending civil suit in OS No.430 of 2022 on the file of the I Additional Subordinate Judge, Nagarcoil, where the defacto complainant herself had admitted, and pleaded that it was only the first petitioner, who was present in the alleged date of occurrence. There is no whisper in the written statement as against the role of the second petitioner herein and hence sought the indulgence of this Court.

4. Per contra, the learned Government Advocate categorically contended that alibi cannot be raised in a quash petition and it is for the trial Court to look into the same, at the time of trial. He further pointed out that the statement recorded under Section 161 Cr.P.C. from LW1 would clearly establish that both the petitioners were present at the place of occurrence on the alleged date of occurrence.



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5. Heard the learned counsel on either side and carefully perused the materials available on record.

6. A careful reading of the charge sheet itself would make it clear that both the petitioners were present in the place of occurrence on the alleged date of occurrence and specific overt acts are made out as against both the petitioners herein. In view of the same, making it clear that on a plea of alibi cannot be raised in a quash petition directing the trial Court to look into all the defences raised by the petitioners during trial, this criminal original petition is dismissed. The learned Judicial Magistrate No. III, Kanyakumari, is directed to dispose of the trial in CC No. 716 of 2023 expeditiously, preferably within six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

27.01.2026

NCC : Yes / No
Index : Yes / No
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WEB COPY TO:-

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



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L.VICTORIA GOWRI, J.

Sm

Order made in
Crl.O.P.(MD)No.2574 of 2024

Dated
27.01.2026