



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **09.12.2020**

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

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CRL.O.P(MD)No.16883 of 2017

and

Cr1.M.P.(MD)No.11125 of 2017

1.K.Ganesh @ Ganesh K.Pandian @
Ganesh Kanaga Pandian

2.K.Arun ...Petitioners/Accused Nos.1 & 2

Vs.

1.The State of Tamil Nadu Rep. by
The Inspector of Police,
Sellur Police Station,
Madurai City. ...1st Respondent / Complainant

2.Seeni Gowthaman

3.S.Pugalenthil ...2nd & 3rd Respondents/Defacto Complainant

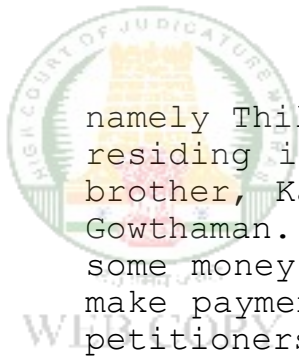
Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records relating to the First Information Report in Crime No.2871 of 2016 registered by the first respondent police and quash the same.

For Petitioners	:	Mr.J.Barathan, Advocate
For R1	:	Mr.K.R.Bharathi Kannan Government Advocate (Cr1. Side)
For R2 & R3	:	Mr.Ajmal Khan Senior Counsel for M/s.Ajmal Associates

O R D E R

This petition has been filed to quash the proceedings in Crime No.2871 of 2016 registered by the first respondent police, as against the petitioners.

2.The case of the prosecution is that the defacto complainant Pugalenthil, S/o.Seenivasan is the brother of one Seeni Gowthaman. The said Seeni Gowthaman had married the sister of the petitioners,



namely Thilagam. The said Seeni Gowthaman and Thilagam Gowthaman are residing in United States of America. The petitioners and another brother, Kannan had borrowed some money from their sister, Thilagam Gowthaman. The petitioners and another brother, Kannan had repaid some money along with interest and thereafter they were not able to make payment. Therefore, at the insistence of Seeni Gowthaman, the petitioners and their brother, Kannan had settled the properties belonging to them in favour of their sister, Thilagam Gowthaman as security for repayment of the borrowed amount. When the petitioners and their brother, Kannan rendered the borrowed amount with interest, the said Seeni Gowthaman and Thilagam Gowthaman refused to return back the properties. It resulted in the petitioners and their brother, Kannan, cancelling the settlement deeds.

3. Thereafter, the sister of the petitioners, Thilagam Gowthaman filed a suit in O.S.No.181 of 2010 on the file of the Fourth Additional District Court, Madurai praying for a decree of declaration that the cancellation of the settlement deeds as null and void and not binding on her. After a decree was passed in favour of Thilagam Gowthaman, an appeal in A.S.(MD)No.95 of 2013 was filed before this Court. On the suggestion of elders and mediators, the entire issue was settled between the petitioners and their brother, Kannan and their sister Thilagam Gowthaman. This Court had recorded the compromise on 02.08.2017 in the presence of the petitioners, their brother Kannan and their sister Thilagam Gowthaman. It was agreed between the parties that the properties are divided among them on the basis of their value taking into account the amount borrowed by the petitioners and Kannan from Thilagam Gowthaman and the repayment made. However, the defacto complainant did not accept the same. Hence, the defacto complainant lodged a complaint as against the petitioners.

4. The learned Counsel appearing for the petitioners would submit that the petitioners are innocent persons and they have not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No.2871 of 2016 for the offences punishable under Sections 120(b), 203, 406, 468 and 420 IPC as against the petitioners. Hence, he prayed to quash the same.

5. The learned Government Advocate (Crl.side) appearing for the first respondent would submit that the investigation is still pending and this petition is in premature stage and hence, he prayed for dismissal of this petition.

6. Heard both sides and perused the materials available on record.

7. It is seen from the First Information Report that there are specific allegations as against the petitioners, which have to be 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.

8.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 Pokarnekhar 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.

6.....
7.....
8.....



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."

9. It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Cr1.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.

10. The learned counsel appearing for the petitioners would submit that the defacto complainant never comes to India and appears
<https://hcservices.ecourts.gov.in/hcservices/>



before the first respondent for investigation. On behalf of the defacto complainant, his brother appeared and submitted so many irrelevant facts and mislead the first respondent.

11.Considering the above submission made by the learned counsel appearing for the petitioner, the defacto complainant namely the second respondent shall appear before the first respondent for investigation purpose and after conducting detailed investigation, the first respondent is directed to file a final report, within a period of twelve weeks from the date of receipt of a copy of this order before the jurisdictional Magistrate.

12.In view of the above, this Court is not inclined to quash the FIR. Accordingly, the Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(AS)

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/ /2021
Sub Assistant Registrar

To

1.The Inspector of Police,
Sellur Police Station,
Madurai City.

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

+1. C.C. to M/S.Ajmal Associate, Advocate SR.No. 24813
+1. C.C. to M/S.T.R.Jeyapalam, Advocate SR.No. 24978

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vsd
JM/18.01.2021/5P/5C