

# Dhilipan Raj vs State Represented By on 30 October, 2024

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

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.10.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.18670 of 2024

and

Crl.M.P.(MD)No.11580 of 2024

Dhilipan Raj

... Petition

Vs.

1.State represented by  
The Inspector of Police,  
Melur Police Station,  
Madurai District.  
(Crime No.297 of 2024)

2.Manthiyan

... Respond

PRAYER : Criminal Original Petition filed under Section 528 of BNSS to call for records relating to the case in Crime No.297 of 2024 on file of the first respondent, Melur Police Station, Madurai District quash the same.

For Petitioner : Mr.K.Guhan

For R1 : Mr.P.Kottai Chamy  
Government Advocate (Crl. Sid

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

Crl.O.P.(

ORDER

The Criminal Original Petition has been filed, invoking Section 528 B.N.S.S., seeking orders to quash the FIR in Crime No.297 of 2024 pending on the file of the first respondent.

2. The petitioner is the fourth accused in Crime No.297 of 2024 on the file of Melur Police Station, Madurai.

3. It is evident from the records that on the basis of the complaint given by the second respondent, who is the Government Bus Driver, FIR came to be registered in Crime No.297 of 2024 on 25.05.2024 for the alleged offences under Sections 341, 336, 435 and 506(2) IPC and Section 4 of Prevention of Damage to Public Property Act, 1984 and subsequently they have filed an alteration report altering the case into 120B, 307, 336, 341, 435 and 506(2) IPC and Section 4 of Prevention of Damage to Public Property Act, 1984.

4. The case of the prosecution is that the petitioner along with other accused in an attempt to protest for the murder of one Deepak <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.18670 of 2024 Pandian had waylaid the Government bus in a drunken mode and damaged the bus and set fire to the bus.

5. The main contention of the petitioner is that the petitioner is not belonging to the community of the said Deepak Pandian and that the petitioner was not at all available at the place of occurrence.

6. As rightly contended by the learned Government Advocate (Criminal Side), the plea of alibi cannot be gone into, in the present quash proceedings and if the petitioner is having any material or evidence to show that he was available at another place at the time of the occurrence, the petitioner is at liberty to produce the said material or evidence before the investigating officer. Just because the petitioner is not belonging to the community, that by itself is not a ground to quash the FIR and it is matter for investigation. Except the above, the petitioner has not canvassed any other reason or ground to quash the FIR.

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 <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.18670 of 2024 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 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 <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.18670 of 2024 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 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 <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.18670 of 2024 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.”

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 <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.18670 of 2024 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.

10. It is pertinent to note that if the petition under Section 528 B.N.S.S., was filed at the stage of FIR, the allegations in the FIR/ complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered.

11. In the case on hand, as rightly contended by the learned Government Advocate (Criminal Side), a cursory perusal of the FIR makes out a prima facie case against the accused and contains specific allegations against the petitioner and it is a matter for investigation and <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.18670 of 2024 as such, the question of quashing the FIR at this stage does not arise at all. Hence, this Court concludes that this is not a fit case to invoke Section 528 B.N.S.S., for quashing the FIR at this stage and the same is liable to be dismissed.

12. In the result, this Criminal Original Petition stands dismissed. The petitioner is at liberty to produce the materials or evidence for the plea of alibi before the investigating officer and on such production, the investigating officer is directed to consider the same while conducting investigation. Consequently, connected Miscellaneous Petition is closed.

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NCC : Yes / No  
Index : Yes / No  
Internet : Yes / No  
csm

To

1.The Inspector of Police,  
Melur Police Station,  
Madurai District.

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

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

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K.MURALI SHANKAR, J.

CSM

Order made in  
CrI.O.P.(MD)No.18670 of 2024  
and  
CrI.M.P.(MD)No.11580 of 2024

Dated: 30.10.2024

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