

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:08.05.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No. 1271 of 2019
and CrI.MP.Nos.833 & 6019 of 2019

1. C.Balachandran
2. Kailasam @ Kandasamy
3. Vijayan
4. Mappillai @ Sengodan
5. Settu Ganesh @ Ganesan
6. Triuchikarar @ Ganesan ... Petitioners

Vs.

1. The State rep by
The Inspector of Police,
District Crime Branch,
Namakkal District,
(Crime No.2 of 2018)
2. A.Murugesan ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records in Crime No.2 of 2018 on the file of the first respondent and quash the same.

For Petitioner : Mr.A.Padmanaban

For Respondents

For R1 : Mr.Mohammed Riyaz
Additional Public Prosecutor.

For R2 : Mr.D.Sathyaraj

O R D E R

This petition has been filed to quash the F.I.R. in Crime No.2 of 2018 registered by the first respondent police for offences under Sections 120B, 193, 466, 467, 468, 471, 420 of IPC, as against the petitioners.

2. The learned Counsel appearing for the petitioners would submit that the petitions are innocent persons and they have not committed any offence as alleged by the prosecution. The allegations as against the petitioners are that they created

forged documents such as Commissioner of Oath certificate & Notary certificate to grab the property of the defacto complainant. He further submitted that the defacto complaint lodged complaint in Crime No. 1 of 2012, with the same set of allegations and the allegations made in the present complaint are only subsequent information relating to the same incident. Therefore, the subsequent FIR is not maintainable and without any base, the first respondent police registered a case in Crime No.2 of 2018 for the offences under Sections 120B, 193, 466, 467, 468, 471, 420 of IPC, as against the petitioners. To support of his contention, the learned counsel appearing for the petitioners relied upon the judgement reported in 2001 SCC (Cri) 1048 in the case of T.T.Antony Vs. State of Kerala and others as follows :-

"18. An information given under sub-section (1) of Section 154 of Cr.P.C. is commonly known as First Information Report (F.I.R.) though this term is not used in the Code. It is a very important document. And as its nick name suggests it is the earliest and the first information of a cognizable offence recorded by an officer in charge of a police station. It sets the criminal law into motion and marks the commencement of the investigation which ends up with the formation of opinion under Section 169 or 170 of Cr.P.C., as the case may be, and forwarding of a police report under Section 173 of Cr.P.C. It is quite possible and it happens not infrequently that more informations than one are given to a police officer in charge of a police station in respect of the same incident involving one or more than one cognizable offences. In such a case he need not enter every one of them in the station house diary and this is implied in Section 154 of Cr.P.C. Apart from a vague information by a phone call or a cryptic telegram, the information first entered in the station house diary, kept for this purpose, by a police officer in charge of a police station is the First Information Report - F.I.R. postulated by Section 154 of Cr.P.C. All other informations made orally or in writing after the commencement of the investigation into the cognizable offence disclosed from the facts mentioned in the First Information Report and entered in

the station house diary by the police officer or such other cognizable offences as may come to his notice during the investigation, will be statements falling under Section 162 of Cr.P.C. No such information/statement can properly be treated as an F.I.R. and entered in the station house diary again, as it would in effect be a second FIR and the same cannot be in conformity with the scheme of the Cr.P.C. Take a case where an FIR mentions cognizable offence under Section 307 or 326 I.P.C. and the investigating agency learns during the investigation or receives a fresh information that the victim died, no fresh FIR under Section 302 I.P.C. need be registered which will be irregular; in such a case alteration of the provision of law in the first FIR is the proper course to adopt. Let us consider a different situation in which H having killed W, his wife, informs the police that she is killed by an unknown person or knowing that W is killed by his mother or sister, H owns up the responsibility and during investigation the truth is detected; it does not require filing of fresh FIR against H - the real offender-who can be arraigned in the report under Section 173(2) or 173(8) of Cr.P.C., as the case may be. It is of course permissible for the investigating officer to send up a report to the concerned Magistrate even earlier that investigation is being directed against the person suspected to be the accused.

19. The scheme of the Cr.P.C. is that an officer in charge of a Police Station has to commence investigation as provided in Section 156 or 157 of Cr.P.C. on the basis of entry of the First Information Report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of evidence collected he has to form opinion under Section 169 or 170 of Cr.P.C., as the case may be, and forward his report to the concerned Magistrate under Section 173(2) of Cr.P.C. However,

even after filing such a report if he comes into possession of further information or material, he need not register a fresh FIR, he is empowered to make further investigation, normally with the leave of the court, and where during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of sub-section (8) of Section 173 Cr.P.C.

20. From the above discussion it follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 of Cr.P.C. only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 Cr.P.C. Thus there can be no second F.I.R. and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the F.I.R. in the station house diary, the officer in charge of a Police Station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 of the Cr.P.C."

Hence, he prayed to quash the criminal proceedings.

3. Per contra, the learned counsel appearing for the second respondent/defacto complainant filed counter and submitted that the petitioners and other accused have already involved a crime of cheating and fabrication of documents and therefore the defacto complainant lodged complaint in Crime No.1 of 2012 and the same is pending. He further submitted that to escape from the above case, the petitioners and other accused have further committed various offences by manipulating the Court documents and played fraud upon the Courts. Therefore the present complaint has been lodged and there are specific

overtact as against the each of the petitioners. He further submitted that it is not subsequent information relating to the first FIR and the present complaint has been registered on different set of allegations. He also relied upon the judgment reported in (2018) 9 SCC 440 in the case of Om Prakash Singh Vs. State of Bihar and others as follows :-

"5. Having heard the learned Advocates from both the sides, we find that the High Court is at fault in allowing the petition filed Under Section 482 of the Code of Criminal Procedure without duly appreciating the facts and circumstances of the case and without effectively considering the allegations made in the complaint and materials found in the charge sheet. The High Court is mainly influenced by the factum that the earlier order of taking cognizance was quashed while deciding the present matter. In our considered opinion, it is an error to conceive that the present proceedings based on the subsequent complaint are liable to be quashed merely because the earlier criminal proceedings were quashed. The High Court rather advanced erroneously on the basis of presumptions and conjectures, without considering the merits of the matter.

6. It is pertinent to note that the subsequent FIR dated 05.08.2012 from which the present proceedings emerge is thrust upon discovery of a new fact of replacing the original parts with the duplicate ones. The subject matter of the complaint is in relation to the superior model "Miura-200", upgraded on the advice of the Respondent-company. Though, the Appellant and his wife agreed and got their machine upgraded to "Miura-200" by paying Rs. 4 lakhs extra, it is found by the technical expert appointed by the manufacturer that the "Miura-200" supplied by Respondent Nos. 2 and 3 was containing duplicate parts. In other words, the original parts were replaced by the duplicate parts at the time of supply of machine to the Appellant, and subsequently the machine was not working properly resulting in inaccurate results. Thus, it is clear that

the subsequent complaint dated 05.08.2012 is based on new set of facts and new set of allegations and not based on old set of allegations as have been made in the FIR dated 24.03.2008. It is needless to repeat that the FIR dated 24.03.2008 was based on the allegations of non-functioning of the machine in addition to delay and carelessness of Respondent Nos. 2 and 3 in getting the machine repaired. At that time, the Appellant and his wife were not aware about replacement of the original parts with the duplicate ones. The Service report of "Key Pharma Limited" was not in existence at that time. Therefore, the Chief Judicial Magistrate, Siwan was justified in taking the cognizance, since prima facie case is found against Respondent Nos. 2 and 3.

7. This Court in the case of Udai Shankar Awasthy v. The State of U.P. : (2013) 2 SCC 435, para 30] has observed that "the law does not prohibit filing or entertaining of the second complaint even on the same facts provided the earlier complaint has been decided on the basis of insufficient material or the order has been passed without understanding the nature of the complaint or the complete facts could not be placed before the Court, or where the complainant came to know certain facts after disposal of the first complaint which could have tilted the balance in his favour. However, the second complaint would not be maintainable wherein the earlier complaint has been disposed on full consideration of the case of the complainant on merit". In the matter on hand, the Complainant/Appellant came to know certain facts relating to the replacement of parts of the machine after the disposal of the first complaint, that too after getting a service report from "Key Pharma Limited, Delhi", and, therefore, there is no bar for the Appellant to lodge second complaint.

8. Looking to the complaint and the charge-sheet, it is clear that the

complainant has made host of allegations. The police after due investigation filed the charge-sheet. On going through the available material, we find a prima facie case against Respondent Nos. 2 and 3. Since the case has to be tried, we desist ourselves to comment any further on the merits of the matter. We make it clear that the observations made by us are only for disposal of this appeal. That these observations of ours will not influence the trial court while deciding the case. Since, we find prima facie material against Respondent Nos. 2 and 3, the High Court is not justified in quashing the proceedings. Accordingly, the impugned judgment of the High Court is set aside. The order of taking cognizance passed by the Chief Judicial Magistrate, Siwan, in Siwan (M) P.S. Case No. 288/2012 stands restored."

Therefore, he prayed for dismissal of this quash petition.

4. The learned Additional Public Prosecutor appearing for the first respondent/police would submit that the investigation is almost completed and the respondent police have only to file final report. Further he submitted that it is only a FIR and it cannot be quashed on its threshold. The investigation may go on to unearth and grab the offence committed by the petitioners. Therefore, he prayed for dismissal of the quash petition.

5. Heard Mr.A.Padmanaban, learned counsel appearing for the petitioners, Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the first respondent and Mr.D.Sathyaraj, learned counsel appearing for the second respondent.

6. The petitioners are arrayed as A1, A2, A12, A4, A5 and A8 respectively, in Crime No.2 of 2018 registered by the first respondent for the offences under Sections 120B, 193, 466, 467, 468, 471, 420 of IPC. The second respondent/ defacto complainant has already lodged a complaint in Crime No. 1 of 2012 for the offences under Sections 120(b), 420, 465, 467, 468, 471, 506(i) of IPC, as again the petitioners and other accused and the same is pending. The allegations in the present complaint is that to escape from the previous case viz., in Crime No.1 of 2012, the petitioners and other accused had created fabricated documents as given by the Malaysian Court and fake Commissioner of Oath certificate and Notary certificate. The first case registered as Crime No.1 of 2012 on different allegations, where as the

present complaint has been registered on different set of facts and circumstances. That apart, the registration of present FIR is not on the basis of subsequent information relating to the first FIR. As such, it can not be said that for the very same allegations two FIRs have been registered.

7. It is seen from the present First Information Report that there is a specific allegation as against the petitioners, which has to be investigated. Further the FIR is not an encyclopedia and it need not contain all facts. Further, it cannot be quashed in its threshold. This Court finds that the FIR discloses prima facie commission of cognizable offence and as such this Court cannot interfere with the investigation. The investigating machinery has to step in to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code.

8. It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in Crl.A.No.255 of 2019 dated 12.02.2019 in the case of *Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors.*, as follows:-

"4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.

5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find

out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.

.....

9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."

9. In view of the above discussion, this Court is not inclined to quash the FIR. However, considering the crime is of the year 2018, the first respondent is directed to complete the investigation in Crime No.2 of 2018 and file a final report within a period of three months from the date of receipt of copy of this Order, before the jurisdiction Magistrate, if not already filed.

10. With the above directions, this Criminal Original Petition stands disposed of. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rts
To

1. The Inspector of Police,
District Crime Branch,
Namakkal District,
2. The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.A.Padmanaban, Advocate sr 43385.

CRL.O.P.No. 1271 of 2019
and Crl.MP.Nos.833 & 6019 of 2019

KJ(CO)
SP(31/05/2019)



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