



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.03.2021

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

Crl.OP(MD)No.14794 of 2020 &
Crl.MP(MD)Nos.2694 of 2021 & 7007 of 2020

Gurusamy @ Selvam ... Petitioner/Sole Accused

vs.

1. The Inspector of Police,
Rajapalayam South Police Station,
Virudhunagar District. ...1st Respondent/Complainant
Cr.No.598/2020

2.Manikandan ...2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to quash the First Information Report in Crime No.598 of 2020 on the file of the first respondent police.

For Petitioner :Mr.J.Jeyakumaran
For Respondents :Mr.A.Robinson,
Government Advocate (Criminal Side)
for R1
Mr.Thiruvadi Kumar
for R2

O R D E R

The present petition is filed seeking to quash the First Information Report in Crime No.598 of 2020 of Rajapalayam South Police Station, Virudhunagar District.

2. The case of the prosecution is that the defacto complainant is a salesman in CNB Diamonds Private Limited, Mayiladuthurai and he supplied gold jewels to New Vetrivel Jewellers, Rajapalayam, Virudhunagar District. The petitioner / accused is the owner of New Vetrivel Jewellers, Rajapalayam and he did not make the payment for the purchase of jewels to the defacto complainant and when the latter requested the former to pay the amounts due to him, the former threatened the latter with dire consequences. On the basis of the complaint lodged by the defacto

complainant, the Inspector of Police, Rajapalayam South Police



Station, Virudhunagar District registered First Information Report in Crime No.589 of 2020 of Rajapalayam South Police Station, Virudhunagar District. Now the present petition is filed to quash the First Information Report on the following grounds.

(i) The petitioner has not committed offences, much less the offences punishable under Section 420 of the Indian Penal Code.

(ii) The entire allegations found in the First Information Report is a clear abuse of process of law.

(iii) No offence under Section 420 of the Indian Penal Code is made out.

3. Mr.J.Jeyakumaran, learned counsel appearing for the petitioner relied on the decision in Binod Kumar vs. State of Bihar reported in (2015) 1 SCC (Cri) 203 and contended that when there is a civil remedy available to the parties, they cannot abuse the process of law by filing a Criminal complaint. The specific contention of the learned counsel appearing for the petitioner is that subsequently, the defacto complainant obtained an agreement of sale in respect of the petitioner's property for the payment of balance amount due to the defacto complainant and the same has been suppressed in the First Information Report. He also relied on the decision in Prof.R.K.Vijayasathya and another vs. Sudha Seetharam and another reported in 2019 (1) MWN (Cr.) 204 (SC), wherein, it is held thus.

"27. The learned Senior Counsel for the appellant contended that the actions of the first respondent constitute an abuse of process of the court. It is contended that the present dispute is of a civil nature and the first respondent has attempted to cloak it with a criminal flavour to harass the aged appellants. It is also contended that there is an undue delay in filing the complaint from which the present appeal arises, and this demonstrates the mala fide intention of the first respondent in filing the complaint against the appellants. The learned Senior Counsel for the appellants relied on the decision of this Court in State of Karnataka v. L. Muniswamy [(1977) 2 SCC 699 : 1977 SCC (Cri) 404] . In that case, the prosecution alleged that eight of the accused had conspired to kill the complainant. The Karnataka High Court quashed [L. Muniswamy v. State of Karnataka, 1975 SCC OnLine Kar 137 : (1976) 1 Kant LJ 84] the proceedings on the ground that no sufficient ground was made out against the accused. A three-Judge Bench of this Court dismissed the appeal by the State with the following observations:



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"7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice."

28. The jurisdiction under Section 482 of the Code of Criminal Procedure has to be exercised with care. In the exercise of its jurisdiction, a High Court can examine whether a matter which is essentially of a civil nature has been given a cloak of a criminal offence. Where the ingredients required to constitute a criminal offence are not made out from a bare reading of the complaint, the continuation of the criminal proceeding will constitute an abuse of the process of the court."

4. Per contra, Mr.Thiruvadi Kumar, learned counsel appearing for the second respondent / defacto complainant contended that the petitioner is the accused in two criminal cases of similar nature and that anticipatory bail petitions filed by the petitioner were dismissed by this court. He also drew the attention of this Court to the Section 415 of the Indian Penal Code and referred the illustration "f", and contended that this is a clear case of cheating and therefore Section 420 of the Indian Penal Code would be attracted as far as the present case is concerned.

5. Mr.A.Robinson, learned Government Advocate (Criminal Side) contended that the First Information Report clearly reveals certain cognizable offences and therefore the police have rightly registered First Information Report against the present petitioner. He also relied on the decision in Skoda Auto Volkswagen India Private Limited vs. State of Uttar Pradesh and others reported in 2020 SCC OnLine SC 958, wherein, it is held



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"It is needless to point out that ever since the decision of the Privy Council in *King Emperor vs. Khwaja Nazir Ahmed*, the law is well settled that 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. As cautioned by this Court in *State of Haryana vs. Bhajan Lal*, 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. In *S.M. Datta vs. State of Gujarat*, 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 (supra)*, this Court held that if a perusal of the first 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."

6. A perusal of the First Information Report clearly spelt out cognizable offence and therefore, the Inspector of Police, Rajapalayam South Police Station, Virudhunagar District cannot be found fault with for registering First Information Report against the present petitioner. The investigation is also at initial stage. In the decision in *Skoda Auto Volkswagen India Private Limited vs. State of Uttar Pradesh and others (cited supra)*, it has been clearly held that Courts should not embark upon an enquiry as to the reliability, genuineness and otherwise of the allegations made in the First Information Report or in the complaint and that Criminal proceedings ought not to be scuttled in the initial stage. In the instant case, the investigation has not yet commenced and immediately after registration of the First Information Report, the present petition is filed by the petitioner and an order of interim stay has also been granted by this Court. In the circumstances, I do not see any reason to quash the First Information Report. Accordingly, this Criminal

<https://hccs.mca.gov.in/Portals/0>



granted by this Court is vacated.
Miscellaneous Petitions are closed.

Consequently, the connected

Sd/-

Assistant Registrar ()

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// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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,
Rajapalayam South Police Station,
Virudhunagar District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.A.THIRUVADI KUMAR, Advocate (SR-14952[F] dated
31/03/2021)

Crl.OP(MD)No.14794 of 2020 &
Crl.MP(MD)Nos.2694 of 2021
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VB (29/04/2021) 5P / 4C