

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 27.08.2020
CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.4322 of 2020 and
Crl.MP.No.2476 of 2020

1.K.Suresh
2.K.S.Jayaraj
3.S.Yogeshwaran

...Petitioners/Accused 1 to 3

Vs.

1.The State rep by

The Inspector of Police(Team-I),
Central Crime Branch,
Chennai - 600 007
(Crime No.98 of 2018)

...1st Respondent

2.M.Prabhu

...2nd Respondent/Defacto
Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in Crime No.98 of 2018 dated 15.03.2018 pending investigation on the file of the Inspector of Police (Team-I), Central Crime Branch, Chennai and quash the entire proceedings.

For Petitioners : Mr.M.Velmurugan

For Respondents

For R1 : Mr.S.Karthikeyan,

Additional Public Prosecutor

For R2 : Mr.P.Muthukumar

O R D E R

This petition has been filed to quash the FIR in Cr.No.98 of 2018 on the file of the first respondent Police registered for the offences under Sections 408, 477(a) and 120 (b) of IPC.

2. The learned counsel for the petitioners would submit that on the complaint lodged by the second respondent, the first respondent registered case in Cr.No.98 of 2018 for the offences under Sections 408, 477(a) and 120(b) of IPC, in which the petitioners are arrayed as A1 to A3. The second respondent has no authority to lodge any complaint on behalf of the company, namely M/s.Fast Track Private Limited. He further submitted that by the resolution passed in the Board Meeting of the company dated 23.07.2013, one, Mr.C.Ambigapathy, Managing

Director of Company is delegated with the powers to carry out day to day affairs of the company. Therefore, the second respondent is being the Chairman of the company, no locus to lodge any complaint on behalf of the company as against the petitioners. In fact, on the instruction of the Managing Director of the company, the petitioners have acted upon. The Managing Director of the company had written letter dated 03.04.2018 to the Commissioner of Police, Chennai stating that there is a dispute between the Directors of the Company and as such there are some issues in respect of controlling the staffs. Therefore, on the instruction of some Directors, lodged false complaint as against the petitioners and he categorically stated that the petitioners never handled money of the company and also they never accounted the money belong to the company.

2.1 He further submitted that the second respondent also owned more than 200 vehicles in the company and his cabs were attached with and used for service of the M/s.Fast Track Private Limited. As per the instruction of the second respondent, the vehicles owned by the Directors would be given priority for booking and also would be given concession at the rate of 25% on ever trip service. When the said unfair trade practice was questioned by the Managing Director, there was a dispute between the Directors. Therefore, the Managing Director and other two Directors were forced to resign from their Directorship. While being so, only to wreck vengeance as against the persons who questioned the second respondent, he lodged the complaint with false allegation as against the petitioners. Therefore, the petitioners have nothing to do with the complaint and they never falsified any account and they are not the reason for the loss of Rs.2 crores of the company.

3. Per contra, the learned Additional Public Prosecutor submitted that on the complaint lodged by the second respondent, the first respondent registered case in Cr.No.98 of 2018 for the offences under Sections 408, 477(a) and 120(b) of IPC, in which the petitioners are arrayed as A1 to A3. There are specific allegations as against the petitioners and also all the allegations are serious in nature and it has to be investigated further. Now the investigation is pending and they are about to complete the investigation in Cr.No.98 of 2018. He further submitted that now it seems that the Managing Director of the company also involved in the offence conspiring along with the petitioners and the first respondent is about to implead him as an accused. Therefore, he sought for dismissal of the quash petition.

4. Heard Mr.M.Velmurugan, learned counsel for the petitioners, Mr.S.Karthikeyan, Additional Public Prosecutor for the first respondent, and Mr.P.Muthukumar, learned counsel for the second respondent.

5. On the complaint lodged by the second respondent, the first respondent registered case in Cr.No.98 of 2018 for the offences punishable under Sections 408, 477(a) and 120(b) of IPC, in which the petitioners are arrayed as A1 to A3. The second respondent lodged complaint alleging that the petitioners were working as I.T.Head, Admit-Head and IT software team of the defacto complainant company. The defacto complainant company have been running business of cab operation service though out Tamil Nadu, and there are more than 400 vehicles owned by the company and private vehicles have also been attached with the company and also used for their cab service. While being so, the petitioners have been entrusted with day to day affairs of the company. For the service, the company is entitled to receive 8% commission from the vehicle owners from the fair collected from the customers. While being so, during the month of May 2017 to October 2017, the petitioners have conspired together and created bogus car rent payments by manipulating car rents collected from the customers and thereby caused loss to the company to the tune of Rs.2 crores.

6. On careful perusal of the FIR, there are specific allegations as against the petitioners to attract the offences under Sections 408, 477(a), 120(b). That apart, the learned Additional Public Prosecutor submitted that the Managing Director of the company also conspired with the petitioners and they are to about to file final report as against the Managing Director also. Whereas, the learned counsel for the petitioners would submit that the second respondent is being Chairman of the company have no locus to lodge any complaint as against the petitioner. On the basis of the resolution passed by the company, Managing Director alone is the competent person to lodge any complaint. He further submitted that by letter dated 03.04.2018 sent by the Managing Director of the Company stating that there is another dispute between the Directors and as such the petitioners are no way connected with the offence as alleged by the second respondent. It shows the conspiracy between the Managing Director and the petitioners in the crime committed by the petitioners. Though there is another dispute between the Directors, the second respondent is being the Chairman of the company have locus to lodge the complaint as against the petitioners and even as against the Managing Director of the company. Therefore, the points raised by the learned counsel for the petitioners cannot be considered in this quash petition.

7. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in CrI.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."

8. 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, considering the crime is of the year 2018, the first respondent is directed to complete the investigation in Crime No.98 of 2018 and file a final report within a period of eight weeks from the date of receipt of copy of this Order, before the jurisdiction Magistrate, if not already filed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police (Team-I),
Central Crime Branch,
Chennai - 600 007
2. The Public Prosecutor,
High Court of Madras

CRL.O.P.No.4322 of 2020

SVI (CO)
RV (15/10/2020)

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