

Crl.OP(MD)No.23522 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.02.2026

PRONOUNCED ON : 01.06.2026

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Crl.O.P.(MD).No.23522 of 2025

and

Crl.M.P.(MD)No.20402 of 2025

1. K.Muthuvilaponnambalam
2. M.Subramanya ponnambalam

... Petitioners

Vs.

1. The State of Tamilnadu,
Rep by. the Inspector of Police,
Panayapatti Police Station,
Pudukottai District.
Crime No.61 of 2021.

.... Respondents / Complainants

2. S.P.Kasivishwanathan

..... Respondent /
Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 528 of BNSS, 2023, to call for the records relating to the impugned



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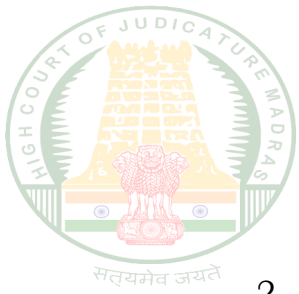
proceedings C.C.No.236 of 2025 on the file of the learned Judicial Magistrate, Thirumayam, Pudukkottai District and quash the same.

For Petitioners : Mr.K.Jeyamohan,
For Mr.M.Rajarajan
For R-1 : Mr.M.Sakthi Kumar,
Government Advocate (Crl. side)
For R-2 : Mr.Vignesh Shanmugam,
For M/s.Ajmal Associates

ORDER

Prologue:

The inherent jurisdiction of this Court under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, is a jurisdiction of great amplitude, but equally of great restraint. It is intended to secure the ends of justice and to prevent abuse of the process of any Court. However, such jurisdiction cannot be invoked to conduct a meticulous appreciation of disputed facts, to weigh the probative value of statements recorded during investigation, or to prematurely extinguish a prosecution where the materials disclose the basic ingredients of the alleged offences.



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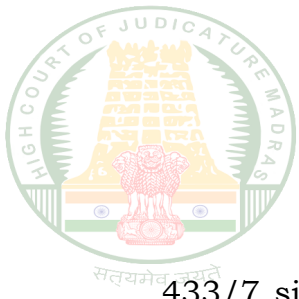
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2. The present Criminal Original Petition raises the familiar but delicate question as to whether an allegation of cutting and removal of standing eucalyptus trees from agricultural land, in the backdrop of an asserted family property dispute and pending civil proceedings, ought to be treated as a purely civil dispute or whether the materials collected during investigation disclose a *prima facie* criminal offence warranting trial.

3. The petitioners, who are arrayed as Accused Nos.1 and 3 in C.C.No.236 of 2025 on the file of the learned Judicial Magistrate, Thirumayam, Pudukkottai District, seek quashment of the final report filed for the alleged offences under Sections 303(2) and 329 of the Bharatiya Nyaya Sanhita, 2023.

Case of the Prosecution:

4. The case of the prosecution, in brief, is that the second respondent / *de facto* complainant is the owner and person in possession of the agricultural wet land comprised in Survey No.



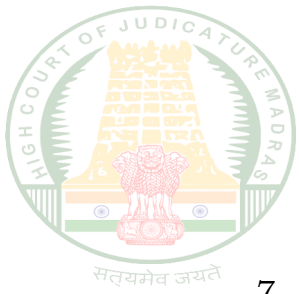
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433/7 situated at Virachilai Village, Thirumayam Post, Pudukkottai District, measuring an extent of 1.65.50 hectares.

5. According to the prosecution, a portion of the said land had been cultivated with six-year-old eucalyptus trees. The value of the trees allegedly cut and removed is stated to be approximately Rs. 1,00,000/-.It is alleged that on 19.12.2024, at about 11.00 a.m., the second respondent came to know that the eucalyptus trees standing in the said land had been illegally cut and removed on the previous day by certain persons.

6. On enquiry, it allegedly came to light that the petitioners herein, along with another accused, had trespassed into the land of the second respondent, cut the standing eucalyptus trees and removed the same. It is further alleged that one Sadiq, a timber merchant, had assisted the accused persons in cutting, transporting and disposing of the said eucalyptus trees.



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7. On the basis of the complaint, a case was registered by the first respondent police for the offences under Sections 303(2) and 329 of BNS, 2023. After investigation, the first respondent police laid a final report, which was taken cognizance of in C.C.No.236 of 2025 by the learned Judicial Magistrate, Thirumayam, Pudukkottai District.

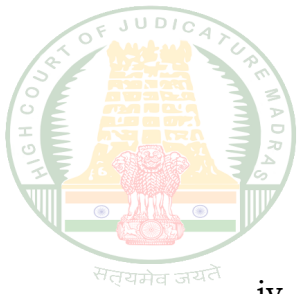
Grounds Raised for Quashment:

8. The petitioners seek quashment of the impugned proceedings primarily on the following grounds:

i. The entire dispute is civil in nature and arises out of rival claims over the property in Survey No.433/7.

ii. A civil suit in O.S.No.22 of 2025 / O.S.No.224 of 2025 is pending in respect of the very same property, wherein the second respondent is arrayed as one of the defendants.

iii. The petitioners have no independent right, title or interest in the subject property and were only assisting one Biraman, who claims right over the property.



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iv. The eucalyptus trees were allegedly cultivated and sold by Biraman and his brothers, who claim to be the lawful persons entitled to deal with the property.

v. No recovery of any eucalyptus wood or sale proceeds has been made from the petitioners.

vi. In the absence of recovery, the offence of theft under Section 303(2) BNS is not made out.

vii. The essential ingredient of dishonest intention is absent, since the act complained of was done under a bona fide claim of right.

viii. The complaint was earlier closed by the police, which itself indicates that the matter was civil in nature.

ix. The petition filed before the learned Judicial Magistrate under Section 156(3) Cr.P.C. / Section 175(3) BNSS was not supported by an affidavit, contrary to the dictum of the Honourable Supreme Court in ***Priyanka Srivastava v. State of Uttar Pradesh***¹.

¹ (2015) 6 SCC 287



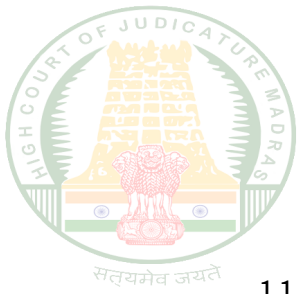
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x. The Investigating Officer failed to conduct a fair investigation by not properly verifying revenue records and by not examining the persons who, according to the petitioners, were the actual owners or cultivators of the trees.

Submissions on either side:

9. The learned counsel appearing for the petitioners submitted that the impugned final report is an abuse of process of law. According to him, even if the entire materials collected by the prosecution are taken at their face value, the offences under Sections 303(2) and 329 BNS are not made out.

10. It was contended that theft under Section 303 BNS requires dishonest moving of movable property out of the possession of another without that person's consent. In the present case, the very question as to who was in possession of the land and who was entitled to the trees is seriously disputed.



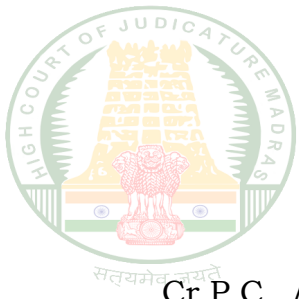
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11. The learned counsel submitted that one Raman has already instituted a civil suit in respect of the subject property and has also asserted that the eucalyptus trees were cultivated and sold by him and his family members. Therefore, according to the petitioners, the dispute relates to title, possession and enjoyment of property and cannot be converted into a criminal prosecution.

12. It was further submitted that there was no clandestine removal of property. On the contrary, even according to the statement of LW-5, the trees were cut openly and sold after the first petitioner claimed that the land belonged to him. Such conduct, according to the petitioners, would show a bona fide claim of right and not dishonest intention.

13. The learned counsel also submitted that no stolen property has been recovered from the petitioners. In the absence of recovery, the prosecution case is wholly unsupported by material evidence. It was further argued that the learned Judicial Magistrate ought not to have directed registration of FIR on a petition under Section 156(3)



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Cr.P.C. / Section 175(3) BNSS without insisting upon a supporting affidavit, as mandated in ***Priyanka Srivastava v. State of Uttar Pradesh***¹. On this ground also, the entire proceedings are liable to be quashed.

14. Per contra, the learned Government Advocate appearing for the first respondent submitted that the investigation has revealed sufficient materials to proceed against the petitioners. The learned Government Advocate drew the attention of this Court to the statement of LW-5, namely Sadiq, the timber merchant, who has specifically stated that he assisted the petitioners in cutting and removing the eucalyptus trees and that the trees were taken for sale. It was submitted that LW-5 is not a formal witness, but a material witness who directly speaks about the role of the petitioners in the alleged cutting, removal and disposal of the trees.

15. The learned counsel appearing for the second respondent submitted that the pendency of a civil suit will not automatically bar criminal prosecution when the allegations disclose criminal trespass

¹ (2015) 6 SCC 287



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and theft. It was further submitted that the existence of a family dispute cannot be used as a shield to justify the removal of standing trees from the land of another. The question as to whether the petitioners acted with dishonest intention or under a bona fide claim of right is a matter for trial.

16. It was also submitted that recovery is not the sole test for sustaining a prosecution for theft. When there are eyewitness materials and statements indicating cutting, removal and sale of the trees, the absence of recovery cannot be a ground to quash the final report at the threshold.

17. Heard the learned counsels on either side and carefully perused the materials available on record.

Point for Consideration:

18. The point that arises for consideration in this Criminal Original Petition is whether the final report in C.C.No.236 of 2025 on the file of the learned Judicial Magistrate, Thirumayam, Pudukkottai

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District, for the offences under Sections 303(2) and 329 BNS, 2023, is liable to be quashed in exercise of the inherent jurisdiction of this Court under Section 528 BNSS, 2023?

Analysis:

19. Section 528 BNSS preserves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under the Sanhita, to prevent abuse of the process of any Court, or otherwise to secure the ends of justice. The said provision corresponds to Section 482 of the Code of Criminal Procedure, 1973. The principles governing exercise of inherent jurisdiction are well settled. At the stage of quashment, the Court is not expected to conduct a roving enquiry into the truthfulness of the allegations. If the allegations in the FIR, complaint, final report and accompanying materials disclose the commission of a cognizable offence, ordinarily, the proceedings must be allowed to proceed.

20. In matters where a final report has already been filed and cognizance has been taken, the Court is required to examine not merely the FIR but also the materials collected during investigation,



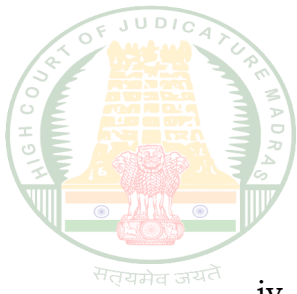
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including statements of witnesses and documents relied upon by the prosecution. However, such examination is only to ascertain whether a *prima facie* case exists and not to conduct a mini trial.

21. A distinction must always be borne in mind between an FIR quash and a final report quash. At the FIR stage, the Court examines whether the allegations disclose a cognizable offence warranting investigation. At the final report stage, the Court examines whether the materials collected during investigation disclose the essential ingredients of the offences alleged. In neither situation can the High Court substitute itself for the trial Court and render findings on disputed facts.

22. Section 303 BNS deals with theft. The essential ingredients of theft are:

- i. there must be movable property;
- ii. such property must be in the possession of a person;
- iii. the accused must move such property out of that person's possession;



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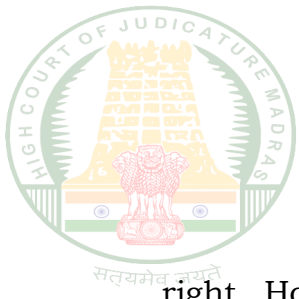
iv. such moving must be without that person's consent; and

v. the moving must be with dishonest intention.

23. Standing trees attached to the earth are ordinarily immovable property. However, once they are cut and severed from the earth, they become movable property. Therefore, an allegation that standing trees were cut and thereafter removed may, depending upon the facts, attract the offence of theft.

24. In the present case, the allegation is not merely that there is a title dispute over land. The allegation is that the accused trespassed into the land, cut the standing eucalyptus trees, removed them and sold them through the assistance of LW-5. Thus, the prosecution case contains a clear allegation of moving property after severance from the earth.

25. The contention of the petitioners that there was no dishonest intention is founded upon their plea of bona fide claim of



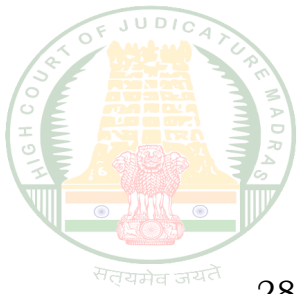
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right. However, whether such claim was genuine, whether Raman was in possession, whether the second respondent was in possession, whether the petitioners acted on behalf of Raman, and whether the trees belonged to the second respondent or to Raman's branch are all disputed questions of fact.

26. Such questions cannot be conclusively determined in a petition under Section 528 BNSS. The plea of bona fide claim of right may be a valid defence in an appropriate case, but its acceptance depends upon evidence. At this stage, the Court cannot accept the defence version in preference to the prosecution materials.

27. The statement of LW-5 assumes importance. According to the prosecution, LW-5 has spoken about his participation in the cutting, removal and disposal of the trees at the instance of the petitioners. If such statement is accepted at its face value, it cannot be said that the allegation of theft is wholly absent.



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28. The contention that no recovery has been made from the petitioners also cannot, by itself, demolish the prosecution case. Recovery may strengthen a prosecution, but absence of recovery is not invariably fatal. An offence of theft may be proved by direct, circumstantial or oral evidence. Whether the evidence of LW-5 is reliable or not is a matter for trial.

29. Section 329 BNS deals with house-trespass and allied forms of trespass, depending upon the statutory sub-classification invoked. Broadly, criminal trespass requires entry into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property.

30. In the present case, the specific allegation is that the accused entered into the land claimed to be in possession of the second respondent and cut and removed eucalyptus trees. If the prosecution allegation is accepted at its face value, entry into the property was not innocent or casual, but was allegedly for the purpose of cutting and removing the trees.

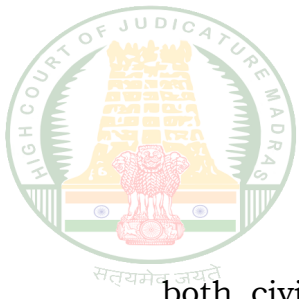


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31. The question as to who was in actual possession of the land on the date of occurrence is undoubtedly a matter of evidence. The petitioners rely upon the claim of Raman and the pendency of the civil suit. The second respondent asserts ownership and possession. These rival versions cannot be adjudicated in a quash petition. At this stage, the materials disclose an allegation of entry upon land claimed by the second respondent and removal of trees therefrom. Therefore, it cannot be said that the offence of criminal trespass is *ex facie* absent.

32. One of the principal submissions of the petitioners is that the entire dispute is civil in nature. It is true that criminal proceedings cannot be permitted to be used as a weapon of pressure in purely civil disputes. Equally, it is settled that merely because civil proceedings are pending between the parties, criminal prosecution is not barred if the allegations disclose the ingredients of a criminal offence.

33. The dividing line is not the existence of a civil dispute, but the existence or absence of criminality. A transaction may give rise to



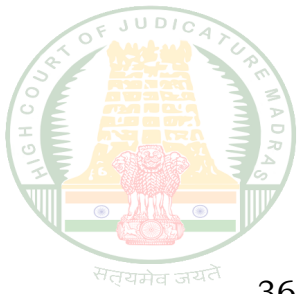
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both civil and criminal consequences. If the act alleged is only a breach of civil right without dishonest or criminal intention, criminal proceedings may be quashed. However, if the allegations disclose trespass, dishonest removal of property, or mischief, the prosecution cannot be interdicted merely because title or possession is also disputed before a civil Court.

34. In the present case, the prosecution does not rest merely upon a disputed title deed. It rests upon an allegation that standing trees were cut and removed and that LW-5 assisted in such removal and sale. Thus, the accusation travels beyond a mere declaratory civil dispute.

35. Whether the civil suit filed by Raman is genuine, whether it was instituted to protect existing rights, or whether it is relied upon as a defence to the criminal prosecution, are all matters which require evidence. This Court cannot, in exercise of inherent jurisdiction, record a finding that the pending civil suit completely effaces the criminal allegations.



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36. The petitioners have strongly relied upon the plea that the act, if any, was done under a bona fide claim of right. Such plea, if established, may have a bearing on the existence of dishonest intention. However, a bona fide claim of right cannot be accepted merely because the accused asserts it. The Court must consider whether such claim is supported by contemporaneous documents, possession, conduct, and surrounding circumstances. These are matters for trial.

37. In the present case, the petitioners deny any independent title over the property and simultaneously state that they were acting at the instance of Raman. On the other hand, LW-5 allegedly states that the first petitioner represented that the land belonged to him and thereafter arranged cutting and removal of trees. These are matters which require evidence and cross-examination. Therefore, the plea of bona fide claim of right cannot be accepted at this stage as a ground to quash the final report.

38. The petitioners contend that no piece of eucalyptus wood has been recovered from them and therefore the charge of theft must



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fail. This submission cannot be accepted at the stage of quashment. Recovery is only one mode of corroboration. In a given case, theft may be established by eyewitness testimony, circumstantial evidence, conduct of the accused, sale transaction, transportation details, or other materials. The prosecution relies upon the statement of LW-5 to connect the petitioners with the cutting, transport and sale of the trees.

39. Whether LW-5 is trustworthy, whether he is an accomplice, whether his statement requires corroboration, and whether his evidence can sustain conviction are all issues to be tested at trial. These questions cannot be decided in a petition under Section 528 BNSS.

40. The petitioners have contended that the Investigating Officer failed to verify the revenue records, failed to examine Raman properly, and failed to investigate the claim that Raman and his brothers sold the trees. A defective or incomplete investigation may, in an appropriate case, affect the weight of the prosecution evidence. However, every alleged defect in investigation does not justify



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quashment of the final report. Unless the defect goes to the root of the matter and demonstrates that no offence is made out even if the prosecution materials are accepted, the proceedings cannot be quashed.

41. In the present case, the alleged omissions in investigation are matters which can be brought out during trial by cross-examination of the Investigating Officer and other witnesses. The trial Court would be competent to consider the effect of such omissions in accordance with law.

42. The petitioners have also raised a procedural objection that the petition filed before the learned Judicial Magistrate seeking a direction for registration of FIR was not accompanied by an affidavit, contrary to the dictum in ***Priyanka Srivastava v. State of Uttar Pradesh***¹. There can be no quarrel with the proposition that applications invoking the power of the Magistrate for a direction to register FIR must be filed with responsibility and must ordinarily be

¹ (2015) 6 SCC 287



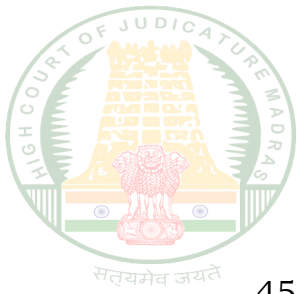
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supported by an affidavit, so as to prevent abuse of the criminal process.

43. However, in the present case, investigation has already been completed, a final report has been filed, cognizance has been taken and the case is now pending as C.C.No.236 of 2025. At this stage, the Court has to examine whether the final report and the materials accompanying it disclose a *prima facie* case.

44. A procedural irregularity at the pre-registration stage, by itself, cannot automatically result in quashing of the final report, particularly when the investigation has culminated in collection of materials which independently disclose the alleged offences. The petitioners are not remediless. They are entitled to raise all permissible objections before the trial Court at the appropriate stage. Therefore, the objection based on non-filing of affidavit does not persuade this Court to quash the entire prosecution at this stage.



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45. The celebrated principles governing quashment require this Court to examine whether the allegations, taken at face value, fail to disclose any offence; whether the proceedings are manifestly attended with mala fides; or whether the prosecution is so absurd and inherently improbable that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding.

46. In the present case, the materials cannot be described as inherently absurd or wholly improbable. There is a specific allegation of cutting and removal of trees. There is a material witness, LW-5, who allegedly speaks about the participation of the petitioners in the removal and sale of the trees. The second respondent also asserts ownership and possession.

47. The defence version may ultimately succeed at trial. The petitioners may establish that Raman was in possession, that the trees belonged to Raman's branch, that the petitioners had no dishonest intention, or that the prosecution witnesses are unreliable.



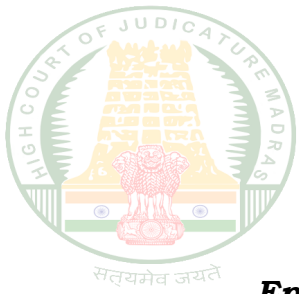
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But these are matters of evidence and not grounds for quashing at the threshold.

48. In a final report quash matter, this Court is entitled to examine the charge sheet materials to see whether the basic ingredients of the offences are disclosed. However, such scrutiny cannot be converted into an adjudication upon title, possession, credibility of witnesses or sufficiency of evidence for conviction.

49. The Court must only see whether there is ground for proceeding and not whether there is ground for conviction. The latter is the province of the trial Court. In the present case, the final report, read along with the statements of witnesses, particularly LW-5, discloses sufficient *prima facie* material to proceed against the petitioners for the alleged offences. Hence, this is not a fit case for exercise of inherent jurisdiction.

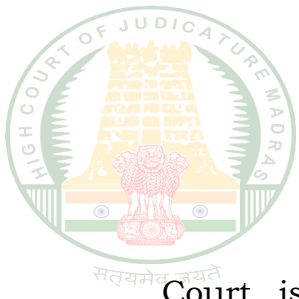


Epilogue:
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50. Criminal law cannot be set in motion to settle every civil score. At the same time, a civil dispute cannot become a sanctuary for acts which *prima facie* bear the colour of criminality. The inherent jurisdiction of this Court is neither a refuge for frivolous prosecutions nor a forum for premature defence adjudication.

51. The case on hand stands at the threshold of trial. The petitioners seek to persuade this Court to accept their version that the cutting and removal of trees was done under a bona fide claim of right arising out of a family property dispute. The prosecution, on the other hand, places reliance upon witness statements which *prima facie* attribute a direct role to the petitioners in the cutting, removal and sale of the eucalyptus trees.

52. Between these competing versions lies a field of disputed facts. Such field must be entered by the trial Court upon evidence and not by this Court in a petition under Section 528 BNSS. This



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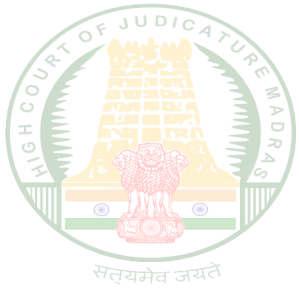
Court is therefore of the considered view that the impugned proceedings cannot be quashed at this stage.

53. In the result, this Criminal Original Petition stands dismissed. It is made clear that the observations made in this order are only for the purpose of deciding the present petition under Section 528 BNSS and shall not influence the learned trial Court while deciding the case on merits.

54. The petitioners are at liberty to raise all their legal and factual defences before the trial Court at the appropriate stage. Considering the nature of the case, the learned Judicial Magistrate, Thirumayam, Pudukkottai District, shall proceed with C.C.No.236 of 2025 in accordance with law and dispose of the same as expeditiously as possible. Consequently, connected Criminal Miscellaneous Petition is closed.

01.06.2026

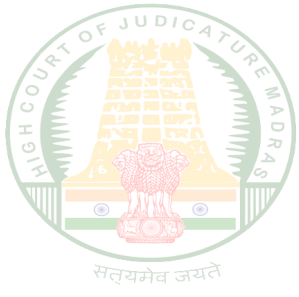
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1. The Inspector of Police,
Panayapatti Police Station,
Pudukottai District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

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