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CrI.O.P.(MD)No.15832 of 2020



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.12.2023

Delivered on : 14.03.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.O.P.(MD)No.15832 of 2020

and

CrI.M.P.(MD).No.7745 of 2020

G.Balakrishnan

... Petitioner

Vs.

1.The Inspector of Police,
Vilakkuthoon Police Station,
Madurai City,
Madurai.

2.Suthakaran

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records in Crime No.1442 of 2020 on the file of the respondent Police and quash the same as against this petitioner is concerned.

For petitioner : Mr.V.Kathirvelu
Senior Counsel
for M/s.K.Vamanan

For 1stRespondent : Mr.P.Kottaichamy
Government Advocate (CrI. Side)

For 2nd Respondent : Mr.M.Prakash



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ORDER

The petitioner/Accused No.2 has filed this petition to quash the FIR in Crime No.1442 of 2020 on the file of the respondent Police.

2. In the FIR, it is alleged that the petitioner and other accused fabricated the signature and documents and misappropriated the jewels worth about Rs.1,11,28,910/-. The Superior of the Bank has conducted inspection. At the time, it was found that the petitioner and other accused were said to have committed forgery, fabrication of the signature and swindling of the above said amount and the jewels. It is the specific allegation that the petitioner and the other accused forged the signature of the individuals and they redeemed the properties and re-pledged the jewels by forging the signature of the defacto complainant. Further, they cheated the defacto complainant by taking money on the basis of the loan, which has been taken by pledging their jewels. On the basis of the complaint given by the second respondent, the FIR was registered in Crime No.1442 of 2020 for the offence under Sections 406, 409, 420, 468 and 471 of IPC.



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3.The learned Senior Counsel appearing for the petitioner/Accused No.2 submitted that the petitioner was working as Manager in the Bank of Baroda, North Veli Street, Madurai, from 15.11.2018 to 25.06.2019. During that period, there was no transaction made. Hence, the registering the FIR against the petitioner is illegal. He further submitted that several documents have been produced before this Court to prove his innocence. He further submitted that the petitioner had never misappropriated the funds of the defacto complainant.

4. The learned senior counsel produced the judgment of this Court in the case of ***Rex Vs. Krishnan***, by order dated 28.08.1939, it is stated that the mere entrustment does not amount to offence. On the basis of the entrustment, the petitioner should have diverted the fund for his benefit and then only the offence is made out and hence, he seeks for quashment of the FIR. Further, he also requested this Court to consider the principle laid down by the honourable supreme Court relating to the quashment of the FIR.

5.The learned Counsel appearing for the defacto complainant submitted that several materials are available against the petitioner. He produced number of the receipts, wherein, there was a difference of the

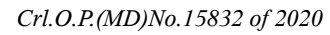


quantity of the jewels and the same was pledged in his name without his consent by forging his signature. He further submitted that the second respondent/defacto complainant had never received any amount from the petitioner. The petitioner is said to have committed the said offences. Hence, he seeks dismissal of this petition.

6. The learned Additional Public Prosecutor has also reiterated the submission of the learned counsel appearing for the second respondent/defacto complainant and submitted that the petitioner is the main accused in this case and he was the instrument for the all the illegal transaction. Hence, he seeks for dismissal of the quash petition.

7. This Court considered the rival submission and precedents relied upon by them and the impugned FIR and the documents adduced before this Court.

8. In this case, the second respondent and other customers pledged their jewels in Bank of Baroda. In the said bank, the petitioner was working as a manager. The petitioner and others forged the signature of the customers and redeemed the same and re-pledged the jewels and misappropriated the amount of Rs.1,11,28,910/-. It is the specific case of



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Infrastructure (P) Ltd. v. State of Maharashtra, reported in (2021) 19

SCC 401 at page 444

13. From the aforesaid decisions of this Court, right from the decision of the Privy Council in Khwaja Nazir Ahmad [King Emperor v. Khwaja Nazir Ahmad, 1944 SCC OnLine PC 29 : (1943-44) 71 IA 203 : AIR 1945 PC 18], the following principles of law emerge:

13.1. Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences.

13.3. However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on.

13.4. The power of quashing should be exercised sparingly with circumspection, in the “rarest of rare cases”. (The rarest of rare cases standard in its application for quashing under Section 482CrPC is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court.)

13.5. While examining an FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or



genuineness or otherwise of the allegations made in the FIR/complaint.

13.6. Criminal proceedings ought not to be scuttled at the initial stage.

13.7. Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule.

13.8. Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the above of the process by Section 482CrPC.

13.9. The functions of the judiciary and the police are complementary, not overlapping.

13.10. Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences.

13.11. Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice.

13.12. The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the



allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure.

13.13. *The power under Section 482CrPC is very wide, but conferment of wide power requires the Court to be cautious. It casts an onerous and more diligent duty on the Court.*

13.14. *However, at the same time, the Court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in R.P. Kapur [R.P. Kapur v. State of Punjab, 1960 SCC OnLine SC 21 : AIR 1960 SC 866] and Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , has the jurisdiction to quash the FIR/complaint.*

13.15. *When a prayer for quashing the FIR is made by the alleged accused, the Court when it*



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exercises the power under Section 482CrPC, only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.

9. In view of the serious allegation of the misappropriation of Rs.1,11,28,910/- by forging the signature of the customers and the investigation is in the preliminary stage, and the petitioner's case does not come under the above guidelines issued by the Hon'ble Supreme Court and the petitioner's specific case that he was not working at the relevant point of time is a disputed fact, which is to be investigated, this Court is unable to entertain this quash petition at this stage.

10. Accordingly, this Criminal Original Petitioner is dismissed. Consequently, the connected criminal miscellaneous petition is closed.

14.03.2024

NCC : Yes/ No
Index : Yes/No
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To

- 1.The Inspector of Police,
Vilakkuthoon Police Station,
Madurai City, Madurai.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN. J.

vsg

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