



Crl.OP(MD)No.20774 of 2025

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.02.2026

PRONOUNCED ON : 01.06.2026

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Crl.O.P.(MD).No.20774 of 2025

and

Crl.M.P.(MD)No.17681 of 2025

Raja

... Petitioner/Accused

Vs.

1. The State of Tamilnadu,
Rep. by the Inspector of Police,
VK Puram Police Station,
Tirunelveli District.
Crime No.165/2022.

.... Respondent / Complainant

2. Kumar

.... Respondent /
Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 528 of BNSS, 2023, to call for the records and quash the charge sheet filed against the petitioner in C.C. No. 318 of 2023 on the file of the Judicial Magistrate, Ambasamudram in respect of Crime No. 165/2022 on the file of the 1st respondent.

For Petitioners : Mr. P.P.Alwin Balan

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



WEB COPY



Crl.OP(MD)No.20774 of 2025

For R-2 : No appearance

ORDER

The petitioner, who is arrayed as A-2 in C.C.No.318 of 2023 on the file of the learned Judicial Magistrate, Ambasamudram, has filed this Criminal Original Petition seeking to quash the proceedings arising out of Crime No.165 of 2022 on the file of the first respondent police, for the offence under Section 379 IPC.

Case of the Prosecution:

2. The *de facto* complainant is the Village Administrative Officer of Adayakarungulam Village, Ambasamudram Taluk. According to the prosecution, there had been recurring disputes between two communities in respect of Sri Thangaman Temple situated in Survey No.987 at Vikramasingapuram. It is alleged that the temple belongs to one community, whereas the land belongs to another community.

3. It is further alleged that several law and order issues had arisen between the rival groups and a committee meeting was



Crl.OP(MD)No.20774 of 2025

WEB COPY

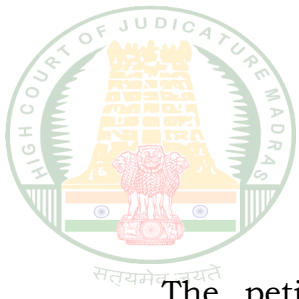
convened at the Ambasamudram Taluk Office to resolve the dispute, but the same did not yield any fruitful result.

4. While so, on 29.05.2022 at about 9.00 p.m., the *de facto* complainant allegedly received information that the inscription kept outside the temple had been stolen. On that basis, Crime No.165 of 2022 was registered and, after investigation, the final report came to be filed for the offence under Section 379 IPC. The same was taken cognizance as C.C.No.318 of 2023 by the learned Judicial Magistrate, Ambasamudram.

Grounds for quash:

5. The petitioner contends that he is working as an Assistant Sub-Inspector in the Railway Protection Force, Palakkad Division, and that he has been falsely implicated as A-2 only on the basis of hearsay statements and the alleged disclosure statement of A-1.

6. It is specifically contended that there is no eyewitness, no recovery from the petitioner, no independent material, and no document enclosed with the charge sheet to show his involvement.



Crl.OP(MD)No.20774 of 2025

WEB COPY

The petitioner further submits that the Section 161(3) Cr.P.C. statement of the alleged mahazar witness does not disclose any fact relating to confession or seizure connecting the petitioner with the offence.

7. It is also submitted that the alleged property is stated to be worth only Rs.300/-, and the implication of the petitioner, a serving law-enforcing officer, is actuated by previous community enmity and is intended to disgrace him and affect his promotional prospects.

Submissions on either side:

8. The learned counsel for the petitioner submitted that the entire prosecution against the petitioner rests upon the alleged confession or disclosure statement of the co-accused. Such a statement, by itself, is not substantive evidence and cannot be the sole foundation for prosecuting another accused.

9. The learned counsel further submitted that Section 27 of the Evidence Act can be pressed into service only when the information supplied by the accused leads to the discovery of a fact. Even then,



Crl.OP(MD)No.20774 of 2025

WEB COPY

only that portion of the statement which distinctly relates to such discovery is admissible. In the present case, there is no discovery of any fact from or at the instance of this petitioner.

10. It was further contended that the charge sheet does not contain any specific overt act against the petitioner. No material is available to show that the petitioner dishonestly removed the alleged inscription from the possession of any person. Therefore, the basic ingredients of Section 379 IPC are wholly absent.

11. The learned counsel also submitted that the dispute between two communities has been given a criminal colour and that the petitioner has been roped in only because of previous hostility. According to the petitioner, continuation of the criminal proceedings would amount to abuse of process of Court.

12. Per contra, the learned Government Advocate (Criminal Side) appearing for the first respondent would submit that the final report has already been filed and the learned Magistrate has taken cognizance. According to the prosecution, the materials collected



Crl.OP(MD)No.20774 of 2025

WEB COPY

during investigation disclose the involvement of the petitioner and the truth or otherwise of the allegations must be tested only during trial. It was further submitted that at the stage of quashment, this Court ought not to conduct a meticulous appreciation of evidence and the petitioner can raise all his defences before the trial Court.

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

Point for Consideration:

14. The point that arises for consideration is whether the final report in C.C.No.318 of 2023, insofar as the petitioner/A-2 is concerned, discloses the essential ingredients of the offence under Section 379 IPC, and whether continuation of the prosecution would amount to abuse of process of law?

Legal Position:

15. The power of this Court under Section 528 BNSS, corresponding to Section 482 Cr.P.C., is to be exercised sparingly, carefully and with circumspection. However, where the allegations,



WEB COPY

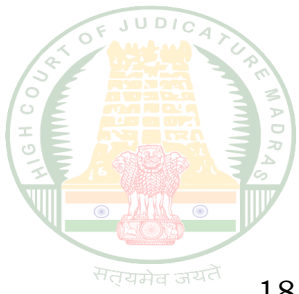
even if taken at their face value, do not constitute any offence, or where the prosecution is manifestly attended with mala fides, or where the materials do not disclose the basic ingredients of the offence, this Court is duty-bound to interfere.

16. In ***State of Haryana v. Bhajan Lal***¹, the Hon'ble Supreme Court has illustratively laid down the categories where criminal proceedings may be quashed. One such category is where the allegations made in the FIR or complaint, even if accepted in entirety, do not *prima facie* constitute any offence against the accused.

17. For an offence under Section 379 IPC, the prosecution must *prima facie* establish theft as defined under Section 378 IPC. The essential ingredients are:

- i. there must be movable property;
- ii. such property must be in the possession of a person;
- iii. the accused must move such property;
- iv. such moving must be without the consent of the person in possession; and
- v. such moving must be with dishonest intention.

¹ 1992 Supp (1) SCC 335



WEB COPY

18. Therefore, mere suspicion, community rivalry, or an uncorroborated disclosure statement of a co-accused will not satisfy the statutory requirements of Section 379 IPC.

Analysis:

19. In the present case, the petitioner is arrayed as A-2. The allegation is that an inscription kept outside the temple was stolen. However, the materials placed before this Court do not disclose any direct allegation that this petitioner removed the said inscription. There is no eyewitness statement attributing any specific overt act to the petitioner. There is no recovery from the petitioner. There is no material to show that the petitioner was present at the place of occurrence. There is also no material to show that he shared any common intention or participated in the alleged removal of the inscription.

20. The prosecution appears to rest substantially, if not entirely, upon the alleged disclosure statement of A-1. Such a statement cannot, by itself, be treated as substantive evidence against the petitioner. A confession of a co-accused is a weak type of



Crl.OP(MD)No.20774 of 2025

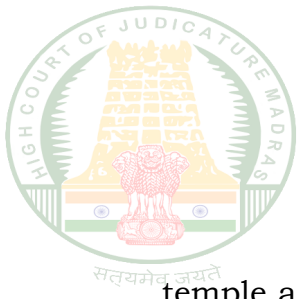
WEB COPY

material and cannot be the sole basis to compel another accused to undergo the ordeal of criminal trial.

21. Section 27 of the Evidence Act is an exception to the general rule excluding confessional statements made to police officers. But such exception is limited and guarded. The information must lead to discovery of a fact. Only that portion of the information which distinctly relates to the discovery is admissible.

22. In the case on hand, the charge sheet does not disclose that any fact was discovered pursuant to any information supplied by this petitioner. The petitioner is not shown to have produced the alleged stolen inscription. No material object is shown to have been recovered from him or at his instance. Therefore, the prosecution cannot invoke Section 27 of the Evidence Act against the petitioner merely by relying upon a statement allegedly made by the co-accused.

23. It is also relevant that the background of the case indicates pre-existing dispute between two communities in relation to the



WEB COPY

temple and the land. Enmity is undoubtedly a double-edged weapon. It may provide motive for the commission of an offence; equally, it may also provide motive for false implication.

24. Where the surrounding circumstances disclose long-standing community tension, the investigating agency is expected to proceed with greater caution and collect independent and legally admissible material before implicating a person, particularly a serving law-enforcing officer.

25. The petitioner is stated to be an Assistant Sub-Inspector in the Railway Protection Force. This fact, by itself, cannot confer immunity from prosecution. Equally, it cannot be ignored that a criminal prosecution founded on slender and legally inadmissible material may have serious civil consequences on his service, reputation and career.

26. The allegation that a person drawing a regular salary had stolen an inscription worth Rs.300/- may not by itself be impossible. But criminal law does not proceed on possibilities. It proceeds on



WEB COPY

legally admissible *prima facie* materials. In the present case, such material is conspicuously absent.

27. The learned Magistrate, while taking cognizance, is not expected to act as a mere post office. Though detailed reasons are not required at the stage of cognizance, the learned Magistrate must apply his judicial mind to see whether the final report discloses the commission of the offence alleged against the accused.

28. Insofar as the petitioner/A-2 is concerned, the final report does not disclose the foundational facts necessary to attract Section 379 IPC. The materials do not show dishonest intention, removal of property by the petitioner, possession of stolen property with him, recovery from him, or any legally admissible act connecting him to the alleged theft. Therefore, even if the prosecution materials are accepted at their highest value, they do not make out a *prima facie* case against the petitioner for the offence under Section 379 IPC.

29. Compelling the petitioner to face trial in such circumstances would amount to allowing the criminal process to



Crl.OP(MD)No.20774 of 2025

WEB COPY

degenerate into a punitive proceeding, even before guilt is established. Such a course would be contrary to the settled principles governing the exercise of inherent jurisdiction.

30. This Court is conscious that quashment is not to be ordered merely because the accused has a plausible defence. But this is not a case where the defence of the accused is being weighed against the prosecution evidence. This is a case where the prosecution materials themselves do not disclose the essential ingredients of the offence against the petitioner.

31. Hence, this Court is of the considered view that continuation of the proceedings in C.C.No.318 of 2023, as against the petitioner/A-2, would be an abuse of process of law and would cause miscarriage of justice.

32. In the result, this Criminal Original Petition is **allowed**. The proceedings in C.C.No.318 of 2023 on the file of the learned Judicial Magistrate, Ambasamudram, arising out of Crime No.165 of 2022 on the file of the first respondent police, are quashed insofar as



Crl.OP(MD)No.20774 of 2025

WEB COPY

the petitioner/A-2 is concerned.

Consequently,

connected

miscellaneous petition is closed.

01.06.2026

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

To

- 1.The Judicial Magistrate,
Ambasamudram.
- 2.The Inspector of Police,
VK Puram Police Station,
Tirunelveli District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.OP(MD)No.20774 of 2025

L.VICTORIA GOWRI, J.

Sml

CRL OP(MD)No.20774 of 2025

01.06.2026