

Kadher Jamal Vs State Rep. by

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Court : Chennai

Decided On : Apr-30-2025

Judge : Honourable Mr Justice G.K. Ilanthiraiyan

Appeal No. : CRL OP/13558/2025

Appellant : Kadher Jamal

Respondent : State Rep. by

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2025

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN
Crl.O.P.No.13558 of 2025 1.Kadher Jamal 2.S.Siva Kumar 3.P.Kaliraj ...
Petitioners Vs. 1.State rep. by Inspector of Police, Kannankurichi Police
Station, Salem. 2.Sri Omna George ..Respondents PRAYER: Criminal
Original Petition is filed under Section 528 of the Bharatiya Nagarik
Suraksha Sanhita, 2023, to call for the entire records in respect of charge
sheet filed in PRC No.5 of 2008 pending on the file of Judicial Magistrate
No.IV, Salem and quash the same in view of the above mentioned

grounds. For Petitioners : Mr.D.Rajagopal For R1 : Mr.R.Vinothraja,
Government Advocate (crl.side).

ORDER

This Criminal Original Petition has been filed to quash the proceedings in PRC No.5 of 2008 pending on the file of Judicial Magistrate No.IV, Salem.

2. The case of the prosecution is that the students of Central Law

College, Salem have agitated against the Management on 19.09.2006. Pursuant to the complaint, a charge sheet came to be framed against the petitioners herein along with other 45 students for the offences under Sections 147, 148, 342,427,506(ii) of IPC r/w Section 3(1) of PPDL Act r/w Section 149 of IPC.

3. According to the prosecution on 19.09.2006, at 1 P.M., 49

students have trespassed in to the veranda of the college building and shouted slogans against the Management. This was followed by an unlawful assembly and they threw stones and flower pots on the glass windows and notice board and damaged the glasses, which cost Rs.2,00,000/-.

4. The learned counsel for the petitioners submitted that there is no

specific allegation against the petitioners. There is only an omnibus allegation that the petitioners joined together and threatened the staff by throwing stones and damaging the college properties. This statement alone would not be sufficient to justify the charges levelled against the petitioners.

5. On a perusal of the complaint as well as the statement of the

witnesses under Section 161 (3) Cr.P.C, it is seen that none of the students have been implicated with overt acts for constituting the offences for which they are charged for.

6. It is generally averred that they had joined together and

threatened the staff by throwing stones and damaging the college properties. The omnibus statement may not constitute the offences against each and every individual student, since criminal trial is contemplated only on the basis of definite allegations of commission of the offence by every individual student.

7.The learned counsel for the petitioners relied upon the judgment

of the Hon'ble Supreme Court in Sathish Mehra v. State of N.C.T. Of Delhi and Anr, AIR 2013 SC 506 and relevant paragraph of the said

order read as follows:

"19. The view expressed by this court in Century Spinning's case (supra) and in Muniswamy's case (supra) to the effect that the framing of charge against an accused substantially affects the person's liberty would require a reiteration at this stage. The apparent and close proximity between the framing of a charge in a criminal proceeding and the paramount rights of article a person arrayed as an accused under article 21 of the Constitution can be ignored only with peril. Any examination of the validity of a Criminal charge framed against am accused cannot overlook the fundamental requirement laid down in the decisions rendered in Century Spinning and Munisawamy (supra). It is from the aforesaid perspective that we must proceed in the matter bearing in mind the cardinal principles of law that have developed over the years as

fundamental to any examination of the issue as to whether the charges framed are justified or not. So analysed, we find that in the present case neither in the FIR nor in the charge- sheet or in any of the materials collected in the course of investigation any positive role of either of the appellants,i.e., G.K. Bhat and R.K.Arora has been disclosed in the matter of renewal and encashment of the fixed deposits. All that appears against the aforesaid two accused is that one was the Chief Manager of

the Bank whereas the other accused was at the relevant time working as the Senior Manager. What role, if any, either of the accused had in renewing the two fixed deposits in the sole name of Anita Mehra or the role that any of them may have had in the payment of the amount due against FD No.21/91 to Anita Mehra or in cancelling the FD No. 9/92 renewed in the sole name of Anita Mehra and thereafter making a fresh FD in the joint Anita Mehra and Satish Mehra, is not disclosed either in the FIR filed or materials collected during the course of investigation or in the charge-sheet filed before the Court. There can be no manner of doubt that some particular individual connected with the Bank must have authorized the aforesaid acts. However, the identity of the said person does not appear from the materials on record. It is certainly not the prosecution case

that either of the accused-appellants had authorised or even facilitated any of the aforesaid action. In such a situation to hold either of the accused-appellants to be, even prima facie, liable for any of the alleged wrongly acts would be a matter of conjecture as no such conclusion can be reasonably and justifiably drawn from the materials available on record. A criminal trial cannot be allowed to assume the character of fishing and roving enquiry. It would not be permissible in law to permit a prosecution to linger, limp and continue on the basis of a mere hope and expectation that in the trial some material may be found to implicate the accused. Such a course of action is not contemplated in the system of criminal jurisprudence that has been evolved by the courts over the years. A criminal trial, on the contrary, is contemplated only on definite allegations, prima facie establishing the commission of an offence by the accused which fact has to be proved by leading unimpeachable and acceptable evidence in the course of the trial against the accused. We are, therefore, of the view that the criminal proceeding in the present form and on the allegations levelled is clearly not maintainable against either of the accused-appellant G.K. Bhat R.K.Arora."

8. The learned Government Advocate (crl.side) submitted that

specific charges have been levelled against the accused based on the statements obtained from witnesses and if at all the petitioners have any grievance, they can cross-examine the witnesses at the time of trial and quashing the charge sheet is not warranted.

9. Applying the above said decision of the Hon'ble Supreme Court

in the instant case, it can be seen that there is no specific overt act imputed against each and every student, with reference to the offences that he/she is charged for. In the absence of the same, I am unable to comprehend as to how the trial would proceed to arrive at a logical

conclusion by implicating each individual student.

10. Though the petitioners herein are 3 of the 49 students, the overt

acts as against all of them are one and the same. None of the accused have been individually implicated and no specific overt acts are attributed against the individual students and hence this Court is of the view that the petitioners herein who are arrayed as accused 6, 24 and 7 are entitled to succeed in this Criminal Original Petition.

11. In the result, the proceedings as against these petitioners in

P.R.C. No.5 of 2008 pending on the file of the Judicial Magistrate No.IV, Salem, is hereby quashed. This Criminal Original Petition stands allowed. 30.04.2025
Neutral citation : Yes/No

Speaking/non-speaking order

shk To 1.The Judicial Magistrate No.IV, Salem, 2.The Inspector of Police, Kannankurichi Police Station, Salem.

3. The Public Prosecutor, High Court, Madras.

G.K.ILANTHIRAIYAN, J.

shk Crl.O.P.No.13558 of 2025 30.04.2025

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