



Crl.OP(MD)No.14991 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.01.2026

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Crl.O.P.(MD).Nos.14991 of 2025

and

Crl.M.P.(MD)Nos.12160 and 12161 of 2025

Siva Sakthi Iyyappan

... Petitioner

Vs.

1.The State of Tamil Nadu
Rep. by The Inspector of Police,
Kaliyakkavilai Police Station,
Kanyakumari District.
(Crime No.288/2019).

2.Rajeshkumar

... Respondents

Prayer: Criminal Original Petition is filed under Section 528 of BNSS, 2023, to call for the records in S.C.No.284/2023 pending before the Assistant Sessions Judge cum Subordinate Court, Kuzhithurai, and quash the same as against the petitioner/Sole Accused.

For Petitioner : Mr.R.Rajamohan

For R-1 : Mr.Thanga Aravindh.B,
Government Advocate (Crl. Side)



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ORDER

Preface:

The inherent jurisdiction of this Court under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 482 of the Code of Criminal Procedure, 1973) is intended to prevent abuse of the process of Court and to secure the ends of justice. When criminal proceedings disclose manifest procedural illegality, jurisdictional error, or are demonstrably attended with mala fides, the High Court is duty-bound to intervene at the threshold. The present Criminal Original Petition presents one such instance where a case and counter-case arising out of the same transaction have been dealt with in blatant disregard of settled principles governing investigation and trial.

2. This Criminal Original Petition has been filed praying to call for the records relating to the Final Report filed in Crime No.288 of 2019 on the file of the first respondent police, taken cognizance as S.C.No.284 of 2023 by the Assistant Sessions Judge-cum-Subordinate Judge, Kuzhithurai, and to quash the same insofar as the petitioner / sole accused is concerned.



Case of the prosecution:

3. The case of the prosecution, in brief, is that the second respondent / *de facto* complainant is the owner of a Maxi Cab Van bearing Registration No. TN-67-BZ-6143. On 20.12.2019 at about 4.45 p.m., when the said van was proceeding near PPM Junction car stand from Kaliakkavalai, two persons known to the *de facto* complainant allegedly stepped onto the vehicle. It is alleged that the petitioner thereafter wrongfully restrained the van, abused the *de facto* complainant using filthy language, threatened him, and broke the right side mirror of the van, causing damage assessed at Rs. 1,350/-, besides causing injury to the *de facto* complainant's hand.

4. Based on the complaint lodged by the *de facto* complainant on the same day, the first respondent police registered a case in Crime No.288 of 2019 for offences under Sections 294(b), 341, 427 and 506(i) of the Indian Penal Code. Upon completion of investigation, a Final Report was filed, which was taken cognizance as S.C.No.284 of 2023 by the learned Assistant Sessions Judge-cum-Subordinate Judge, Kuzhithurai.



Case of the petitioner:

5. The petitioner submits that the impugned prosecution is a counterblast to an earlier complaint lodged by him on the very same date, arising out of the same transaction. According to the petitioner, on 20.12.2019 at about 4.50 p.m., while he was discharging his duty as Branch Manager at Kaliakkavalai Bus Stand, the *de facto* complainant parked his Maxi Cab Van in front of the TNSTC Bus Stand in violation of Motor Vehicles Rules and illegally boarded passengers, causing traffic obstruction.

6. When the petitioner questioned the same, the *de facto* complainant allegedly abused him in filthy language, issued life threats and dashed the van against the petitioner, causing injury to him. Based on the petitioner's complaint, the respondent police registered Crime No.287 of 2019 for offences under Sections 294(b), 323, 353 and 506(i) IPC, which was taken cognizance as S.T.C.No. 279 of 2020 by the learned Judicial Magistrate No.I, Kuzhithurai and is pending trial.



7. The petitioner contends that both crimes arose out of the same occurrence, but the investigating agency failed to follow the mandatory procedure prescribed under Police Standing Order 566 relating to case and counter-case. It is further contended that the offences alleged against the petitioner are exclusively triable by a Magistrate, yet the case has been committed to the Sessions Court without jurisdiction. The petitioner also asserts that he is a public servant acting in discharge of official duties and that the prosecution is vitiated for want of sanction under Section 197 Cr.P.C., 1973.

Grounds for quash:

The principal grounds urged by the petitioner are as follows:

8. The cognizance taken by the Assistant Sessions Court is without jurisdiction, as the alleged offences under Sections 294(b), 341 and 427 IPC are triable exclusively by a Magistrate. The investigation suffers from gross violation of Police Standing Order 566 governing case and counter-case, resulting in miscarriage of justice. The Magistrate committed the case mechanically without application of mind and without ensuring simultaneous committal of the case and counter-case.



9. The petitioner, being a public servant acting in discharge of official duty, could not have been prosecuted without prior sanction under Section 197 Cr.P.C., 1973. The continuation of separate proceedings in respect of the same transaction before different Courts amounts to abuse of process of law. Even if the allegations are taken at face value, the essential ingredients of the offences alleged are not made out. The prosecution squarely falls within the parameters laid down in ***State of Haryana v. Bhajan Lal***¹.

Submissions:

10. The learned counsel for the petitioner reiterated the above submissions and contended that the entire prosecution is tainted with mala fides and procedural illegality. It was further argued that the impugned proceedings, if allowed to continue, would result in irreparable prejudice to the petitioner and would undermine the fairness of the criminal justice process.

11. Per contra, the learned Government Advocate (Criminal Side) submitted that the allegations disclose *prima facie* commission of offences and that disputed questions of fact ought to be decided

¹ 1992 Supp (1) SCC 335



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only at trial. It was contended that the inherent jurisdiction should be exercised sparingly and that the petitioner may work out his remedies before the learned Trial Court.

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

Point for consideration:

13. Whether the continuation of proceedings in S.C.No.284 of 2023 against the petitioner is vitiated by jurisdictional error, procedural illegality and abuse of process of law, warranting interference under Section 528 BNSS?

Analysis:

14. It is not in dispute that Crime Nos.287 and 288 of 2019 arose out of the same transaction and at the same place and time. The existence of a case and counter-case casts a higher duty on the investigating agency to strictly adhere to the procedure prescribed under Police Standing Order 566, which mandates fair investigation,



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identification of the real aggressor and submission of appropriate reports in both cases.

15. In the present case, the records disclose that while the counter-case was taken cognizance by the learned Judicial Magistrate, the impugned case alone was committed to the Sessions Court, notwithstanding the fact that the offences alleged are not exclusively triable by a Court of Session. Such committal, without jurisdiction, strikes at the root of the proceedings.

16. Further, the settled legal position is that case and counter-case arising out of the same transaction must be tried by the same Court, one after the other, to avoid conflicting judgments. The failure to adopt such a course results in grave procedural impropriety.

17. The contention relating to sanction under Section 197 Cr.P.C., 1973, also merits consideration. The allegations, even as per the prosecution, arise out of an incident that occurred when the petitioner was allegedly performing his official duties at a bus stand.



In such circumstances, the absence of prior sanction vitiates the prosecution at its inception.

18. Applying the principles enunciated in **State of Haryana v. Bhajan Lal**¹, this Court finds that the impugned proceedings fall within the categories where criminal prosecution is manifestly attended with mala fide intention and instituted with ulterior motive.

19. Applying the ratio laid down by the Hon'ble Supreme Court in **Nathi Lal & Ors. v. State of U.P.**² and reiterated with clarity by this Court in **T. Balaji v. State**³, it is evident that when a case and counter-case arise out of the same occurrence, fairness in criminal administration mandates that both cases shall be investigated by the same Investigating Officer, placed before the same Court, and tried by the same Judge, one after the other, so as to obviate conflicting findings and ensure discovery of the real aggressor.

1 1992 Supp (1) SCC 335

2 (1990) Sup SCC 145

3 2024-2-L.W.(Crl) 175



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20. However in the present case, though Crime Nos.287 and 288 of 2019 admittedly stem from the same transaction at the same place and time, the Investigating Agency has proceeded to file separate final reports, resulting in the counter-case being tried by the learned Judicial Magistrate, while the impugned case alone has been committed to the Sessions Court, despite the offences being exclusively triable by a Magistrate. Such a course of action is in patent violation of the directives laid down in **Balaji case**, strikes at the root of procedural fairness, and renders the continuation of the impugned proceedings legally unsustainable. That apart, the investigating officer has not narrated the reason for filing final reports in both the cases detailing the manner of aggression involved and who was the aggressor.

21. Criminal law cannot be permitted to degenerate into a weapon of harassment, particularly when the prosecution is tainted by jurisdictional infirmity and procedural illegality. Courts must remain vigilant to ensure that fairness in investigation and trial is not sacrificed at the altar of mechanical prosecution.



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22. In the result, the Criminal Original Petition is allowed. The proceedings in S.C.No.284 of 2023 on the file of the Assistant Sessions Judge-cum-Subordinate Judge, Kuzhithurai, arising out of Crime No.288 of 2019, are quashed insofar as the petitioner / sole accused is concerned. Consequently, connected miscellaneous petitions are closed.

02.01.2026

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

To

- 1.The Assistant Sessions Judge
cum Subordinate Court, Kuzhithurai.
2. The Inspector of Police,
Kaliyakkavilai 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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