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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 15.09.2021

PRONOUNCED ON: 22.09.2021

CORAM

THE HON'BLE Mr. JUSTICE C.V.KARTHIKEYAN

Crl.O.P.No. 28800 of 2017

And

Crl.M.P.No. 16284 of 2017

1. E.Rukmani
2. E.Gowri Mahesh Kumar
3. K.R.Gowrisanker ... Petitioners/Accused 1 to 3

Vs.

1. State rep. by
Inspector of Police
Central Crime Brancy - Forgery Wing
Chennai. ... Respondent/complainant
2. S.Murugarselvil ...Respondent/Defacto
Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to call for records in Crime No. 365 of 2017 on the file of the first respondent police, quash the same.

For Petitioners : Mr.B.R.Shankaralingam

For 1st Respondent : Mr. E.Raj Thilak
Additional Public Prosecutor
(Crl.Side)

For 2nd Respondent : Mr. P. Ravi Shankar Rao

ORDER

This Criminal Original Petition has been filed by the accused Nos. 1, 2 and 3 in Crime No. 365 of 2017 on the file of the first respondent/Inspector of Police, Central Crime Branch, Forgery Wing, Chennai, to quash the said First Information Report.



2. It must be mentioned that Crime No. 365 of 2017 had been registered on a complaint given by the second respondent/defacto complainant. The first petitioner/A-1 is the mother-in-law of the second respondent/defacto complainant. The second petitioner/A2 is the brother-in-law of the second respondent/defacto complainant. The third petitioner/A3 is the Advocate for the first and second petitioners.

3. A Textile Mill Company named M/s. Kanniamman Cotton Textiles (P) Ltd., was run by the first and second petitioners and also by the husband of the second respondent/defacto complainant. The husband of the second respondent/defacto complainant died a road traffic accident on 25.06.2004. The second respondent/defacto complainant, as legal heir was entitled to the shares which her husband had held in M/s. Kanniamman Cotton Textiles (P) Ltd., and also to the properties, which he was also entitled. Seeking her allotment of the shares for which she claimed entitlement as legal heir of her deceased husband, the defacto complainant filed C.P.No. 61 of 2005 before the Company Law Board at Chennai.

4. The first and second petitioners herein were shown as respondents in that Company Petition. During the proceedings before the Company Law Board, the first and second petitioners produced a will claiming that it had been executed by the late husband of the second respondent/defacto complainant bequeathing the shares which he had in M/s. Kanniamman Cotton Textiles (P) Ltd., to them / the first and second petitioners herein. The defacto complainant thereafter filed an application before the Company Law Board to forward the said Will to the Tamil Nadu Forensic Science Laboratory to test the genuineness of the signature of her husband. A report had been received on 17.04.2009 opining that the Will was a forged document. The first and second petitioners herein filed an appeal in Company Appeal No.12 of 2013. This came up for consideration before a learned Single Judge of this Court, who by an order dated 08.06.2015 had dismissed the Appeal.

5. Claiming that she had been cheated and deprived of the shares of the said Company and also the properties in which she and her son were entitled to as legal representatives of her deceased husband, the second respondent had given a complaint to the first respondent on 28.10.2017. On the basis of the said complaint, First Information Report in Crime No. 365 of 2017 had been registered by the first respondent under Sections 420, 465, 467, 468, 471 and 120(b) IPC against not only the petitioners herein but also against five other accused. This First Information Report is now sought to be quashed by the petitioners/A-1, A-2 and A-3.



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6. Heard Mr. B.R. Shankaralingam, learned counsel for the petitioners, Mr.E.Raj Thilak, learned Additional Public Prosecutor, appearing for the first respondent and Mr.P.Ravi Shankar Rao, learned counsel for the second respondent.

7. It is the contention of Mr. B.R.Shankaralingam, learned counsel for the petitioners that the finding with respect to the Will by the Forensic Department was given in the year 2010. Even much prior to that, the defacto complainant had filed a Civil Suit seeking partition and separate possession, which had been partly decreed and as against the same, both sides had preferred First Appeals which are now pending. It is also pointed out that the defacto complainant had also given a similar complaint on 29.10.2015 and she had also filed Crl.O.P.No. 5750 of 2016 seeking a direction to register a case based on the facts of the said complaint. That petition came up for consideration before a learned Single Judge of this Court and by order dated 16.03.2016, the learned Judge observed that the respondent therein/Inspector of Police, City Crime Branch, Vepery, Chennai, after conducting enquiry had closed the complaint stating that the dispute was civil in nature particularly, since, the civil suit was pending and the Company Appeal No.12 of 2013 was pending. The respondent therein had contended that the genuineness or otherwise of the Will can be examined only after the civil suit was disposed of.

8. It is the contention of the learned counsel for the petitioners that these facts had been suppressed in the complaint. It was also pointed out by the learned counsel that share certificates had been actually handed over to the defacto complainant and acknowledgement receipts in this regard, all dated 31.08.2015 have been filed as documents along with the present petition. The learned counsel therefore contended that nothing further survives in so far as the claim of the second respondent with respect to the shares are concerned.

9. The learned counsel further pointed out that the second respondent had not filed any protest petition questioning closure of her earlier complaint. She had also not preferred any complaint before any competent Judicial Magistrate. The learned counsel therefore urged that the First Information Report in Crime No. 365 of 2017 on the file of the first respondent police should be quashed in so far as the petitioners/A-1, A-2 and A-3 are concerned.

10. Mr.E.Raj Thilak, learned Additional Public Prosecutor contended that there had been a stay granted by this Court from continuing investigation. The first respondent was therefore not able to collect the Will or any other documents for conducting



an enquiry into the allegations made. The learned Additional Public Prosecutor also stated that the offences involved in the instant case included Sections 465, 467, 468 and 471 IPC and pointed out that these offences require detailed investigation to be conducted and the genuinity or otherwise of the Will will have to be independently examined by the Investigating Officer. The learned Additional Public Prosecutor further pointed out that there were five other accused named in the First Information Report and they had not come forward to file any petition seeking quash and even against them investigation had not started in view of the order of the stay granted by this Court. The learned Additional Public Prosecutor pointed out that the offences involved are cognizable in nature and require detailed investigation.

11. Mr. P. Ravi Shankar Rao, learned counsel appearing for the second respondent/defacto complainant stated that the Will had been found to be a forgery in manner known to law by forwarding the same to the Tamil Nadu Forensic Science Laboratory Department at Chennai by a competent Court before whom the Will had been produced by the petitioners herein. A report had been obtained that the Will was a forged one after due examination of the admitted signatures of the late husband of the second respondent. The learned counsel therefore stated that an offence under Sections 465 and 467 are clearly made out and therefore stated that the investigation should be conducted and the final report filed by the first respondent can always be tested during the course of trial. The learned counsel further stated that the earlier complaint was closed only because the Civil suit was pending and the Company Appeal was pending. Now the Civil suit had concluded and Appeals had been filed by both the sides. The Company Appeal had also been dismissed by this Court. It had been found that the Will had been forged and such finding had not been disturbed by any competent Court till this date. With respect to the receipt of share certificates, learned counsel stated that the Will also contained references to properties and therefore the defacto complainant and her son have been deprived of their rightful claims not only to the share but also to the properties. The learned counsel therefore stated that investigation should be proceeded with in the manner known to law by the first respondent.

12. I have carefully considered the arguments advanced and the records available.

13. The husband of the second respondent had died in a road traffic accident on 25.06.2004. There were properties to which he was entitled to. He was also entitled to shares in a Textile Company called M/s. Kanniamman Cotton Textiles (P) Ltd. The



second respondent claimed her lawful rights to the shares and the properties. This was denied by the first and second petitioners herein, who are her mother-in-law and brother-in-law. She therefore filed Company Petition No. 61 of 2005 before the Company Law Board at Chennai. The petitioners herein produced a Will said to have been executed by the late husband of the second respondent/defacto complainant. Suspecting the genuineness of the said Will, the second respondent filed an application before the Company Law Board to examine the signatures of her Late husband by the forensic department. The Will was forwarded to the Tamil Nadu Forensic Science Laboratory. A report was received that the signatures of her late husband had been forged.

14. The Company Law Board therefore passed an order dated 24.10.2013 directing the petitioners herein to transmit the shares as per the law on succession. Questioning that particular order, the first petitioner herein and also the Company had filed Company Appeal No. 12 of 2013 before this Court. A learned Single Judge, by order dated 08.06.2015, after observing all the facts had dismissed the Company Appeal.

15. In the meanwhile, the second respondent had also filed a civil suit in the year 2008 seeking partition of the properties and other assets. That was partly decreed. Appeal preferred by both the sides against the said Judgment are now pending.

16. The second respondent had an occasion to give an earlier complaint which was closed by the respondent therein holding that the dispute was civil in nature. It was contended by the respondent at that time that the genuineness of the Will has to be determined.

17. Now it has been determined. It has been held at least by one competent and lawful authority, namely, Tamil Nadu Forensic Science Laboratory that the Will is a forged one. The Will had been produced by the first and second petitioners herein before the Company Law Board seeking to influence the Judgment of the Company Law Board. Production of a forged document before any judicial authority is an offence. The petitioners will have to necessarily answer that particular charge during the course of trial. Investigation into that particular offence will have to be done. A First Information Report registered on the basis of such a complaint indicating commission of cognizable offences cannot be interfered with. Therefore, I hold that even though the earlier complaint was closed on the ground that the dispute was civil in nature, the present complaint which discloses cognizable offences should not be interfered with.



18. It is the contention of the learned counsel for the petitioners that the complaint was given after about seven years with extraordinary delay. That cannot be a reason to quash a complaint primarily because a competent authority has opined that a particular document, a Will, produced before a judicial authority was a forged document and such an offence, at any point of time, has to be examined and investigated.

19. In (2021) 5 SCC 795 [Skoda Auto Volkswagen (India) Vs. State of Uttar Pradesh and Others], the Hon'ble Supreme Court had held as follows:-

" 40. It is needless to point out that ever since the decision of the Privy Council in King Emperor v. Khwaja Nazir Ahmad [King Emperor v. Khwaja Nazir Ahmad, 1944 SCC OnLine PC 29 : AIR 1945 PC 18] , the law is well settled that the courts would not thwart any investigation. It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the court will not permit an investigation to go on.

41. As cautioned by this Court in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , the power of quashing should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. While examining a complaint, the quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or in the complaint.

42. In S.M. Datta v. State of Gujarat [S.M. Datta v. State of Gujarat, (2001) 7 SCC 659 : 2001 SCC (Cri) 1361 : 2001 SCC (L&S) 1201], this Court again cautioned that criminal proceedings ought not to be scuttled at the initial stage. Quashing of a complaint should rather be an exception and a rarity than an ordinary rule. In S.M. Datta [S.M. Datta v. State of Gujarat, (2001) 7 SCC 659 : 2001 SCC (Cri) 1361 : 2001 SCC (L&S) 1201] , this Court held that if a perusal of the first



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information report leads to disclosure of an offence even broadly, law courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere. "

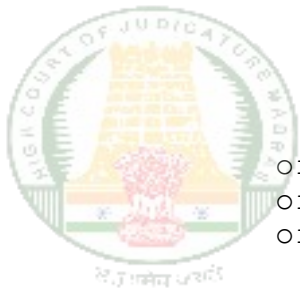
20. In 2021 SCC Online 206 [Priti Saraf and Another Vs. State of NCT of Delhi and Another] , the Hon'ble Supreme Court had held as follows:-

"28. It is thus settled that the exercise of inherent power of the High Court is an extraordinary power which has to be exercised with great care and circumspection before embarking to scrutinise the complaint/FIR/charge-sheet in deciding whether the case is the rarest of rare case, to scuttle the prosecution at its inception."

21. In M/s. Neeharika Infrastructure Pvt. Ltd., Vs. State of Maharashtra and others [2021 SCC Online 315], the Hon'ble Supreme Court had again reiterated that the High Courts should be extremely circumspect had held as follows:-

"23. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

i) Police has the statutory right and duty under the relevant provisions of the Code



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of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;



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xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur Vs. State of Punjab (AIR 1960 SC 866) and State of Haryana Vs. Bhajan Lal, (1992 Supp. (1) SCC 335), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit



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the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.



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xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied."

[Emphasis Supplied]

22. The ratio laid down in all the above Judgments is very clear. The Hon'ble Supreme Court had stated that the Court cannot embark upon an enquiry as to the reliability or genuinity of the complaint or the allegations made in a First Information Report. It was also laid down stated that the power of quashing should be exercised sparingly with circumspection. It has been further stated that the Court has to consider only whether the allegations in the First Information Report disclose commission of cognizable offence or not. The Court does not require to consider on merits whether or not the merits of the allegations make out a cognizable offence.

23. In the instant case, the very allegation that the petitioners herein are alleged to have produced a forged Will to screen away the properties and shares from the second respondent itself shows that the said offence requires to be investigated in manner known to law.

24. This Criminal Original Petition is therefore dismissed. I find no reason to quash the First Information Report in Crime No. 365 of 2017 on the file of the first respondent police. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vsg

To

1.The Inspector of Police,
Central Crime Branch - Forgery Wing,
Chennai.



2.The Public Prosecutor,
High Court, Madras.

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+1cc to Mr.P.Ravi Shankar Rao, Advocate Sr.48641

+1cc to Mr.B.R.Shankaralingam, Advocate Sr.48436

Crl.O.P.No. 28800 of 2017

And

M.P.No. 16284 of 2017

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