

K.Radhakrishnan vs State Of Tamil Nadu Rep.By on 29 October, 2024

Crl.O.P.(MD)No.1

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.10.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.18491 of 2024

and

Crl.MP.(MD)Nos.11487 & 11488 of 2024

K.Radhakrishnan

: Petitioner/Sole

Vs.

1.State of Tamil Nadu rep.by
The Inspector of Police,
District Crime Branch,
Nagercoil, Kanniyakumari District.
Crime No.24 of 2013.

2.The Assistant Director of Town Panchayat,
Nagercoil Zone, Kanniyakumari District.

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PRAYER : Criminal Original Petition filed under Section 528 of BNSS to call for the records pertaining to the case registered in C.C.No. 2018 on the file of the Judicial Magistrate Court No.I, Nagercoil a quash the same as illegal.

For Petitioner : Mr.K.Ganesamoorthi,

For Respondents : Mr.K.Sanjai Gandhi,
Government Advocate (Crl. Sid

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Crl.O.P.(

ORDER

This Criminal Original Petition has been filed seeking orders to quash the charge sheet in C.C.No.72 of 2018 on the file of the Judicial Magistrate Court No.I, Nagercoil.

2. It is evident from the records that on the basis of the complaint given by the second respondent, FIR came to be registered in Crime No.24 of 2013 for the offences under Sections 465, 466, 468, 471, 473 and 477A of IPC and after completing the investigation, the first respondent has laid the final report and the same was taken on file in C.C.No.72 of 2018 on the file of the Judicial Magistrate Court No.I, Nagercoil.

3. The case of the prosecution is that on 25.06.2012 a meeting of Executive Officers of Town Panchayat was conducted by the District Collector Kanyakumari and instructed the Directors of Town Panchayat to issue the Service Register to all the Executive Officers and let them verify the entries made in their respective Service Register and certify the entry and therefore the then Assistant Director of Town Panchayat issued <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.18491 of 2024 a circular to all Executive Officers to appear and certify their Service Register as per the District Collector's order and all the Executive Officers also came and verify and certified their Service Registers; that the accused, who was working as Executive Officer of Azhagappapuram Town Panchayat, made an entry in page No.71 of his Service Register in the part of Immovable properties portion with malafide intention as (Jewels of 1600 g worth about 9.60 lakhs given as marriage gift by spouse family) and to that effect made a forged signature and seal of one Basha, who was worked as an Executive Officer in Villukuri Panchayat in the year 2001 and certified the Service Register as per the above direction of District Collector and when the de-facto complainant came to know about the wrong entry, he made a written complaint to Superintendent of Police through his proceedings in ROC.No.2968/2012/Q2, dated 06.02.2013 and upon the direction of Superintendent of Police in C.No.C1/8726/13, the present FIR was registered by the first respondent.

4. The main contention of the petitioner is that though the same was noticed earlier, the complaint was lodged after the lapse of six <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.18491 of 2024 months and that the prosecution has not offered any acceptable reason or explanation for the said delay. Even assuming that there existed some delay, that by itself is not a reason or ground to quash the case as against the present petitioner.

5. As rightly pointed out by the learned Government Advocate (Criminal Side), there are specific allegations against the petitioner in the complaint as well as in the statement recorded under Section 161 Cr.P.C. Except the above, the petitioner has not canvassed any other reasons or ground to quash the charge sheet.

6. The Hon'ble Supreme Court in the case of State of Haryana and others Vs. Bhajan Lal and others reported in 1992 SCC (Cri) 426 has enumerated 7 categories of cases, where the power can be exercised under Section 482 of Code of Criminal Procedure and the same are extracted hereunder:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.18491 of 2024 extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and

reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

<https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.18491 of 2024 (3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused; (6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

<https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.18491 of 2024 (7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

7. In *Dr.Dhruvaram Murlidhar Sonar Vs. The State of Maharashtra and others* reported in 2019 (18) SCC 191, the Hon'ble Apex Court has specifically held that exercise of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule. It is settled law that the inherent jurisdiction under Section 482 Cr.P.C. is wide but at the same time, the same is to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself.

8. The Hon'ble Supreme Court in Kaptan Singh Vs. The State of Uttar Pradesh and others reported in 2021 (3) Crimes 247 has stated that, that Court in catena of decisions has observed that the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.18491 of 2024 jurisdiction and/or conducting the trial and that question is required to be examined keeping in view, the contents of FIR and prima facie materials, if any, requiring no proof and at such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and materials relied on.

9. A cursory perusal of the final report and the statements filed along with the final report would make it clear that there existed a prima facie case to proceed against the petitioner and it is a matter for trial.

10. Considering the above and also the submission made by the learned Government Advocate (Criminal Side) and also taking note of the fact that this is not a fit case to quash the charge sheet against the petitioners. Hence, this Court concludes that the Criminal Original Petition is devoid of merits and the same is liable to be dismissed.

11. At this juncture, the learned counsel for the petitioner would submit that the personal appearance of the petitioner before the trial Court may be dispensed with.

<https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.18491 of 2024

12. Considering the facts and circumstances of the case and also the submission made by the learned counsel appearing for the petitioner, the personal appearance of the petitioner before the trial Court is ordered to be dispensed with, on conditions that he shall appear at the time of initial questioning, proceedings under Section 313 of Cr.P.C., and at the time of passing judgment and on the hearings, specifically directed by the trial court. The petitioner is further directed to give an undertaking in the form of affidavit that he will be duly represented by a counsel on all hearing dates and that the Counsel representing him will cross examine the prosecution witnesses on the same day they are examined in chief. The petitioner shall not dispute the identity of the witnesses. The petitioner shall appear before the Court in the event their presence is insisted by the trial judge for the purpose of identification. If the petitioner adopts any dilatorial tactics, it is open to the Trial Court to insist for his appearance and deal with the petitioner in accordance with the judgment of Supreme Court of India, in State of Uttar Pradesh Vs. Shambunath Singh, reported in 2001 (4) SCC 667. <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.18491 of 2024

13. In the result, the Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes / No

29.10.

Index : Yes / No
Internet : Yes / No
das

To

1.The Judicial Magistrate Court No.I,
Nagercoil .

2.The Inspector of Police,
District Crime Branch,
Nagercoil, Kanniyakumari District.

3.The Assistant Director of Town Panchayat, Nagercoil Zone, Kanniyakumari District.

4.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

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