



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.08.2020

Delivered on : 04.09.2020

CORAM:

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

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CRL OP (MD)No.9022 of 2020  
and  
CrI.M.P. (MD)No.4239 of 2020

P.Senthilkumar

... Petitioner /Accused

Vs.

1.State Rep. by

The Inspector of Police,  
Central Crime Branch,  
Madurai City.

(Crime No.35 of 2020)

... Respondent/Complainant

2.V.S.Mahalingam

... Respondents/De facto  
Complainant

PRAYER: Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records pertaining to the F.I.R. in Crime No.35 of 2020, dated 04.06.2020, registered for the commission of offence under Sections 120-B, 465, 466, 467, 468, 471, 419 and 420 I.P.C. on the file of the Central Crime Branch Police Station, Madurai City and quash the same insofar as the petitioner is concerned.

For Petitioner

: Mr.A.Kalaiselvan

For R1

: Mr.A.P.G.Ohm Chairma Prabhu  
Government Advocate (CrI. side)

### ORDER

This Criminal Original Petition has been filed seeking to call for the records pertaining to the F.I.R. in Crime No.35 of 2020, dated 04.06.2020, registered for the offences punishable under Sections 120-B, 465, 466, 467, 468, 471, 419 and 420 I.P.C. on the file of the first respondent Police and quash the same as against the petitioner herein.

2.The case of the petitioner is that he was arrayed as first accused in Crime No.35 of 2020 on the file of the first respondent Police. While at the time of passing orders in CrI.O.P.(MD) Nos.16995 and 16996 of 2019, dated 20.05.2020, a learned Single Judge of this Court directed the first respondent Police to record a fresh statement from the second respondent - V.S.Mahalingam, who is the de-facto complainant and register an F.I.R. on that basis and



take action as per law. By obeying the said order, the first respondent herein registered a case without following the guidelines stipulated by our Hon'ble Apex Court in **Lalita Kumari Vs. Government of Uttar Pradesh and others [2014 (2) SCC (1)]**. In fact, the first respondent has never been declared as a Police Station under Section 2(s) of the Code of Criminal Procedure. Hence, on that score alone, registration of the F.I.R. against the petitioner is illegal. Further, registering the F.I.R. against the petitioner is not in conformity with Section 154 Cr.P.C. and also the averments found in the First Information Report do not disclose any cognizable offence particularly against the petitioner herein.

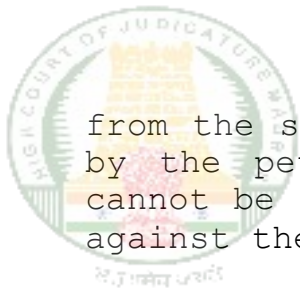
3.Further, the respondent Police has not conducted any preliminary enquiry. If such preliminary enquiry would have been conducted, it would have been revealed the fact that the petitioner is also one of the victims and he purchased a portion of the property viz., 25 cents from the co-owners of the property by his hard earned money through Registered Deed No.8700, dated 03.11.2017, on the file of the Joint Sub-Registrar IV, Madurai (South). Therefore, registering the F.I.R. against the petitioner is an abuse of process of law.

4.Before considering the said submissions with the relevant records, it is necessary and useful to see the averments made in the F.I.R., which required to be quashed against the petitioner.

5.A close reading of the averments found in the First Information Report reveals the fact that by believing the false representation made by one Nagaraj and Sadak Abdullah, the second respondent/de-facto complainant - V.S.Mahalingam paid the portion of agreed sale amount to the accused and consequently, during the course of said transaction, after entering into an unregistered sale agreement dated 07.01.2019 with the second accused - S.Palanikumar, the petitioner herein along with two other accused demanded the second respondent/de-facto complainant to pay Rs.1 Crore for the purpose of cancelling the sale agreement having by one Vijayakumar and also for withdrawing the case filed by one Muniyandi.

6.By way of complying the above said demand, on 11.01.2019 the second respondent/de-facto complainant paid Rs.84,50,000/- and on 18.01.2019, he paid Rs.15,50,000/- to the second accused. Further, the petitioner along with two other accused made impersonation as they are the legal heirs of the original owner and fabricated the partition deed and by showing the same, received Rs.3 Crores. Further, with the help of the Sub-Registrar, they cancelled the release deed, which is also one of the fabricated documents.

7.The above said ingredients found in the First Information Report would clearly reveal the fact that at the time of occurrence, the petitioner and others made impersonation and received the amount



from the second respondent/de-facto complainant. The act committed by the petitioner is nothing but a cognizable offence. So, it cannot be said that the first respondent Police registered the case against the petitioner without any *prima facie* evidence.

8. At this juncture, it is necessary and useful to see the judgment of our Hon'ble Apex Court in the case of **Sau. Kamal Shivaji Pokarnekar Vs. The State of Maharashtra and others [Criminal Appeal No.255 of 2019, dated 12.02.2019]**, wherein it has been held as follows:-

'9. .... 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 Court to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. ....'

9. Further, in **U.P. Pollution Control Board Vs. Dr. Bhupendra Kumar Modi and another** reported in 2009 (2) SCC 147, our Hon'ble Apex Court has held as follows:-

'41. When exercising jurisdiction under Section 482 of the Code, the High Court could not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it the accusation would not be sustained. To put it clear, it is the function of the trial Judge to do so. The Court must be careful to see that its decision in exercise of its power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. If the allegations set out in the complaint do not constitute offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Criminal Procedure Code. However, it is not necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal.'

10. Now, applying the ratio laid down by our Hon'ble Apex Court in the above referred judgments to the case on hand, as already observed, the averments found in the First Information Report constitute a cognizable offence, which means, during the time of occurrence, the petitioner fabricated documents and made inducement towards the second respondent/de-facto complainant to purchase the property, which not belongs to him. Therefore, the truthfulness of the said averment has to be decided only at the time of trial by the learned Trial Judge. Though the powers under Section 482 Cr.P.C. is an inherent power, it should not ordinarily embark upon an enquiry as to reliability of evidence to sustain the allegations. Therefore, I am of the considered opinion that the grounds raised by



the petitioner to quash the F.I.R. do not have any merits. Hence, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Inspector of Police,  
Central Crime Branch,  
Madurai City.

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

+2 CC to M/s.K. PALANIKUMAR, Advocate ( SR-16186[F] dated 08/09/2020 )

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04.09.2020

AP(14/09/2020) 4P 5C