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CRL.O.P.(MD)NO.6350 OF 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.11.2021

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

Crl.O.P.(MD)No.6350 of 2021 and

CRL.M.P.(MD)No.3666 of 2021

Sathasivam

... Petitioner / Accused No.1

Vs.

1. State rep. By,
The Inspector of Police,
District Crime Branch,
Virudhunagar.
(Crime No.9 of 2018)

... 1st Respondent / Complainant

2. Gunasekaran

... 2nd Respondent /
Defacto Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records relating to the First Information Report in Crime No.9 of 2018 on the file of the Inspector of Police, District Crime Branch, Virudhunagar and to quash the same as against the petitioner is concerned.

For Petitioner	: Mr.C.Prabakaran
For R-1	: Mr.T.Senthil Kumar, Additional Public Prosecutor.
For R-2	: Ms.S.Mahalakshmi

O R D E R

Heard the learned counsel on either side.

2. This criminal original petition has been filed for quashing the First Information Report in Crime No.9 fo 2018 registered on the file of the Inspector of Police, District Crime Branch, Virudhunagar District, for the offence under Sections 406, 420 and 506(1) of I.P.C.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the memorandum of grounds. He would point out that there was a business transaction between the petitioner and the defacto complainant. According to the defacto complainant, the petitioner owed him a sum of Rs.45,98,450/-. The petitioner had paid a sum of Rs.5,80,000/-. The petitioner had purchased rice from the second respondent. The learned counsel appearing for the petitioner states that the liability on the part of the petitioner to pay the balance amount can only amount to a breach of contract. It is open to the second respondent to file a



civil suit for recovery of the balance amount. According to him, a pure civil case is being converted into a criminal case. He submitted that the very registration of the First Information Report is an abuse of process. He wanted this Court to quash the impugned First Information Report.

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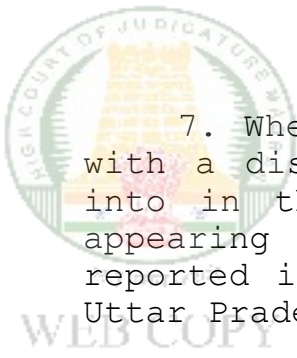
4. Per contra, the learned Additional Public Prosecutor appearing for the first respondent and the learned counsel appearing for the second respondent submitted that the petitioner has not made out a case for quashing the impugned First Information Report.

5. I carefully considered the rival contentions and went through the materials on record.

6. The case of the prosecution is that the petitioner is in the habit of cheating the wholesale vendors like the defacto complainant. It is specifically stated that as many as seven criminal cases are pending against the petitioner. They are as follows:-

Sl. No.	Crime No. / Case No.	Date	Station / Court
1.	3 of 2018	26.02.2018	City Crime Branch, Trichy.
2.	9 of 2018	19.07.2018	District Crime Branch, Virudhunagar.
3.	277 of 2018	31.07.2018	Attaiyampatti police station, Salem District.
4.	C.C.No.949 of 2016	02.11.2018	The Judicial Magistrate Court, Manapparai.
5.	C.C.No.203 of 2018	19.04.2018	The Judicial Magistrate Court, Karur.
6.	C.C.No.212 of 2018	20.04.2018	The Judicial Magistrate Court, Karur.
7.	C.C.No.243 of 2018	20.04.2018	The Judicial Magistrate (FTC) Court, Karur.

Out of them, three cases are under Section 138 of the Negotiable Instruments Act. It is also stated that Non-Bailable Warrant is pending against the petitioner. According to the prosecution, the petitioner would approach a wholesale dealer with an offer to purchase a small quantity of rice and he would make prompt payment. Thereafter, the petitioner would make a bulk purchase from the said wholesale dealer and then vanish without making payment. Quite a few wholesale dealers based in Karur, Salem and Trichy have also been put to loss. According to the prosecution, the petitioner had dealt with the defacto complainant with a dishonest intention from the very outset.



7. Whether the petitioner had dealt with the second respondent with a dishonest intention from the outset or not cannot be gone into in the First Information Report stage. The learned counsel appearing for the second respondent placed reliance on the decision reported in (2021) 4 MLJ (CrL.) 51 (SC) (Kaptan Singh V. State of Uttar Pradesh). In the said decision, it was laid down as follows:-

"9.1. ... If the petition under Section 482 Cr.P.C. was at the stage of FIR in that case the allegations in the FIR/Complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation/inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation. Even at this stage also, as observed and held by this Court in catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial. As held by this Court in the case of Dineshbhai Chandubhai Patel (Supra) V. State of Gujarat (supra) in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the Investigating agency nor can exercise the powers like an Appellate Court. It is further observed and held that question is required to be examined keeping in view, the contents of FIR and *prima facie* material, if any, requiring no proof. At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a situation, it becomes the job of the Investigating Authority at such stage to probe and then of the Court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.

9.2 In the case of Dhruvaram Murlidhar Sonar (Supra) after considering the decisions of this Court in Bhajan Lal (Supra), it is held by this Court that exercise of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule. It is further observed that inherent jurisdiction under Section 482 Cr.P.C. though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in



exercise of powers under Section 482 Cr.P.C. Similar view has been expressed by this Court in the case of Arvind Khanna (Supra), Managipet (Supra) and in the case of XYZ v. State of Gujarat (Supra), referred to hereinabove."

8. I am therefore, not in a position to grant any relief to the petitioner herein. It is not possible for this Court to interfere at the stage of investigation. Leaving open the petitioner's contentions and defences, this criminal original petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PMU

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,
District Crime Branch,
Virudhunagar.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.C. PRABAKARAN, Advocate (SR-34199[F] dated 11/11/2021)

Crl.O.P. (MD)No.6350 of 2021
11.11.2021

TSK(CO)
KB(02.12.2021) 4P 4C