

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.01.2016

Date of Verdict: 18.02.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

CrI.O.P.Nos.13569 and 30297 of 2015

1. R.Kumaravelu
2. Smt.Homai Kumaravelu ... Petitioners in both the petitions

Vs

1.State of TamilNadu Rep by
Inspector of Police ,
City Crime Branch,
Coimbatore in Crime No.22/2015

2.Jagdish C.Bhojani ...Respondents in W.P.13569/2015

1. State of Tamil Nadu,
rep. by Inspector of Police,
M-5, Vadavalli Police Station,
Coimbatore,

2. Jagdish C.Bhojani ... Respondents in
CrI OP 30297/2015

Prayer: These Petitions are filed under Section 482 Cr.P.C.,
praying to call for the records pertaining to FIR in Crime
Nos.22 and 334 of 2015 on the file of the first respondent
police and quash the same.

For Petitioner : Mr.R.Krishnamurthy, SC for
Mr.Karthik Raja in
CrIOP No.30297 of 2015
Mr.A.Ramesh, SC for
Mr.Karthik Raja in
CrIOP No.13569 of 2015

For Respondents : Mr.B.Kumar, SC for
Mr.M.Santhana Raman for R2
Mr.C.Emalias,
Addl.Public Prosecutor for R1
in both petitions

COMMON ORDER

These two Criminal Original Petitions are filed by the petitioners, praying to call for the records pertaining to FIR in Crime Nos.22 and 334 of 2015 respectively, on the file of the first respondent police and quash the same.

2. Since the issue involved in these two petitions pertains to the same subject matter, these matters are taken up for final disposal by way of this common order.

3. The petitioners herein, are the husband and wife and have been arrayed as accused 1 and 2 in Crime Nos.22 and 334 of 2015 on the file of the first respondent, which were registered based on the complaints lodged by one Jagdish C.Bhojani, the defacto complainant/2nd respondent.

4. The prosecution case is that the 2nd respondent's wife, Renuka J.Bhojani started a proprietary concern, namely, M/s.JB Conductors at Selvapuram, Coimbatore. She also started another concern at Somayampalayam village. M/s.JB Conductors are engaged in the business of converting Copper into copper profiles and they have been selling the same to the manufacturers of motors and submersible pumps. The said Renuka J.Bhojani is the sole Proprietrix of both the concerns and the 2nd respondent was looking after the management of M/s.JB Conductors by virtue of power of attorney from his wife. While so, Renuka J.Bhojani purchased an extent of 25.25 cents of land in SF No.333/1 and 333/1.B.2 of Somayampalayam village adjacent to the factory premises of the petitioners, namely, Aquasub Engineering at Somayampalayam. Since the defacto complainant's wife required money for purchasing the land and to construct a factory and to erect machinery in the above said land, she mortgaged the land to the first petitioner herein for a sum of Rs.2.00 crores on 24.8.2011 under a registered mortgage deed registered vide Document No.4771 of 2011 in Sub Registrar Office, Vadavalli. She also gave 60 blank cheques signed by her in M/s.JB Conductors account with Indian Overseas Bank, Dr.Nanjappa Road, Coimbatore and Promissory notes, stamp papers and green sheets to the first petitioner as security for her making regular monthly repayments towards mortgaged amount. Though the mortgaged amount was agreed at Rs.2.00 crores under a registered mortgage deed; the first petitioner herein paid only Rs.1.20 crores to Renuka J.Bhojani and thereby, he failed to pay the balance amount of Rs.80.00 lakhs out of the agreed total mortgaged amount. Subsequently, the said Renuka J Bhojani sold the mortgaged property to the first petitioner after two years on 20.2.2013 vide document No.867 of 2013 registered in Sub Registrar Office, Vadavalli. Even after selling the property to him, the first respondent failed to cancel the mortgage and also

failed to return blank cheques, promissory notes, stamp papers and green sheets to the second respondent. It is also stated that all the accused have obtained 90 blank cheques, promissory notes, stamp papers and green sheets signed by Renuka J.Bhojani in the name of M/s.JB Conductors as security for the Copper supplied by Aquasab Engineering towards job work order and that the petitioners failed to return the said cheques and other papers. Thus the accused conspired among themselves and misappropriated the amount by misusing the cheques with imaginary values and presented them with the signatures of one T.Narendran/A3 in the case in the account of Indian Overseas Bank, Dr.Nanjappa road, Coimbatore. All the accused have encashed the amounts in respect of the following cheques, viz.,

1. Cheque No.741324 for Rs.66,00,000/-, dated 7.4.2014
2. Cheque No.741351 for Rs.50,00,000/-, dated 2.1.2013
3. Cheque No.741316 for Rs.1,92,037/- dated 27.6.2013
4. Cheque No.741311 for Rs.1,00,00,000/-, dated 25.4.2013
5. Cheque No.741313 for Rs.67,65,290/-, dated 27.6.2013
6. Cheque No.741321 for Rs.98,08,870/-, dated 29.7.2013
7. Cheque No.741318 for Rs.43,939/-, dated 14.8.2013
8. Cheque No.741324 for Rs.57,71,742/-, dated 19.8.2014
9. Cheque No.741326 for Rs.2,75,75,491/-, dated 19.8.2014

5. It is also the prosecution case that all the four accused have conspired and misappropriated money by filling the cheques signed by Renuka J Bhojani and thereby enjoyed a wrongful gain upto nearly Rs.4 Crores and also cheated Indian Overseas Bank, Coimbatore. Hence, the defacto complainant lodged a complaint before the first respondent and it has been registered vide Crime No.22 of 2015 on 23.7.2015.

6. After registration of the above said crime, the petitioners have approached this Court by way of filing CrI.O.P.No.13569 of 2015 and obtained interim stay on 5.6.2015.

7. While so, again the second respondent/defacto complainant lodged another complaint with identical allegations before the first respondent, which came to be registered vide Crime No.334 of 2015. In the said complaint, it has been alleged that the 2nd respondent's wife, Renuka J.Bhojani started a proprietary concern, namely, M/s.JB Conductors at Selvapuram, Coimbatore. She also started another concern at Somayampalayam village. M/s.JB Conductors are engaged in the business of converting Copper into copper profiles and they have been selling the same to the manufacturers of motors and submersible pumps. The said Renuka J.Bohajani is the sole Proprietrix of both the concerns and the 2nd respondent was looking after the management of M/s.JB Conductors by virtue of power of attorney from his wife. While so, Renuka J.Bhojani purchased an extent of 25.41 cents of land in GS No.333/1 and 333/1.B.2 of Somayampalayam village adjacent to the petitioners' already existing Somayampalayam factory

premises in the year 2008 with an object of expansion and shifting of their Selvapuram unit to their own place and start a new project of manufacturing Super enameled Copper winding wires. The 2nd respondent had discussed about the new project with the 1st petitioner and that 1st petitioner and his men induced him to obtain a loan to a tune of Rs.326 lakhs from IOB, Dr.Nanjappa Road, Coimbatore on 18.9.2009 by mortgaging the complainant's Somayapalam land and stood as a guarantor and made the 2nd respondent to believe that he was helping him. The 2nd respondent invested Rs.84 lakhs and started building the factory. After construction of the factory, the first petitioner and others created documents and registered lease deed for the said factory at Somayapalayam and let the 2nd respondent to run the factory in the name of M/s.JB Conductors and further he allowed one Narendran/A3 to operate his firm loan account at Indian Overseas Bank as a joint signatory from the month of July 2013 and thereafter, 2nd respondent came to know that A3 was operating his bank accounts without his consent and knowledge. While so, on the instructions of the 1st petitioner, 2nd respondent's wife had purchased another land to an extent of 25.25 cents and it was mortgaged to Mr.Kumaravelu, the first petitioner herein on the same day and the said Renuka C Bojani gave 60 blank cheques signed by her in M/s.JB Conductors account with Indian Overseas Bank, Coimbatore and also promissory notes, stamp papers and green sheets to the 1st petitioner as security for her making repayments of the mortgaged amount. Later, this land was sold to the first petitioner's company, but mortgage was not cancelled and security documents were not returned back. It is also alleged that in all the accused have obtained 90 blank cheques, promissory notes, stamp papers and green sheets signed by Renuka J Bojani in her account with Indian Overseas Bank, Coimbatore in the name of M/s.JB Conductors as security for the copper supplied by the petitioners' company Aquasub Engineering towards job work and that the petitioners failed to return them. Later the 2nd respondent came to know that the 1st petitioner and others had trapped him to cancel the lease deed of the factory and had thrown him out of the factory. It is also alleged that after throwing the 2nd respondent out of the factory, the petitioners fraudulently transferred the amount.

8. Now the petitioners have come forward with the present petitions, seeking to quash the above said two cases registered on the file of the first respondent.

9. Learned senior counsel appearing for the petitioners in CrI.O.P.No.13569 of 2015 would submit that entire allegations of the FIR would show that the dispute between the parties is purely civil in nature. He pointed out that the main allegation of the defacto complainant is that 90 blank cheques given by his wife at the time of mortgaging property, were misused by the petitioners, but the bank statements of M/s.Aqua Sub Engineering

annexed at page 92-133 of the typed set of papers would show that the petitioners/accused have only advanced Rs.1.2 crores for purchase of the land after the defacto complainant entered into mortgage deed, but in his complaint, 2nd respondent has not averred this fact. Therefore, the payment of alleged Rs.80 lakhs, according to the defacto complainant, not advanced by the petitioners, has no significance in this matter.

10. Further, the learned counsel, by inviting attention of this Court to the statement of account of the Indian Overseas Bank, Dr.Nanjappa Road Branch, Coimbatore at page 95 and submitted that there were large scale of withdrawals done in favour of M/s.Aqua Sub Engineering and the amounts tallied in respect of the cheques which were alleged to have been misused by the petitioners. Thus, it is the submission of the learned senior counsel for the petitioners that a glance of the bank statements would clearly establish that absolutely there is no misuse of cheques and the petitioners have given Rs.6 crores as guarantor in respect of the loan availed by the petitioners. Therefore, the transaction between the parties is purely of civil nature and the allegations contained in the FIR do not constitute a criminal offence as against the petitioners. He has further submitted that the second respondent/defacto complainant has deliberately suppressed the fact that M/s.Aquasub Engineering was a guarantor for the huge financial facilities availed by M/s.JB Conductors with Indian Overseas Bank, Coimbatore to the tune of Rs.8.75 crores and M/s.JB Conductors had defaulted in repayment of loan and therefore, the prime security which is a residential house of the defacto complainant's wife was brought for sale in auction, but however, M/s.Aqua Sub Engineering, as a guarantor, has paid a sum of Rs.6 Crores to Indian Overseas Bank, Coimbatore in order to protect its image in the market. The learned senior counsel also submit that since the second respondent cheated the Indian Overseas Bank, the petitioners have lodged a complaint against the defacto complainant's wife and only as a counter blast, the 2nd respondent lodged the present complaints. Therefore, the learned senior counsel would submit that the entire transactions between the petitioners and defacto complainant are purely civil in nature and do not constitute any criminal offence, the present FIRs are liable to be quashed. In support of his submissions, the learned senior counsel relied upon a judgment reported in "2013 Cri.L.J.1272 (Rajiv Thapar and others versus Madan Lal Kapoor" , wherein, it has been held as under:

"22. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 of the Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement

of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 of the Cr.P.C., at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 of the Cr.P.C. the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice."

and submitted that if material produced by the accused, is sterling and is of impeccable quality, the complaint can be quashed. For the same proposition, he also relied upon a decisions of the Hon'ble Supreme Court reported in "(2009) 12 SCC 184 (Surendra Kumar Bhatia versus Kanhaiya Lal and others)" and "2013 Cri.L.J.3839 (Prashant Bharti versus State of NCT of Delhi)" and submitted that the since the allegations made in the complaint absolutely do not attract Sections 406 and 420 IPC, the complaint is liable to be quashed. In the instant case, the bank statements produced by the petitioners would clearly show that it is only a business transaction between the parties. The said documents are sterling and of impeccable quality in nature. Hence, by looking into the said documents, one can easily come to the conclusion that the dispute between the parties is purely civil in nature.

11. The learned counsel appearing for the petitioner in CrI.O.P.No.30297 of 2015 has also made detailed arguments. He submitted that none of the transactions alleged in the FIR, in fact, have not taken place and the allegation of the 2nd respondent/defacto complainant that the petitioner operated the bank account of the defacto complainant has absolutely no merit since no other person other than the account holder can operate bank account and that cancellation of the mortgaged deed does not arise when once a sale deed is executed in respect of the mortgaged property. He also submitted that the allegations contained in the FIR do not prima facie constitute any offence or make out a case against the petitioner and hence, the allegations in the FIR are inherently improbable which do not prima facie establish the commission of offence. He relied upon a decision reported in "(2010) 10 SCC 673 (Manoj Mahavir Prasad Khaitan versus Ram Gopal Poddar and another)", wherein, it has been held as under:

"12. We reiterate that when the criminal Court looks into the complaint, it has to do so with the open mind. True it is that that is not the stage for finding out the truth or otherwise in the allegations; but where the allegations themselves are so absurd that no reasonable man would accept the same, the High Court could not have thrown its arms in the air and expressed its inability to do anything in the matter. Section 482 Cr.P.C. is a guarantee against injustice. The High Court is invested with the tremendous powers thereunder to pass any order in the interest of justice. Therefore, this would have been a proper case for the High Court to look into the allegations with the openness and then to decide whether to pass any order in the interests of justice. In our opinion, this was a case where the High Court ought to have used its powers under Section 482Cr.P.C."

and submitted that complaint is liable to be quashed if the allegations are found absurd and without any basis. He also relied upon the judgment reported in "2015 Cri.L.J.4886 (D.P.Gulati versus State of Uttar Pradesh and another)" and submitted that the entire allegations contained in the FIR would go to show that the transactions between the parties are relating to non-payment of loan amount availed through the bank, cancellation of lease agreement, execution of mortgage deed, etc., which absolutely do not constitute any criminal offence against the petitioner. The learned counsel also relied upon a decision of the Hon'ble Supreme Court reported in "(2013) 6 SCC 740 (Chandran Ratnaswami versus K.C.Palanisamy and others, etc.), wherein, it has been held as under:

"29. The doctrine of abuse of process of court and the remedy of refusal to allow the trial to

proceed is well-established and recognized doctrine both by the English courts and courts in India. There are some established principles of law which bar the trial when there appears to be abuse of process of court. Lord Morris in the case of *Connelly vs. Director of Public Prosecutions*, (1964) 2 All ER 401 (HL) observed: "There can be no doubt that a court which is endowed with a particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction. A court must enjoy such powers in order to enforce its rule of practice and to suppress any abuse of its process and to defeat any attempted thwarting of its process". "The power (which is inherent in a court's jurisdiction) to prevent abuse of its process and to control its own procedure must in a criminal court include a power to safeguard an accused person from oppression or prejudice." In his separate pronouncement, Lord Delvin in the same case observed that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial.

30. In *Hui Chi-Ming vs. The Queen* [(1992) 1 AC 34 (PC)], the Privy Council defined the word "abuse of process" as something so unfair and wrong with the prosecution that the court should not allow a prosecutor to proceed with what is, in all other respects, a perfectly supportable case.

31. In the leading case of *Bennett vs. Horseferry Road Magistrates' Court*, (1993) 3 All ER 138, on the application of abuse of process, the court confirms that an abuse of process justifying the stay of prosecution could arise in the following circumstances:

(i) where it would be impossible to give the accused a fair trial; or सत्यमेव जयते

(ii) where it would amount to misuse/manipulation of process because it offends the court's sense of justice and propriety to be asked to try the accused in the circumstances of the particular case.

32. In *R. vs. Derby Crown Court ex p Brooks*, (1985) 80 Cr.App.R. 164, Lord Chief Justice Ormrod stated: "It may be an abuse of process if either

(a) the prosecution has manipulated or misused the process of the court so as to deprive the defendant of a protection provided by law or to take unfair

advantage of a technicality, or (b) on the balance of probability the defendant has been, or will be, prejudiced in the preparation of conduct of his defence by delay on the part of the prosecution which is unjustifiable."

33. Lord Justice Neill in R. vs. Beckford, [1996] 1 Cr.App.R. 94: [1995] R.T.R. 251 observed that: "The jurisdiction to stay can be exercised in many different circumstances. Nevertheless two main strands can be detected in the authorities: (a) cases where the court concludes that the defendant cannot receive a fair trial; (b) cases where the court concludes that it would be unfair for the defendant to be tried." What is unfair and wrong will be for the court to determine on the individual facts of each case."

and submitted that the this Court is empowered to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require tthat the proceeding ought to be quashed.

12. By way of reply, Mr.B.Kumar, learned senior counsel appearing for the defacto-complainant/2nd respondent would submit that merely based upon the bank statements produced by the petitioners, the entire prosecution cannot be quashed at the intial stage since the allegations made against the petitioners have reliable substance and this Court cannot conduct a roving enquiry on such bank accounts to come to the conclusion that no case is made out. He pointed out that the defacto complainant has made specific allegation that about 90 blank cheques were given by the defacto complainant to the petitioner, who misused the same with dishonest intention to cheat the defacto complainant. He submitted that if the petitioners produced all the said cheques before this Court, it can be said that it is a document of sterling nature. In fact, after termination of lease, the petitioners have thrown out the defacto complainant from the place of his business and the 2nd respondent/defacto complainant came to know later through third parties that the petitioners are carrying on the business in the name of the complainant as M/s.JB Conductors. In this regard, the learned senior counsel relied upon various letters in respect of the correspondence that had taken place between the suppliers and the defacto complainant. Further, the learned senior counsel also made a detailed argument by inviting attention of this Court to the bank accounts and submitted that there is sufficient prima facie material against the petitioners that they misused the blank cheques given by the defacto complainant and transferred the money to the tune of crores to their account and it is a matter of investigation and at this stage, it is not

appropriate to quash the proceedings.

13. The learned Additional Public Prosecutor would submit that though the matter appears to be civil in nature, investigation so far conducted would show that the petitioners are running the business in the name of the defacto complainant and therefore, it is a matter of investigation which is in progress and therefore, at this stage, it is not appropriate to quash the proceedings. Hence, he sought for dismissal of the petitions.

14. Heard the learned learned counsel for the petitioners and the respondents and also learned Additional Public Prosecutor and perused the entire materials available on record.

15. In the complaints lodged by the defacto complainant, there are serious allegations of cheating by misusing the blank cheques given by the defacto complainant's wife towards security in respect of the mortgaged loan and instance of encashment of crores of rupees for their wrongful gain and charges of malpractice that even after selling the mortgaged property to the first petitioner, the petitioners have not cancelled the mortgage and that the defacto complainant was thrown out from the business venture and the petitioners started business in the name of the defacto complainant, etc., were made. Based on the complaints lodged by the defacto complainant, two FIRs vide Crime Nos. 22 and 334 of 2015 on the file of the first respondent police came to be registered. The learned respective counsel appearing for the petitioners advanced their arguments and projected that the transaction between the petitioners is purely of civil nature, but it has been given the colour of criminal act with the sole object to implicate the petitioners and the allegations contained in the FIR do not constitute a criminal offence as against the petitioners and to establish this, they also invited the attention of this Court to the bank statements. However, according to the prosecution, the allegations made in the complaints would prima facie constitute the commission of the offence and the investigation conducted so far would show that the defacto complainant was thrown out from the business and the accused are carrying on the business in the name of the defacto complainant and therefore, the matter requires to be investigated further to find out whether the cheques issued by the defacto complainant were misused and whether they were encashed during the course of commercial transaction. Therefore, as rightly submitted by the learned senior counsel for the defacto complainant, when the allegations contained in the FIRs have considerable substance, it is not appropriate to shut out the investigation at the threshold. Merely based on the bank statements, which are the subject material of the trial, this Court cannot come to the conclusion that the allegations are absurd and without any basis. It is a settled legal proposition that while considering the case for

quashing of the criminal proceedings the Court should not "kill a still born child", and appropriate prosecution should not be stifled unless there are compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegations have some substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the Court is whether the uncontroverted allegations as made, prima facie establish the offence. At this stage, the Court can neither embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence nor should the Court judge the probability, reliability or genuineness of the allegations made therein. In the present case, the learned counsel appearing for the petitioners made an endeavour by advancing their vehement arguments based on bank statements to the effect that the entire transaction between the parties is of civil nature, but it has been given the colour of criminal act and the allegations do not prima facie constitute commission of offence and make out a case against the petitioners. As already stated, this Court cannot embark upon the bank statements, which is the subject matter of the trial and merely based upon the same, no conclusion can be arrived at that no case was made out against the petitioners as the allegations have no substance.

16. At this juncture, it is worthwhile to refer the decision of the Hon'ble Supreme Court reported in "2013 Cri.L.J.1272 (Rajiv Thapar and others versus Madan Lal Kapoor", wherein, the Hon'ble Supreme Court has enumerated the steps required to be followed before invoking inherent jurisdiction by the High Court under Section 482 Cr.P.C., to determine the veracity of prayer made by an accused for quashment of the proceedings, as under:

"(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the

court, and would not serve the ends of justice? If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising there from) specially when, it is clear that the same would not conclude in the conviction of the accused."

17. In view of the above position of law and discussion, and having regard to facts and circumstances of the case in hand, and after going through the contents of the FIRs, I am of the considered view that none of the steps delineated by the Hon'ble Supreme Court in the above said decision, is satisfied and hence, the present Criminal Original Petitions are liable to be dismissed.

18. The reliance placed upon by the learned counsel in "Prashant Bharti" (cited supra), pertains to the allegation of rape, wherein, on verifying the mobile phone call details, the Court found that the accused was not found at the place of occurrence and in such circumstances, the complaint came to be quashed. Another reliance placed upon by the learned counsel for the petitioners, in "Rajiv Thapar case" is concerned, the defacto complainant therein alleges the death of her daughter is only due to poisoning, but the Hon'ble Supreme Court quashed the complaint based on the material available on record including post-mortem report, that the deceased had not died on account of having been strangled. In both the cases, it can be seen that the documents available are sterling and impeccable quality only. So far as the present case is concerned, the evidence on record would show that the petitioners had encashed all the 90 cheques given by the defacto complainant as security. The allegation of the defacto complainant is that in spite of encashing all the cheques, he was thrown out from the property and thereafter, the petitioners are carrying out the business in the name of the defacto complainant's company. Though the learned senior counsel vehemently argued that the matter is purely civil in nature, converting it as criminal case would be nothing but abuse of process of Court, I am of the considered opinion that even if civil remedy is available to the defacto complainant, it cannot be said that he is debarred from filing the complaint if the act of the accused prima facie establishes the criminal liability. No doubt it is true that the bank statements would reflect the transactions between the petitioners and the defacto complainant, however, this Court cannot conduct a roving enquiry at this stage as to whether the petitioners had withdrawn the amount by presenting the so-called

cheques pursuant to the regular business transactions or withdrawn the amount by misusing the said cheques. This has to be decided only at the time of evidence. Therefore, the proposition laid down in the above said two decisions cannot be made applicable to the facts of the present case since the defacto complainant and the petitioners are giving different versions and according to the prosecution, the matter is required to be investigated and this Court cannot conduct a roving enquiry in respect of the bank statements produced by the petitioners. Moreover, I am of the opinion that though the allegations made in the complaint appear to be superficially civil in nature, even if a slightest criminal liability emanates from the said allegations then it needs an investigation and as such, FIR cannot be quashed at the threshold stage.

For the foregoing discussion, the Criminal Original Petitions are dismissed. However, the petitioners are at liberty to approach this Court after filing the final report.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Inspector of Police,
M-5 Vadavalli Police Station,
Coimbatore.

2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Santhana Raman, Advocate Sr.10516

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Crl.OP Nos.13569
& 30297 of 2015

sr(CO)
srg(22/03/2016)