

Sureshkumar vs The State Rep.By The Inspector Of Police on 21 October, 2024

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

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.10.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

CrI.O.P.(MD)No.17748 of 2024

and

CrI.M.P(MD)Nos.10990 and 10991 of 2024

Sureshkumar

: Petitioner/A2

Vs.

1.The State rep.by the Inspector of Police,
Sivakasi East Police Station,
Virudhunagar District.
Crime No.381 of 2023.

2.Mathiyazhagan

: Respondent

PRAYER : Criminal Original Petition filed under Section 528 of BNSS to call for the records connected with the case in C.C.No.115 of 20 the file of the learned Judicial Magistrate No.II, Sivakasi and quash same as illegal as against the petitioner.

For Petitioner : Mr.S.Ramesh Kumar,

For Respondents : Mr.K.Sanjai Gandhi,
Government Advocate (CrI. Si
for R1.

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CrI.O.P.(

ORDER

The Criminal Original Petition has been filed, invoking Section 482 of Cr.P.C., seeking orders, to call for the records pertaining to the impugned proceedings in C.C.No.115 of 2024 on the file of the learned Judicial Magistrate No.II, Sivakasi and quash the same as illegal as against the petitioner.

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.381 of 2019 for the offences under Sections 341, 294(b), 353, 506(i) IPC and Section 4(1)(j) of Tamil Nadu Prohibition Act and after completing the investigation, the first respondent has laid the final report and the same was taken on file in C.C.No.115 of 2024 on the file of the Judicial Magistrate Court No.II, Sivakasi.

3. The case of the prosecution is that on 13.09.2023 at about 06.30 pm., when the defacto complainant along with police officials went to New Street for serving eviction notice to the encroachers, the first accused prevented the defacto complainant and others and abused them <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.17748 of 2024 in filthy language and that when the same was questioned, the second accused was also abused them in filthy language and caused criminal intimidation and restrained them from completing their work.

4. The main contention of the petitioner is that the petitioner/second accused was not at all available at the place of occurrence; that though the petitioner has claimed CCTV footage, the same was refused to be given and that there are no specific overt act against the petitioner so as to attract the offence alleged against them.

5. The learned Government Advocate (Criminal Side) would submit that the defacto complainant, Town Planning Officer along with his officials, as per direction of the District Collector went to serve the eviction notice to the encroachers and at that time, the petitioner has interfered and abused them in filthy language and that there are specific allegations against the petitioner in the complaint and the statements recorded under Section 161(3) of Cr.P.C. It is settled law that the plea of alibi cannot be gone into in the present proceedings and is matter for trial. Except the above, the petitioner has not canvassed any other reason or ground to impugn the charge sheet.

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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 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 <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.17748 of 2024 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; (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 <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.17748 of 2024 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;

(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 <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.17748 of 2024 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 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. <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.17748 of 2024

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

21.10.

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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K.MURALI SHANKAR, J.

To

1.The Judicial Magistrate No.II, Sivakasi.

2.The Inspector of Police, Sivakasi East Police Station, Virudhunagar District.

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

Order made in Crl.O.P.(MD)No.17748 of 2024 and Crl.M.P(MD)Nos.10990 and 10991 of 2024
Dated: 21.10.2024 <https://www.mhc.tn.gov.in/judis>