



BEFORE THE MADURAI BENCH OF MADURAI HIGH COURT

DATED:17.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

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CRL.O.P.(MD) No.10681 of 2019

and

CrI.M.P(MD) Nos. 6706 and 6707 of 2019

1. M/s.Elfin Ecom Pvt Ltd
Mullai Nagar, Thirumangalam
Madurai
Rep. by its Managing Director
S.Ramesh Kumar
 2. S.Ramesh Kumar
 3. J.Badhushaa
 4. S.Raja
 5. Shahul Hameed
 6. Basheer ... Petitioners/Accused 1 to 6
- Vs.
1. The State rep by
The Inspector of Police,
Trichy Police Station
E.O.W Wing, Trichy ... 1st Respondent/Complainant
 2. S.Veerakumar ... 2nd Respondent/Defacto
Complainant
 3. The District Revenue Officer
Trichy ... 3rd Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to Call for the records relating to the proceedings in Crime No.1 of 2019 on the file of the first respondent and quash the same as against the petitioners.

For Petitioner	: Mr.B.Nambiselvan
For Respondents	
For R1 & R3	: Mr.K.Suyambulinga Bharathi Government Advocate (CrI.Side)
For R2	: No Appearance



O R D E R

This petition has been filed to quash the proceedings in Crime No.1 of 2019 on the file of the first respondent, as against this petitioners.

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2. The learned Counsel appearing for the petitioner would submit that the defacto complainant is running a photo studio at Trichy. He further submitted that in the mid of 2017, One Prabakaran who is the friend of the defacto complainant showed pamphlet issued by the first accused company advertising to bring forth investors to invest in its company with high rate of interest for the capital invested sum along with various other gifts. Having deceived over the pamphlet shown by his friend the defacto complainant and his friends went to business premises of the first accused and at that time the first accused showed various schemes to the defacto complainant and his friends. The defacto complainant invested money and he took capital gains in his name and also in the name of the one Illavarasi, who is the wife of the defacto complainant. Further the defatco complainant on various occasions has also transferred a sum of Rs.4,88,000/- to the account of the first accused company. It is further stated that from the first accused company the defacto complainant has received a sum of Rs.2,15,000/- and with respect to the balance sum of Rs.2,73,000/- the petitioners/accused persons have cheated the defacto complainant. Hence the defacto complainant has lodged a complaint before the respondent police and based on the same, the respondent police registered a case in Crime No 1 of 2019 for the offences under Sections 120(B),420, 406 of IPC and Section 5 of TNPID Act, 1997. He further submitted that now the petitioners are ready and willing to settle the entire amount which were received from the depositors. Hence he prayed to quash the same.

3. The learned Government Advocate(Crl.Side) would submit that the case is under investigation.

4. Heard Mr.B.Nambiselvan learned counsel appearing for the petitioners and Mr.K.Suyambulinga Bharathi, learned Government Advocate(Crl.Side) appearing for the official respondents.

5. It is seen from the 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 the 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. It is 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.

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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 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."

It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Crl.A.No.579 of 2019** dated **02.04.2019** in the case of **Devendra Prasad Singh Vs. State of Bihar & Anr.**, as follows:-

" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

6. In view of the above discussion, this Court is not inclined to quash the proceedings in Crime No.1 of 2019 pending on the file of the first respondent. Hence this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are closed. Since it is submitted by the learned counsel for the petitioners that the petitioners are ready and willing to settle the entire amount which were received from the depositors, the petitioners are at liberty to settle the entire amount due to the depositors before the competent authorities, namely the third respondent herein.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar (CS)



To

1. The Inspector of Police,
Trichy Police Station
E.O.W Wing, Trichy
2. The District Revenue Officer
Trichy
3. The Additional Public Prosecutor
Madurai Bench of Madras High Court

+1 CC to Mr.B.NAMBI SELVAN, Advocate (SR-87203[F] dated
17/09/2019)

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