

Muhamad Aswar Khan vs The State Rep.By on 19 September, 2024

Crl.O.P.(MD)No.155

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.15565 of 2024

and

Crl.M.P(MD)Nos.9740 and 9743 of 2024

Muhamad Aswar Khan

: Petitioner/A

Vs.

1.The State rep.by

The Deputy Superintendent of Police,
O/o.the Deputy Superintendent of Police,
Rameshwaram Circle,
Ramanathapuram District.

2.The Inspector of Police,

Rameswaram Town Police Station,
Rameshwaram Taluk,
Ramanathapuram District.
Crime No.186 of 2022.

3.Ajith

... Responden

PRAYER : Criminal Original Petition filed under Section 528 of BNSS to call for the records relating to the impugned charge sheet in Spl.S.C.No.6 of 2023 on the file of the Special Court for Exclusive of Cases under SC/ST (POA) Act, Ramanathapuram District in FIR in

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<https://www.mhc.tn.gov.in/judis>

Crl.O.P.(

Crime No.186 of 20222, dated 19.06.2022 on the file of the second respondent and quash the same in so far as the petitioner is concer

For Petitioner

: Mr.K.Yasar Arafath

For Respondents : Mr.K.Sanjai Gandhi,
Government Advocate (Crl
for R1 & R2.

ORDER

The Criminal Original Petition has been filed, invoking Section 528 of BNSS., seeking orders, to call for the records relating to the impugned charge sheet in Spl.S.C.No.6 of 2023 on the file of the Special Court for Exclusive Trial of Cases under SC/ST (POA) Act, Ramanathapuram District in FIR in Crime No.186 of 2022, dated 19.06.2022 on the file of the second respondent and quash the same in so far as the petitioner is concerned.

2. It is evident from the records that on the basis of the complaint given by the third respondent, FIR came to be registered in Crime No.186 of 2022 for the offences under Sections 147, 148, 294(b), 323, 506(ii) IPC, Section 4 of TNPHW Act and Sections 3(1)(r), 3(1)(s) of SC/ST(POA) Act, 1989, and after completing the investigation, the <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.15565 of 2024 second respondent has laid the final report and the same was taken on file in Spl.S.C.No.6 of 2023 on the file of the Special Court for Exclusive Trial of Cases under SC/ST (POA) Act, Ramanathapuram District.

3. The case of the prosecution is that due to previous enmity, all the accused have entered into the place of the complainant and attacked him with wooden log and caused injuries and also caused criminal intimidation and that they have also abused the defacto complainant in filthy language by using caste name. Hence, the complaint.

4. The learned counsel for the petitioner would submit that the petitioner's name does not find place in the FIR and that since the petitioner being the friend of the first accused, he was falsely implicated in this case. He would further submit that the provisions of SC/ST (POA) Act would not attract as there was no public view and he has also relied on the judgment of the Hon'ble Supreme Court in Ramesh Chandra Vaishya Vs. The State of Uttar Pradesh and another reported in 2023 (4) KLT (SN) 38.

<https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.15565 of 2024

5. The learned Government Advocate (Criminal Side) would submit that the petitioner has been added on the basis of the confession statement taken from the co-accused, that there are sufficient materials to proceed against the petitioner and that the second respondent has rightly laid the charge sheet against the accused.

6. Just because, the petitioner's name does not find place in the FIR and he was added on the basis of the confession taken from the co-accused, the same cannot be taken as a ground to quash the charge sheet. The next contention is that the confession statement taken from the co-accused is not proper and legal. It is settled law that the validity and the legality of the confession statement cannot be decided in the present proceedings and the same is a matter for trial. Except the above, the petitioner has not canvassed any other reason or ground to quash the impugned charge sheet.

7. 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 <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.15565 of 2024 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 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, <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.15565 of 2024 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; (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 <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.15565 of 2024 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;

(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.”

8. 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.

9. The Hon'ble Supreme Court in Kaptan Singh Vs. The State of Uttar Pradesh and others reported in 2021 (3) Crimes 247 has stated <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.15565 of 2024 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 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.

10. 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.

11. Considering the above, this Court concludes that the Criminal Original Petition is devoid of merits and the same is liable to be dismissed.

12. At this juncture, the learned counsel for the petitioner would submit that since the petitioner is working at Chennai, his personal appearance before the trial Court may be dispensed with. <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.15565 of 2024

13. Considering the facts and circumstances of the case and also the fact that the petitioner is working at Chennai, 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 his 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> CrI.O.P.(MD)No.15565 of 2024

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

19.09.

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
das

To

- 1.The Special Judge for Exclusive Trial of Cases under SC/ST (POA) Act, Ramanathapuram District.
- 2.The Deputy Superintendent of Police, O/o.the Deputy Superintendent of Police, Rameshwaram Circle, Ramanathapuram District.
- 3.The Inspector of Police, Rameswaram Town Police Station, Rameshwaram Taluk, Ramanathapuram District.
- 4.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

<https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.15565 of 2024 K.MURALI SHANKAR,J.

das Order made in Crl.O.P.(MD)No.15565 of 2024 and Crl.M.P(MD)Nos.9740 and 9743 of 2024
Dated: 19.09.2024 <https://www.mhc.tn.gov.in/judis>