



Crl.OP(MD)No.18417 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.02.2026

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Crl.O.P.(MD)No.18417 of 2025

and

Crl.M.P.(MD)Nos. 15155 and 15160 of 2025

T.Rajeshwaran

... Petitioner

Vs.

1. The State Rep. by Tamil Nadu,
The Inspector of Police,
Gandamannur Vilakku Police Station,
Theni District.
Crime No.281 of 2018.

2. Manian,
The Sub Inspector of Police,
Gandamannur Vilakku Police Station,
Theni District.

... Respondents

PRAYER: Criminal Original Petition filed under Section 528 of BNSS, 2023, to call for the records pertaining to the impugned proceedings in C.C.No.96 of 2019 on the file of the learned Judicial Magistrate Court, Andipatty, Theni District, for the offences under Sections 341, 353 and 379 of IPC and to quash the same as illegal.

For Petitioner : Mr.K.Dinesh



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For R-1 : Mr.M.Sakthi Kumar
Government Advocate (Crl. Side)

ORDER

Preface:

This Criminal Original Petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, seeking to quash the charge sheet in C.C.No.96 of 2019 pending on the file of the learned Judicial Magistrate, Andipatti, Theni District, insofar as the petitioner is concerned. The petitioner is sought to be prosecuted for the alleged offences punishable under Sections 341, 353 and 379 of the Indian Penal Code.

2. The petitioner would contend that he is a practicing Advocate and that his implication in the present case is wholly unwarranted, legally unsustainable, and actuated by improper exercise of police power. According to him, even the remand Court, at the relevant point of time, had found no sufficient material to justify his remand for the alleged offences. It is in the said backdrop that



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the present petition has come to be filed invoking the inherent jurisdiction of this Court.

Case of the prosecution:

3. The case of the prosecution, as projected by the respondent police, is that on the date of occurrence, the police had intercepted the second accused in connection with alleged illegal transportation of sand and had secured both the vehicle involved and about half unit of sand.

4. It is the further case of the prosecution that the petitioner herein had proceeded to the place of occurrence and that he was introduced by the second accused to the police as the owner of the vehicle involved in the alleged offence.

5. The prosecution would further allege that when the police attempted to take action in the matter, the petitioner had interfered with the discharge of official duty by the police personnel and had used criminal force by twisting the hand of one Selvam, a police



official. On the basis of the said allegations, the petitioner came to be implicated for the offences under Sections 341, 353 and 379 IPC.

6. Upon completion of investigation, the respondent police laid a final report, which was taken on file as C.C.No.96 of 2019 by the learned Judicial Magistrate, Andipatti, Theni District.

Grounds for quash

7. The principal grounds urged by the petitioner for quashing the proceedings are as follows:

7.1. Firstly, the petitioner is a practicing Advocate, and according to him, he had gone only to assist the second accused, who had been taken into custody by the respondent police in connection with the alleged sand theft case.

7.2. Secondly, it is contended that the petitioner was unnecessarily taken into custody by the police on the very same day, though there was no legally acceptable material to implicate him in the alleged occurrence.



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7.3. Thirdly, the petitioner would place strong reliance on the remand report and the observations made by the learned Judicial Magistrate at the relevant stage, wherein it was noticed that the police had failed to produce any material to show that the petitioner was the owner of the vehicle allegedly involved in the offence or that he had committed theft of sand.

7.4. Fourthly, it is contended that the learned Judicial Magistrate had refused to remand the petitioner for the offences under Sections 341, 353 and 379 IPC and Section 21(4) of the Mines and Minerals (Development and Regulation) Act, 1957, and had specifically directed the Investigating Officer to proceed in accordance with Section 41A of the Code of Criminal Procedure.

7.5. Fifthly, the petitioner would submit that despite the above judicial direction, the police did not comply with the mandate of Section 41A Cr.P.C., 1973, and, in disregard of the same, proceeded to file the final report against him. According to the petitioner, such a course of action vitiates the prosecution insofar as he is concerned.



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7.6. Lastly, it is urged that the essential ingredients of the offences alleged are not made out against the petitioner and that continuation of the criminal proceedings would amount to abuse of process of Court.

Arguments on the side of the petitioner:

8. The learned counsel appearing for the petitioner submitted that the petitioner is a practicing Advocate and that his presence in the police station or at the place of occurrence was only for the limited purpose of extending legal assistance to the second accused. The learned counsel further submitted that the petitioner had been falsely implicated merely because he had come to the aid of the second accused. It was argued that the respondent police, instead of acting in accordance with law, proceeded against the petitioner in an arbitrary fashion.

9. Drawing the attention of this Court to the remand proceedings, the learned counsel submitted that the learned Magistrate had categorically recorded that there was no material to



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establish that the petitioner was the owner of the vehicle in question.

It was further argued that the remand Court had not accepted the prosecution case at face value and had directed the Investigating Officer to comply with Section 41A Cr.P.C., 1973.

10. The learned counsel would therefore submit that once the Magistrate had declined to remand the petitioner on the strength of the materials then produced and had directed the police to proceed strictly in accordance with Section 41A Cr.P.C., 1973, the subsequent filing of final report without adhering to such direction is legally infirm.

11. The learned counsel also contended that the allegations are vague and do not clearly spell out the ingredients of wrongful restraint, assault or criminal force to deter a public servant from discharge of his duty, or theft. Therefore, the continuation of prosecution would be wholly unjustified.



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Arguments on the side of the respondent:

12. Per contra, the learned Government Advocate (Crl. Side) appearing for the first respondent police, on instructions, submitted that on the date of occurrence, the second accused was secured by the police along with half unit of sand and the vehicle used for transporting the same.

13. He would further submit that the petitioner had come to the spot and that he was introduced by the second accused to the police as the owner of the vehicle concerned. According to the prosecution, it was only on the basis of such admission that the petitioner was taken into custody.

14. The learned Government Advocate further submitted that when the police proceeded to take the first accused into custody, the petitioner interfered with the official duty of the police personnel and exerted criminal force by twisting the hand of one Selvam, a police official.



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15. It was therefore contended that there are specific allegations as against the petitioner and that the correctness or otherwise of the same can only be tested in the course of trial and not in proceedings under Section 528 of BNSS.

16. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the first respondent.

17. This Court is of the view that since the second respondent is a police officer impleaded in his personal capacity and since the controversy can be effectively adjudicated on the materials available on record, notice to the second respondent is dispensed with.

Point for consideration

18. In the light of the rival submissions, the point that arises for consideration in this Criminal Original Petition is whether the continuation of criminal proceedings in C.C.No.96 of 2019 on the file of the Judicial Magistrate Court, Andipatti, Theni District, as against



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the petitioner, would amount to abuse of process of Court, warranting interference under Section 528 of BNSS, 2023?

Analysis:

19. This Court has carefully considered the submissions made on either side and perused the materials available on record.

20. The foundational circumstance that weighs with this Court is the remand report and the judicial assessment made by the learned Magistrate at the earliest stage of the proceedings. A perusal of the said materials reveals that the learned Magistrate had recorded that the prosecution had failed to produce material to show that the petitioner was the owner of the vehicle allegedly involved in the transportation of sand.

21. The significance of the said observation cannot be lightly brushed aside. The allegation of theft of sand and the consequential implication of the petitioner are sought to be built upon the premise that the petitioner was connected with the vehicle used in the



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commission of the offence. However, when even at the threshold the prosecution was unable to place material before the remand Court to substantiate such connection, the prosecution case insofar as it concerns the petitioner becomes inherently doubtful.

22. More importantly, the learned Magistrate had refused to remand the petitioner for the offences under Sections 341, 353 and 379 IPC and Section 21(4) of the Mines and Minerals (Development and Regulation) Act, 1957, and had directed the Investigating Officer to comply with Section 41A Cr.P.C., 1973.

23. Section 41A Cr.P.C., 1973, was introduced as a salutary safeguard to ensure that arrest is not made in a mechanical manner where the circumstances do not warrant immediate arrest. When a judicial direction had already been issued requiring the Investigating Officer to follow such statutory procedure, the same could not have been ignored with impunity.



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24. The materials placed before this Court do not indicate due compliance with the said direction in the manner expected by law. Instead, the Investigating Officer appears to have proceeded to file the final report against the petitioner notwithstanding the earlier judicial reservation as to the existence of material against him.

25. The petitioner is admittedly a practicing Advocate. The specific defence set up by him is that he had gone only to assist the second accused, who had already been taken into custody by the respondent police. This explanation appears plausible in the factual matrix of the case, particularly when the materials relied upon by the prosecution do not unambiguously establish his complicity in the alleged theft.

26. As regards the offence under Section 341 IPC, the materials do not clearly disclose that the petitioner had voluntarily obstructed any person so as to prevent such person from proceeding in any direction in which he had a right to proceed. Mere presence at



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the place of occurrence or protest, without specific material demonstrating wrongful restraint, would not suffice.

27. Equally, with respect to Section 353 IPC, there must be clear and specific material to show assault or use of criminal force against a public servant in the execution of his duty. Though the prosecution would allege that the petitioner twisted the hand of one Selvam, the overall circumstances, especially the earlier refusal of remand by the Magistrate and the absence of convincing foundational material, make the continuation of prosecution on such allegation doubtful insofar as the petitioner is concerned.

28. Insofar as Section 379 IPC is concerned, theft necessarily requires dishonest intention and unlawful moving of movable property out of another's possession without consent. In the present case, the material placed does not satisfactorily connect the petitioner with the alleged act of theft of sand. The very aspect as to his ownership of the vehicle, which forms an important part of the



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prosecution version, was not supported by acceptable material before the remand Court.

29. It is well settled that while exercising jurisdiction to quash criminal proceedings, this Court does not ordinarily embark upon meticulous appreciation of evidence. At the same time, where the materials on record fail to disclose the basic ingredients of the offences alleged, or where continuation of prosecution would amount to misuse of the criminal process, the inherent jurisdiction of this Court can and ought to be exercised to secure the ends of justice.

30. In the case on hand, this Court finds that the prosecution, as against the petitioner, lacks the requisite clarity and legal foundation. The sequence of events, the observations made by the remand Court, the direction to follow Section 41A Cr.P.C., 1973, and the subsequent filing of the final report without satisfactorily overcoming the defects noticed at the threshold, cumulatively persuade this Court to hold that allowing the prosecution to



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- 2.The Inspector of Police,
Gandamannur Vilakku Police Station,
Theni District.
- 3.The Judicial Magistrate Court,
Andipatti,
Theni District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

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