

# Ramar vs State Rep.By The Inspector Of Police on 28 August, 2024

Crl.O.P.(MD)No.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.08.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.14145 of 2024

and

Crl.M.P.(MD)No.8751 of 2024

Ramar

... Petition

Vs.

1.State rep.by the Inspector of Police,  
Sellur Police Station,  
Madurai City.  
Crime No.907 of 2021.

2.Ponnala

... Respo

PRAAYER : Criminal Original Petition filed under Section 528 of BNSS call for the records pertaining to the case in C.C.No.1924 of 2023 file of the learned Judicial Magistrate No.II, Madurai and quash th as against the petitioner.

For Petitioner : Mr.S.Balaji

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

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

Crl.O.

ORDER

The Criminal Original Petition has been filed, invoking Section 528 B.N.S.S., seeking orders, to call for the records pertaining to the case in C.C.No.1924 of 2023 on the file of the learned Judicial

Magistrate No.II, Madurai and quash the same as against the petitioner.

2. It is seen from the records that on the basis of the complaint lodged by the second respondent, FIR came to be registered in Crime No.907 of 2021 for the offence under Sections 406 and 420 of IPC against the three persons including the petitioner and after completing the investigation, charge sheet came to be filed for the offence under Sections 406 and 420 of IPC against three persons including the petitioner and the case was taken on file in C.C.No.1924 of 2023 and the same is pending on the file of the learned Judicial Magistrate No.II, Madurai.

3. The main contention of the petitioner is that the petitioner has not received any amount from the defacto complainant; that the defacto complainant has not raised any specific allegations against the petitioner in the complaint; that the second respondent has admitted that she has paid <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.14145 of 2024 Rs.50,000/- to the first accused on 09.11.2021 near Fathima College, Madurai, but the complaint was lodged on 08.11.2021 against the petitioner and other accused and that the averment in the charge sheet does not attract the offence under Sections 406 and 420 IPC.

4. But the learned Government Advocate (Criminal Side) appearing for the State would submit that it is a case of job rocketing and in the FIR as well as the final report, it has been specifically stated that all the accused have received the amount.

5. As rightly contended by the learned Government Advocate (Criminal Side), the above aspects canvassed by the petitioner cannot be gone into at this stage and are matter for trial.

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:-

<https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.14145 of 2024 “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, 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 <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.14145 of 2024 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 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 <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.14145 of 2024 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 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, <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.14145 of 2024 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 charge sheet along with statements and other records, makes out a prima facie case to proceed against the accused including the petitioner and hence, this Court is of the clear view that it is not a fit case to quash the proceedings at this point of time.

10. 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.

11. Considering the facts and circumstances of the case, 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 <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.14145 of 2024 of affidavit that he will be duly represented by a counsel on all hearing dates and that the Counsel representing them 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 their 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.

12. In the result, the Criminal Original Petition is dismissed. Consequently, CrI.M.P(MD)No.8751 of 2024 is closed.

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NCC : Yes / No  
Index : Yes / No  
Internet : Yes / No  
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<https://www.mhc.tn.gov.in/judis>

CrI.O.P. (MD)No.1414

K.MURALI SHANKAR,J.

To

1.The Judicial Magistrate No.II,  
Madurai.

2.The Inspector of Police,  
Sellur Police Station,  
Madurai City.

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

Order made i  
Crl.O.P. (MD)No.14145 of 202  
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Dated: 28.08.20

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