

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.08.2020

Date of Verdict : 04 .09.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.OP.No.1447 of 2020 and
Crl.MP.Nos.873 & 874 of 2020

T V Sundram Iyengar & Sons Private Limited,
Rep.by its Global President and Chief Executive Officer,
Mr.G.Srinivasa Raghavan,
Having office at Kochar Bliss,
Plot No.9 and Super 8 A,
Thiru-vi-ka Industrial Estate,
Guindy, Chennai 600 032

.... Petitioner

Vs.

1.State rep. by its,
Inspector of Police,
Perundurai Police Station,
Erode

2.M/s.Air Zone Travels India,
Rep. by P.K.Vengadesan,
No.18, New Bus Stand Complex,
Perundurai, Erode District - 638 052
... Respondent

Prayer :- This Criminal Miscellaneous Petition is filed under
Section 482 of Cr.P.C. praying to call for the records on the
file of the first respondent in FIR No.808 of 2019 dated
25.12.2019 as against this petitioner and quash the same.

For Petitioner : Mr.N.R.Elango,
Senior Counsel,
for Mr.K.V.Sajeevkumar
For Respondents
For R1 : Mr.S.Karthikeyan,
Additional Public Prosecutor
For R2 : Mr.G.Muthukumar

ORDER

This petition has been filed to quash the FIR in Crime
No.808 of 2019 on the file of the first respondent registered
for the offences under Sections 467, 475, 420 and 506(i) of
IPC.

2. Mr.N.R.Elango, learned Senior Counsel appearing for the petitioner submitted that the complaint lodged by the second respondent is motivated one and contains false and bald allegations as against the petitioner. Therefore, the entire FIR is nothing but clear abuse of process of law. Even according to the defacto complainant, there is no specific overt act for each and every accused and mere allegations without any overt act for the complaint cannot form basis for registering FIR. The relationship between the petitioner and the second respondent is a Customer and a Service Provider and if at all the second respondent being a customer was not satisfied with the service provided by the petitioner, the second respondent can very well redress his grievances under the consumer protection Act. The second respondent lodged complaint of fixing a banned BS-III engine to the Omni bus. There is absolutely no ban for the engine of BS-III to a BS-II model vehicle. In fact, the Government of India issued GSR 643(E) dated 19.08.2015, and the engine BS-IV standards shall come into force in respect of four wheeler for the vehicle's manufactured on or after 01.04.2017. The Hon'ble Supreme Court of India also held by the order dated 29.03.2017 in WP (Civil).No.13029 of 1985 in the case of MC Mehta Vs. Union of India that the no new commercial vehicles not complaint with BS-IV shall be sold in India by manufacturer or dealer on and from 01.04.2017 onwards. Therefore, the manufacturing or sale of new commercial vehicle not complaint with BS-IV alone was banned and its registration was prohibited by the Government. Therefore, the complaint was lodged by the second respondent with ulterior motive only to wreck vengeance against the petitioner.

2.1 He further contended that the Motor Vehicles Act and Rules categorically state that the owner of the vehicle has to get necessary approvals / permission from the RTO and not by the dealer. In fact, the Regional Transport Officer, Perundurai has renewed the petitioner's vehicle and issued fitness certificate twice even after replacement of engine which was valid upto 03.05.2019. Therefore, without valid insurance for the vehicle the fitness certificate will not be issued by the Regional Transport Officer. While being so, the first respondent without even conducting any enquiry and without verifying those details mechanically registered the FIR on the complaint lodged by the second respondent herein. Therefore, it is nothing but malicious prosecution instituted by the second respondent and it is liable to be quashed. In support of his contention, he also relied upon the judgment of the Hon'ble Supreme Court of India in the case of Haryana and others Vs. Bajanlal and others reported in 1992 Supplementary 1 SCC 335, wherein the Hon'ble Supreme Court has listed out the following category of case in which the criminal proceedings can be quashed using the inherent jurisdiction of the High Court under section 482 Cr.P.C.:

"7. Where a criminal proceeding is manifestly attended with malafide and / or where the proceedings is maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge."

Therefore, he sought for quashment of the FIR.

3. Per contra, Mr.S.Karthikeyan, Additional Public Prosecutor submitted that the second respondent after lodging the complaint, filed direction petition before this Court in CrI.OP.No.20915 of 2019 for direction directing the first respondent to register his complaint, and this Court by order dated 05.08.2019 directed the first respondent to conduct enquiry and complete the same within a period of three weeks and if any cognizable offence is made out, to register complaint accordingly. Accordingly, the first respondent after conducting due enquiry on the complaint lodged by the second respondent, registered the case in Crime No.808 of 2019 for the offence under Sections 467, 475, 420 and 506 (i) of IPC against three accused persons, in which the petitioner is arrayed as A1. According to the complainant, he owned omni bus bearing registration No.TN 37 BL 4500 and the same was handed over for service to the accused persons. During the service, the Manager of Maintenance informed the defacto complainant to change the new engine and as per his advice, the second respondent agreed and purchased two engine from M/s.Ashok Leyland Limited, Chennai and replaced the old engine for the cost of Rs.3,09,000/- Thereafter, the accused persons failed to give necessary documents for getting approval from the Regional Transport Office. Thereafter, the defacto complainant came to understand that the Regional Transport Office rejected the approval stating that there is defect in the engine and the said engine model was banned from sale in the market from 01.04.2017 onwards. Even then, the accused persons have replaced the banned engine and produced before the Regional Transport Officer. Having been collected a sum of Rs.3,09,000/-, the accused persons did not replace and erected banned engine of the omni bus. Further the defacto complainant alleged that they also punched the engine No. without the knowledge of the complainant and thereby manipulated the engine No. Therefore, the averments are clearly constituted under Sections 467, 475, 420 and 506 (i) of IPC and the investigation is pending.

4. Mr.G.Muthukumar, the learned counsel for the second respondent submitted that the second respondent owned omni bus bearing registration No.TN 37 BL 4500 and the same was handed over for service to the accused persons. During the service, the Manager of Maintenance informed to change the new engine

and as such the second respondent purchased two engine from M/s.Ashok Leyland Limited, Chennai and replaced the old engine for the cost of Rs.3,09,000/- Thereafter, the accused persons failed to give necessary documents for getting approval from the Regional Transport Office. While being so, the defacto complainant came to understand that the Regional Transport Office rejected the approval stating that there is defect in the engine and the said engine model was banned from sale in the market from 01.04.2017 onwards, and the accused persons replaced the banned engine and produced before the Regional Transport Officer. Having been collected a sum of Rs.3,09,000/-, the accused persons did not replace and erected banned engine of the omni bus, and they also punched the engine No. without the knowledge of the complainant and thereby manipulated the engine No. Therefore, the averments are clearly constituted under Sections 467, 475, 420 and 506 (i) of IPC, and as such he sought for dismissal of the petition.

5. Heard Mr.N.R.Elango, learned Senior Counsel for the petitioner, Mr.S.Karthikeyan, learned Additional Public Prosecutor for the first respondent, and Mr.G.Muthukumar, learned counsel for the second respondent.

6. There are totally three accused, in which the petitioner is arrayed as the first accused. On the complaint lodged by the second respondent, the first respondent did not register FIR. Therefore, the second respondent was constrained to approach this Court in Crl.OP.No.20915 of 2019 and this Court by order dated 05.08.2019 directed the first respondent to conduct enquiry and register the case if any cognizable offence is made out. Accordingly, the first respondent conducted enquiry and registered FIR in Crime No.808 of 2019 for the offences under Sections 467, 475, 420 and 506 (i) of IPC. The crux of the allegations is that the second respondent handed over their omni bus bearing registration No.TN 37 BL 4500 for service with the accused persons. On the advice of the Manager of Maintenance, the second respondent agreed to change the engine. Accordingly, the second respondent paid a sum of Rs.3,09,000/- and thereafter came to understand that instead of BS-IV, they erected BS-III model which is banned engine after 01.04.2017. Therefore, the Regional Transport Officer also rejected the approval of erection of new engine. Further the accused persons have also punched the engine No. without the knowledge of the defacto complainant, thereby they manipulated the engine No. Though, the learned Senior Counsel raised so many grounds on facts, this Court cannot conduct rowing enquiry on the FIR. The first respondent has to investigate the complaint and to file final report. In this regard, 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.

.....
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."

7. In view of the above discussion, this Court is not inclined to quash the First Information Report. Accordingly, this Criminal Original Petition stands dismissed. However, the first respondent is directed to complete the investigation in Crime No.808 of 2019 and file final report before the jurisdictional Magistrate within a period of twelve weeks from the date of receipt of copy of this Order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Inspector of Police,
Perundurai Police Station,
Erode

2.The Public Prosecutor,
High Court of Madras.

Cr1.OP.No.1447 of 2020

A.SK(06/11/2020)

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