



BEFORE THE MADURAI BENGH OF MADRAS HIGH COURT

Reserved on : 25.09.2019

Pronounced on : 27.09.2019

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P (MD) No.8365 of 2019

and

Crl.M.P. (MD) No.5223 of 2019

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1.Naveen Jeyaprakash
2.Gnadurai
3.Thinakaran
4.Isakkiappan
5.Baskar Arulraj

... Petitioners/Accused 1 to 5
Vs

1.The State rep. by
Inspector of Police,
Tirunelveli Junction Police Station,
Tirunelveli City
Crime No.104 of 2019 ...Respondent/Complainant

2.Ananthkumar,
Agriculture Department,
Tirunelveli. ... Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records relating to crime No.104 of 2019 pending before the 1st respondent police and quash the same.

For Petitioners : Mr.N.R.Ilango, senior counsel
for Mr.S.Ravi

For Respondents : Mr.A.Natarajan, State P.P. Assisted
by Mr.R.Anandaraj, APP for R1

O R D E R

This petition has been filed to quash the proceedings in crime No.104 of 2019 on the 1st respondent police as against the petitioners for the offences under Sections 171 (H), 171(E) and 109 of Indian Penal Code and Section 128 of the Representation of the People Act, 1951.

2.The learned senior counsel appearing for the petitioner submitted that on the complaint lodged by the 2nd respondent, 1st respondent registered the case as against the petitioners on the allegation that on 17.04.2019, on the information about the distribution of money for the general election of the Member of Parliament, the 2nd respondent went to



Karuppanthurai main road at about 06.15 p.m. and he saw a Toyota car bearing Regn. No.TN 74 AH 6666 with case of Rs.2,39,000/-, postal votes, cheque book, pass book and voters list and he seized all the materials and handed over to the 1st respondent, who, thereafter, registered the case as against the occupants of the car.

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3.He further submitted that the third petitioner is none other than the son of the candidate, who contested in the Lok Sabha election at Tirunelveli Constituency on behalf of the opposite party of the ruling party and hence, the entire case has been foisted with the false information only out of political vengeance.

4.He further submitted that the offences under Sections 171(H) and 171(E) and 109 of I.P.C., are not at all made out as against the petitioners. To attract the offence under Section 171(H) of I.P.C., the prosecution must allege that without the general or special authority in writing of a candidate incurs or authorizes on account of holding any public meeting or upon any advertisement, circular or publication or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate and in this case there is no such averment in the complaint to attract Section 171(H) of I.P.C.

5.He further submitted that insofar as the offence under Section 171 (E) of I.P.C. is concerned, the prosecution must satisfy the ingredients contemplated under Section 171(B) of I.P.C. But, there is no averment to attract this offence also and hence, the FIR has no legs to stand. As far as the offence under Section 128 of the Representation of the People Act is concerned, it would not apply as against the petitioners since, the said section deals about the maintenance of secrecy of voting. According to the case of the prosecution, on the secret information, the 2nd respondent had seen the car and seized the materials from the possession of the petitioners. Therefore, the entire crime has been foisted as against the petitioners only on the political vengeance and he prays for quashment of the entire criminal proceedings as against the petitioners.

6.Per contra, the learned State Public Prosecutor filed counter affidavit and submitted that on the information, the 2nd respondent, on 17.04.2019 went to Karuppanthurai village at about 6.15 p.m., where he had seen the Toyota car bearing registration No.TN 74 AH 6666 and found carrying unaccounted money of Rs.2,39,000/-, postal vote ballots, cheque book, pass book and voters list. These materials were seized and handed over to the 1st respondent and after obtaining necessary permission from the learned Judicial Magistrate IV, Tirunelveli, the 1st respondent



registered a case in crime No.104 of 2019 for the offences under Sections 171(H), 171(E) of I.P.C. and Section 128 of the Representation of the People Act, 1951 r/w Section 109 of I.P.C.

7.He further submitted that the petitioners had violated the Election Code of Conduct insofar as that they have not obtained prior permission for using the vehicle for electioneering related work as it is evident from the presence of the 3rd petitioner, who is none other than the son of the candidate, who contested in the Lok Sabha Election in Tirunelveli Constituency. Therefore, the presence of the third petitioner with unaccounted money and also with the pass book and other materials is clearly attracted the offence under Section 171(H) of I.P.C. and for violating the model Code of Conduct. Insofar as the offence under Section 171(E) of I.P.C. is concerned, it reads that whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year or with fine or with both. Admittedly, a sum of Rs.2,39,000/- was carried by the petitioner, for which, no account has been produced at the time of seizure. The possession of the said money is violating the model conduct of code during the election imposed by the Election Commission of India.

8.He further submitted that insofar as the offence under Section 128 of the Representation of the People Act, 1951 is concerned, the petitioners admittedly possessed with the postal votes ballots. The said offence deals with the maintenance of secrecy of voting. The third petitioner being the son of the contested candidate, has not supposed to possess any postal votes ballots, since the postal vote ballots meant for the Government servants, who has been deputed for election duty to cast his vote. He further submitted that it is only in FIR stage and it has to be investigated further. Therefore, the FIR cannot be quashed at its threshold. In support of his contention, he relied on the decision of the Hon'ble Supreme Court in ***Dineshbhai Chandubhai Patel Vs. State of Gujarat reported in (2018) 3 Supreme Court Cases 104*** and prayed for dismissal of this petition.

9.Heard the learned senior counsel appearing for the petitioner and the learned State Public Prosecutor appearing for the 1st respondent and perused the materials available on records.

10.The petitioners are arraigned as A1 to A5. On the secret information, the 2nd respondent inspected Karuppanthurai village and found that the petitioners were in the car bearing registration No. TN 74 AH 6666 with a possession of unaccountable money of Rs.2,39,000/-, postal votes, cheque book, pass book and voters list. After seizing those materials, the 2nd respondent handed over to the 1st respondent and on receipt of the same, the



1st respondent obtained necessary permission from the learned Judicial Magistrate No.IV, Tirunelveli and registered a case in crime No.104 of 2019 for the offences under Sections 171 (H), 171 (E) and 109 of Indian Penal Code and Section 128 of the Representation of the People Act, 1951.

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11. According to the learned senior counsel appearing for the petitioners, there are no averments and no prima facie to attract the offence under Sections 171 (H) and 171(E) of I.P.C. It is relevant to extract the ingredients of those offence hereunder:

"171 H. *Illegal payments in connection with an election* -

Whoever without the general or special authority in writing of a candidate incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees:

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate."

"171.E. *Punishment for bribery.*-

Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both:

Provided that bribery by treating shall be punished with fine only.

12. According to the prosecution, the petitioners were in possession of cash of Rs.2,39,000/- and postal vote ballots, cheque book, pass book and voters list. Admittedly, the third petitioner is none other than the son of the candidate, who contested for the Member of Parliament viz., Lok Sabha election in Tirunelveli Constituency. Therefore, there are materials to attract the offence under Section 171(H) of I.P.C. and it has to be investigated further.

<https://hcservices.courts.gov.in/> 13. In so far as the offence under Section 171(E) of I.P.C. is



concerned, whoever commits the offence of bribery shall be punished. So, admittedly, the petitioners were in possession of cash of Rs.2,39,000/- that too during the election period in the same constituency along with postal vote ballots and also voters list. Therefore, there is prima facie to attract the offence under Section 171(E) of I.P.C.

14.Insofar as the offence under Section 128 of the Representation of the People Act, 1951 is concerned, the petitioners were in possession of postal vote ballots and also voters list. The postal vote ballots are meant for Government servants, who has been deputed for election duties and whoever, wants to cast their votes, they can get postal vote ballot and it has to be sent through post only and it cannot be handed over to any of the candidate or the agent of the candidate. Therefore, how the postal vote ballots are possessed by the petitioner is a Million dollar question. Hence, this Court feels that there is prima facie to attract the offence under Section 128 of the Representation of the People Act. Accordingly, to attract the offences as against the petitioners, there are materials to proceed with enquiry and the points raised by the learned senior counsel appearing for the petitioners cannot be considered.

15.The learned State Public Prosecutor relied upon the decision of the Hon'ble Supreme Court in **Dineshbhai Chandubhai Patel Vs. State of Gujarat reported in (2018) 3 Supreme Court Cases 104**, where the Apex Court has held as follows:

"25.The law on the question as to when a registration of the FIR is challenged seeking its quashing by the accused under Article 226 of the Constitution or Section 482 of the Code and what are the powers of the High Court and how the High Court should deal with such question is fairly well settled.

26.This Court in State of West Bengal & Ors. vs. Swapan Kumar Guha & Ors. (AIR 1982 SC 949) had the occasion to deal with this issue. Y.V. Chandrachud, the learned Chief Justice speaking for Three Judge Bench laid down the following principle: (SCC pp.576-77 & 598, paras 21 & 66

"21.....the condition precedent to the commencement of investigation under S.157 of the Code is that the F.I.R. must disclose, prima facie, that a cognizable offence has been committed. It is wrong to suppose that the police have an unfettered discretion to commence investigation under S.157 of the Code. Their right of inquiry is conditioned by the existence of reason to suspect the



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commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the F.I.R., prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation must go on. The Court has then no power to stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences.

66. Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. If on a consideration of the relevant materials, the Court is satisfied that an offence is disclosed, the Court will normally not interfere with the investigation into the offence and will generally allow the investigation in the offence to be completed for collecting materials for proving the offence."

27. Keeping in view the aforesaid principle of law, which was consistently followed by this Court in later years and on perusing the impugned judgment, we are constrained to observe that the High Court without any justifiable reason devoted 89 pages judgment (see-paper book) to examine the aforesaid question and then came to a conclusion that some part of the FIR in question is bad in law because it does not disclose any cognizable offence against any of the accused persons whereas only a part of the FIR is good which discloses a prima facie case against the accused persons and hence it needs further investigation to that extent in accordance with law.

28. In doing so, the High Court, in our view, virtually decided all the issues arising out of the case like an investigating authority or/and appellate authority decides, by little realizing that it was exercising its inherent jurisdiction under Section 482 of the Code at this stage.

29. The High Court, in our view, failed to see the extent of its jurisdiction, which it possess to exercise while examining the legality of any FIR complaining commission of several cognizable offences by accused persons. In order to examine as to whether the factual contents of the FIR disclose any prima



facie cognizable offences or not, the High Court cannot act like an investigating agency and nor can exercise the powers like an appellate Court. The question, in our opinion, was required to be examined keeping in view the contents of the FIR and prima facie material, if any, requiring no proof.

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30.At this stage, the High Court could not appreciate the evidence nor could draw its own inferences from the contents of the FIR and the material relied on. It was more so when the material relied on was disputed by the Complainants and visa-se-versa. In such a situation, it becomes the job of the investigating authority at such stage to probe and then of the Court to examine the questions once the charge sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.

31.In our considered opinion, once the Court finds that the FIR does disclose prima facie commission of any cognizable offence, it should stay its hand and allow the investigating machinery to step in to initiate the probe to unearth the crime in accordance with the procedure prescribed in the Code.

32.The very fact that the High Court in this case went into the minutest details in relation to every aspect of the case and devoted 89 pages judgment to quash the FIR in part lead us to draw a conclusion that the High Court had exceeded its powers while exercising its inherent jurisdiction under Section 482 of the Code. We cannot concur with such approach of the High Court.

33.The inherent powers of the High Court, which are obviously not defined being inherent in its very nature, cannot be stretched to any extent and nor can such powers be equated with the appellate powers of the High Court defined in the Code. The parameters laid down by this Court while exercising inherent powers must always be kept in mind else it would lead to committing the jurisdictional error in deciding the case. Such is the case here.

34.On perusal of the three complaints and the FIR mentioned above, we are of the considered view that the complaint and FIR, do disclose a prima facie commission of various cognizable offences alleged by the complainants against the accused persons and, therefore, the High Court instead of dismissing the



application filed by the accused persons in part should have dismissed the application as a whole to uphold the entire FIR in question.

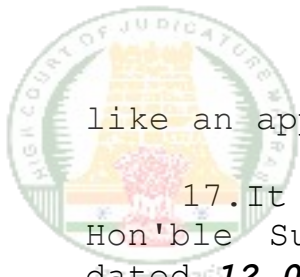
35.Learned counsel for the accused persons after the arguments were over filed brief note and placed reliance on 2 decisions of this Court reported in (2015) 11 SCC 730 and (2011) 3 SCC 351 in support of their contentions. We have perused the 2 decisions. In our view, both the decisions are distinguishable on facts, whereas the decision on which we have placed reliance is more on the point. It is for the reason that in the first place, the 2 decisions relied on by the learned counsel for the accused persons were the cases where a complaint was filed in the Court under Section 138 of the Negotiable Instruments Act and in other case under some sections of IPC. It is this complaint which was sought to be quashed by invoking the inherent jurisdiction under Section 482 of the Code. Such is not the case here. Secondly, the decision therefore turned on the facts involved in respective cases.

36.In the case at hand, the challenge is especially to registration of the FIR. This Court in Swapan Kumar Guha (supra) case examined the exercise of inherent powers of the High Court in the context of a challenge to an FIR. In our view, therefore, the law laid down in Swapan Kumar Guha (supra) is directly applicable to the facts of this case as against the law laid down in the two cited decisions.

37.In the light of foregoing discussion, it is now necessary that the matter, which is subject matter of FIR in question, needs to be investigated in detail by the investigating authorities in accordance with procedure prescribed in the Code.

38.We have purposefully refrained from making any observation on the merits and also refrained from giving our reasoning on factual issues arising out of the case, else it may cause prejudice to the parties and also hamper the on-going investigating process undertaken by the police authorities."

16.Perusal of the said decision would show that in order to examine as to whether the factual contents of the FIR discloses any prima facie cognizable offence or not the Higher Court cannot act like an investigating agency and only can exercise the power



like an appellate Court.

17. 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 - 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.

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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

<https://hcservices.ecourts.gov.in/hcservices/> 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."

18. In view of the above discussion, this Court is not inclined to quash the FIR. Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petition is also dismissed. However, the first respondent is directed to complete the investigation and file a final report within a period of three months from the date of receipt of copy of this Order, before the jurisdictional Magistrate.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar (CS)

Arul

To

1. The Inspector of Police,
Tirunelveli Junction Police Station,
Tirunelveli City

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S. RAVI, Advocate (SR-90153[F] dated 27/09/2019)

Order made in

CRL.O.P (MD) No.8365 of 2019

27.09.2019

_KM/ (11.10.2019) 10P 4C