



Crl.O.P. No.2032 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

Crl. O.P. No.2032 of 2021

and Crl.M.P. Nos.1127 & 1128 of 2021

Anand Surana

.. Petitioner

Versus

1. State rep. by the Inspector of Police,
CCB Police, Team XVI,
Vepery, Chennai – 600 007.

2. A.H.Shaik Alavudeen

... Respondents

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records pertaining to C.C. No.5074 of 2014 on the file of the Chief Metropolitan Magistrate, Egmore, Chennai and quash the same as illegal, incompetent and without jurisdiction by allowing the present Criminal Original Petition.

For Petitioner : Mr. R.Thiagarajan

For Respondent 1 : Mr. A.Damodaran

Additional Public Prosecutor

2 : Mr. Y.Mohamed Ghouse

ORDER



CrI.O.P. No.2032 of 2021

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This Criminal Original Petition has been filed to call for the records relating to C.C. No.5074 of 2014 on the file of the Chief Metropolitan Magistrate, Egmore, Chennai and quash the same as illegal.

2. The petitioner is the first accused against whom and two other accused, a case has been registered in Cr.No.105 of 2014 by the first respondent / Inspector of Police, CCB Police, Team XVI, Vepery, on the complaint given by the second respondent / *de facto* complainant.

3. The case of the prosecution is that the father of the *de facto* complainant one A.M.Haja Mohideen and his brother Anwaruddin have purchased a property situated at Door No.12-A & 12-B, Parasu Pillai Street, Kilpauk, Chennai in the year 1970 from one Suseela; the father of the *de facto* complainant died in the year 1996; the petitioner's paternal uncle Anwaruddin is a resident of Singapore and he is doing business there and hence the subject property was maintained by the *de facto* complainant; since the *de facto* complainant was in need of money during the year 2002, he wanted to mortgage the above said property; in order to help him in raising money by mortgaging the subject property, the *de facto* complainant got introduced



CrI.O.P. No.2032 of 2021

himself to one Murugadas who is the second accused herein; the said Murugadas assured the *de facto* complainant that he would get money from the first accused / the petitioner, if a mortgage deed is executed in respect of the subject property; the *de facto* complainant went along with Murugadas to the office of the petitioner and the petitioner asked him to come after two days in order to receive a sum of Rs.2,00,000/-; after two days, Murugadas and the *de facto* complainant went to the Sub Registrar Office, Periamet where the *de facto* complainant was asked to sign in many documents and the *de facto* complainant had also handed over the original title deeds of the subject property to the first and second accused and he was also asked to sign in a typed stamp paper and thereafter he received a sum of Rs.2,00,000/- from the first accused; after a few months, the men of the first accused came and threatened that the *de facto* complainant should execute the sale deed in respect of the said property in favour of the first accused / the petitioner; however, the *de facto* complainant refused to execute the sale deed; later the *de facto* complainant has let out the property to one Kishan for rent and the said Kishan used to pay rent to the *de facto* complainant; while that being so, during the month of April, 2005, the henchman of the first accused came to Tiruvarur and abducted the *de facto* complainant in a car and they kept him in



Crl.O.P. No.2032 of 2021

Malliga Lodge, Mount Road, Chennai and the first accused threatened the *de facto* complainant to execute the sale deed in accordance with the sale agreement; when the *de facto* complainant refused to execute a sale deed, the first accused threatened the *de facto* complainant that he could not return to his place unless he executed the sale deed in his favour; frightened by the threat caused to him, the *de facto* complainant went to the Sub Registrar Office; there he saw his paternal uncle Anwaruddin was impersonated by some other person and they managed to execute the sale deed in respect of the subject property by using an impersonator along with the *de facto* complainant; the amount, as stated in the sale deed, was not paid to the *de facto* complainant; when the *de facto* complainant came to collect rent from his tenant Kishan, he came to know that the first accused and his henchman had threatened Kishan to vacate the premises and damaged his goods; in this regard, the *de facto* complainant had given a complaint to the Commissioner of Police, but no action has been taken; thereafter, he filed a petition in Crl.O.P. No.22432 / 2011 and got a direction to register the FIR.

3.2 On the basis of the above complaint, a case was registered by CCB



CrI.O.P. No.2032 of 2021

police in Cr. No.105/2014 for the offences under Section 419, 420 r/w.34 IPC and 506(i) IPC; after completing the investigation, charge sheet has been filed has been laid against the accused 1 to 3 for the offences under Section 120B, 420, 465, 467, 468 & 471 IPC and it has been taken on file in C.C. No.5074 of 2020. Now the petitioner who is the first accused had filed the present petition to quash the proceedings in C.C. No.5074 of 2020.

4. Heard Mr.R.Thiagarajan, learned counsel appearing for the petitioner, Mr.A.Damodaran, learned Additional Public Prosecutor appearing for the first respondent and Mr.Y.Mohamed Ghouse, learned counsel appearing for the second respondent and perused the materials available on record.

5. The learned counsel for the petitioner submitted that the case itself has been registered without any *prima facie* evidence and the criminal proceedings initiated against the petitioner / first accused is a sheer abuse of process of law; the respondent police had deliberately failed to conduct preliminary enquiry to scrutinise the background of the complaint and refer the matter as a civil dispute; in respect of the very same subject matter, a case in C.S. No.521/2011, subsequently transferred to City Civil Court, Chennai due to change of



Crl.O.P. No.2032 of 2021

jurisdiction, and renumbered as O.S. No.6996 of 2012 on the file of XV Assistant City Civil Court, Chennai) has also been filed and pending; the second respondent / *de facto* complainant had given a criminal colour to a civil dispute and he had taken the short cut method to achieve his intention by filing a criminal complaint; when there is a Civil Suit pending in respect of the subject matter, initiating criminal proceedings is non-est in law; the second respondent / *de facto* complainant had set up a person by name Kishan and filed a collusive suit for injunction in O.S. No.13542/2010 on the file of the XV Assistant City Civil Court, Chennai, as though the said Kishan was the tenant of the second respondent; the second respondent and Kishan colluded together and got a collusive *ex parte* decree on 15.07.2011; later the petitioner got impleaded himself in the collusive suit preferred by Kishan and that was renumbered in O.S. No.6996/2012 and the said suit was dismissed on 23.01.2017; the intention of the second respondent is to achieve something which he could not achieve by initiating civil proceedings; there are no support materials produced to substantiate the charges against the petitioner and hence the proceedings are liable to be quashed as against the petitioner.

6. In support of the above submissions, the learned counsel for the



CrI.O.P. No.2032 of 2021

petitioner relied on the following judgments of the Hon'ble Supreme Court:

i) Rajeshbhai Muljibhai Patel and Others Vs. State of Gujarat and another reported in ***(2020) 3 Supreme Court Cases 794.***

ii) State of Haryana and Others Vs. Bhajan Lal and Others reported in ***1992 Supp (1) Supreme Court Cases 335.***

iii) Priyanka Srivastava and Another Vs. State of U.P. And Others reported in ***2015 (3) MWN (Cr.) 171.***

iv) Babu Venkatesh and Others Vs. State of Karnataka and Others reported in ***2022 (5) SCC 639.***

7. The learned Additional Public Prosecutor appearing for the first respondent submitted that the petitioner had impersonated someone in respect of Anwaruddin and got the sale deed executed on 07.02.2005 by threatening and coercing the *de facto* complainant; enough materials are produced to show that the payments were not made by the petitioner; as per the recitals cited in the sale deed dated 07.02.2005, the paternal uncle of the *de facto* complainant had also executed another sale deed on 12.09.2005 in favour of the petitioner herein in order to rectify the earlier sale deed dated 07.02.2005, when his



CrI.O.P. No.2032 of 2021

signature was forged; the materials are sufficient enough to prove the charges against the accused and hence the petition should be dismissed.

8. The property situated in door No.12-A and 12-B of Parasu Pillai Street, Kilpauk, Chennai, measuring an extent of 1582 sq.ft., in plot 8-B and 480 sq.ft. for plot 10-B, totalling to an extent of 2062 sq.ft. in R.S. No.137 in Egmore is the subject matter involved in this case. The fact that the said property along with other properties have been purchased by the father of the *de facto* complainant A.M.Haja Mohideen and his paternal uncle A.M.Anwaruddin by virtue of a sale deed dated 19.10.1970 is not disputed. The paternal uncle of the *de facto* complainant A.M.Anwaruddin is the resident of Singapore and conducting his business there. After the death of the father of the *de facto* complainant namely A.M.Haja Mohideen, half share was inherited by the wife and children of A.M.Haja Mohideen. The wife, two daughters and two sons of late A.M.Haja Mohideen have executed a registered power of attorney on 20.05.2002 in favour of the second respondent namely A.H.Shaik Alauddin for negotiating the property for sale with any prospective purchaser, to receive advance, to execute sale agreement and sale deed, receive sale consideration, present the document for registration, admit execution of



Crl.O.P. No.2032 of 2021

the sale deed in the office of the Sub Registrar and sign documents, and thereafter sign the documents for mutation of revenue records in the name of the purchaser, deliver possession and to maintain accounts for the same. The power document is a registered power document dated 20.05.2002 in document No.67/2002 in Book No.4 of Koothanallur Sub Registrar Office.

9. The *de facto* complainant in whose favour the power was executed is also one of the sons of late A.M.Haja Mohideen. It is to be noted that the very purpose of executing the general power of attorney itself is for the purpose of selling the subject matter in favour of a prospective purchaser. In the power of attorney document, the title of the Power of Attorney has been originally given as “*Special Power of Attorney for Execution Agreement and Sale Deed*”. But the word 'Special' has been struck off in ink and overwritten as 'General'. Even by such conscious correction made by someone, the nature of the power of attorney document did not get changed from '*Special Power of Attorney for Execution of Agreement and Sale Deed*' to '*General Power of Attorney*'.

10. The recitals of the power of attorney document would show its



Crl.O.P. No.2032 of 2021

purpose beyond doubt. The power has been given only for the purpose of selling the property and not for anything else. So, there is no foundation for the allegation that the *de facto* complainant had executed a mortgage deed in his capacity as the power agent for others and for himself in favour of the petitioner after obtaining a loan of Rs.2,00,000/- from him. The power of attorney does not authorise the *de facto* complainant to receive any loan and execute the mortgage deed in favour of anyone. So in all probabilities the advance amount of Rs.2,00,000/- had been received by the *de facto* complainant as the sale advance for selling the property to the petitioner and in pursuance thereof he had executed a sale agreement.

11. Had the respondent police scrutinised the power of attorney and enquired about the corrections made in the copies, the case would have been closed at the threshold itself. Since the records indicates the transaction of sale agreement between the petitioner and the *de facto* complainant before execution of the sale deed dated 07.02.2005, there is no necessity to kidnap the second respondent and threaten him to execute the sale deed. In view of the explicit object stated in the power of attorney, the one and only document which could have been executed by the *de facto* complainant was a sale



agreement and not the mortgage deed.

12. The next allegation of the second respondent is that on the date when the sale deed dated 07.02.2005 was executed, the petitioner had arranged some impersonator to act like his paternal uncle Anwaruddin and the said third party had forged the signature of Anwaruddin in the sale deed executed in favour of the petitioner. If a third person is brought in the place of *de facto* complainant's paternal uncle Anwaruddin, he could have told the petitioner that he is not Anwaruddin. Since Anwaruddin is the paternal uncle of the defacto complainant his identity is well known to the *de facto* complainant. It is difficult to believe that the purchaser had brought some third party to impersonate Anwaruddin. Because being a purchaser he would have known very well that except the real owner Anwaruddin, no other person can pass an effective title in respect of the half of the property. After coming to know about the malpractice, Anwaruddin himself had executed another sale deed 12.09.2005 in order to pass effective title in favour of the petitioner. Had the petitioner involved in impersonation, Anwaruddin would have given a complaint against the petitioner and would not have executed the sale deed on 12.09.2005.



CrI.O.P. No.2032 of 2021

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13. So the conduct of the A.M.Anwaruddin would show that the other party to the sale deed, namely the defacto compliant could have involved in impersonation and made the petitioner to believe that the person brought by him was his paternal uncle Anwaruddin. For reasons best known to Anwaruddin he had not chosen to give a criminal complaint. Neither the petitioner had given a criminal complaint that someone had forged the signature of Anwaruddin in executing a sale deed in his favour. This is probably because of his complacency of getting the subsequent sale deed executed by the real owner Anwaruddin and thereby perfecting his title. Had the petitioner impersonated someone for Anwaruddin and gets forged signature in the sale deed, the risk of getting the imperfect title will only affect the petitioner and not the defacto complainant.

14. However, the *de facto* complaint took advantage of failure on the part of Anwaruddin and the petitioner and gave a complaint by stating that the petitioner had impersonated and forged the sale deed. Without enquiring Anwaruddin the charge sheet has been filed against the petitioner. Even in the charge sheet Anwaruddin is not cited as a witness. Anwaruddin was not



CrI.O.P. No.2032 of 2021

enquired for the reasons best known to the respondent police.

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15. The learned Additional Public Prosecutor had vehemently argued that if someone had committed forgery and thereafter rectifies it, the same will not absolve the criminal liability for committing the offence of forgery. Though the principle stated by the learned Additional Public Prosecutor is correct, the application of the principle against the petitioner is improper, for the very reason that the crime of impersonation should have been committed by the *de facto* complainant himself. This is more so, because of the false statements with which he had given the complaint. The falsity of the complaint is writ large from his allegation that he had only executed the mortgage deed and not a sale agreement in favour of the petitioner. Because the special power given by the *de facto* complainant by his mother and other siblings was just to execute sale agreement and sale deed and not to execute the mortgage deed.

16. It is a classic case where the victim has been made as an accused and the accused had assumed the role of the complainant. No explanation is available as to why the key witness Anwaruddin was not enquired and cited as



Crl.O.P. No.2032 of 2021

a witness or why Anwaruddin has not chosen to lodge any complaint against the forgery and impersonation committed. The impersonator who had forged the signature of Anwaruddin in the sale deed was neither shown as an accused and nor arrested. Had an important witness namely Anwaruddin been examined, the role played by the *de facto* complainant in all these incidents could have been come to light.

17. On the face of it, the allegations of the complaint shows the improbabilities and falsity in the case of the prosecution as against the petitioner. Most importantly the person who was brought to the Sub Registrar Office on 07.02.2005 by representing himself as Anwaruddin was not secured. Without the statement of the impersonator and the statement of the Anwaruddin charge sheet has been filed against the petitioner, who is a purchaser. This is an appropriate case where a serious preliminary enquiry ought to have been conducted in accordance with the guidelines given in the judgment of the Supreme Court held in ***Lalita Kumari Vs. Government of Uttar Pradesh and others*** reported in ***[2014 (2) SCC (1)]***.

18. The *de facto* complainant has further alleged that the entire sale



Crl.O.P. No.2032 of 2021

consideration as seen in sale deed dated 07.02.2005 was not received by him.

Since he had executed a sale deed in favour of the purchaser by accepting the payments, it is the burden of the *de facto* complainant to prove the same in the civil suit filed by him against the petitioner. It is a matter which is civil in nature.

19. In fact, the respondent police did not immediately register the FIR on the complaint given by the *de facto* complainant. He had filed Crl.O.P. No.22432 / 2011 for seeking direction to register the complaint. In the said order it is stated that since there are allegations of land grabbing, the matter is ordered to be transferred to Anti-Land Grabbing Wing for further investigation and to file a fresh complaint if any. Subsequently, the petitioner had filed a complaint before the land grabbing cell on 30.01.2012 on the very same allegations. In another Criminal Original Petition filed by the second respondent in Crl.O.P. No.25388 of 2014, an order has been passed on 23.09.2014 to complete the investigation within a period of six months. So the delay on the part of the respondent police in not registering the complaint dated 10.08.2011 at the first instance itself, would show that the respondent police did not intend to register the FIR against the petitioner and only after the



Crl.O.P. No.2032 of 2021

petitioner got a direction to transfer the enquiry to Anti-Land Grabbing Unit, the FIR got registered.

20. Instead of making delay and thereby enabling the *de facto* complainant to file the proceedings seeking directions, the respondent police could have finished their preliminary enquiry in the first complaint dated 10.08.2011 itself and briefed the Court about the real facts during the proceedings of Crl.O.P. No.22432/2011. The orders of the court on the face of it would show that the Court did not advert into the allegations made in the complaint.

21. For the occurrence alleged to have been taken in the year 2005. the *de facto* complainant had chosen to give the criminal complaint in the year 2011. Though the delay cannot be the only reason to quash the proceedings, the inordinate delay coupled with other factors cannot be omitted to be taken note of.

22. The *de facto* complainant has stated in the complaint that he came to know about the threat given to the alleged tenant when he inspected the go-down premises in the year 2011 and thereafter he had given the complaint. A



CrI.O.P. No.2032 of 2021

suit has been filed by one Kishan in O.S. No.13542/2010 against the defacto complainant for injunction and the same was decreed *ex parte* on 15.07.2011.

In the said suit, the petitioner was not added as a party, In the statement given of Kishan, he has stated that on 20.11.2010 when he went to the go-down, he saw the doors broken and goods stolen. Since he did not know who had committed the theft, he had filed a suit against the landlord/*de facto* complainant in O.S.No. 13542/2010. It is unnatural for a tenant to doubt and presume that his landlord alone had broken the door and stolen his goods and file a suit against him.

23. The reason for such an unusual conduct of Kishan is patent that he wanted to make-believe cause of action for filing the suit against the defacto-complainant and get an *ex parte* decree behind the petitioner, by colluding with the de-facto complainant. The petitioner who impleaded himself as a party in the suit subsequently and contested the same. Thereafter, the suit got dismissed on 23.01.2017. Kishan did not file an appeal challenging the same.

24. Another civil suit in C.S. No.521 of 2011 was filed by the *de facto*



CrI.O.P. No.2032 of 2021

complainant and others against the petitioner to declare that the sale deed dated 07.02.2005 as null and void and for partition and for partition of the same subject matter. The vendors who have already sold the property in favour of the petitioner had filed a suit for partition and to declare the sale deed as null and void.

25. In the list of witnesses C.W.1 is the complainant, C.W.2 is a witness who had signed the sale deed dated 07.02.2005, C.W.3 is Kishan who had filed collusive suit with the second respondent, C.W.4 is the Bank Manager who had spoken about the statement of account for the period from 01.11.2002 to 30.11.2002, C.W.5 to C.W.7 are the Sub Registrar / staff of Sub Registrar Office, Periamet, who have furnished the relevant documents to the Police, C.W.8 and C.W.9 are the Investigation Officers who had conducted investigation and filed the charge sheet. Except C.W.1 to 3, no private witnesses were available to substantiate the charges levelled against the petitioner.

26. The unreliability of the complaint and the statement of C.W.1 and



CrI.O.P. No.2032 of 2021

C.W.3 has been discussed at length already. C.W.2 is a witness who had signed as a witness on behalf of the petitioner in the sale deed dated 05.04.2005 and his evidence alone will not in any way be helpful to substantiate the charges against the petitioner.

27. In fine, the materials available on record do not make out any case or substantiate any charges against the petitioner. With these materials, if the defacto complainant and other accused are subjected to trial, that would only waste the time of Court and no useful purpose will be served. In this regard, it is relevant to cite the much quoted Supreme Court judgment of ***State of Haryana and others Vs. Bhajan Lal and Others*** reported in ***1992 Supp (1) Supreme Court Cases 335***. The relevant portion of the said judgment is extracted hereunder:

“

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.



CrI.O.P. No.2032 of 2021

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(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the Institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge”.



Crl.O.P. No.2032 of 2021

WEB COPY

28. In the case in hand, a person who was appointed as power of attorney through a special power of attorney for selling the property, had given an unbelievable complaint that he had only executed a mortgage deed in favour of the purchaser. The above allegations on the face of it is absurd and unbelievable. The *de facto* complainant who is the brother's son of Anwaruddin had seen the person impersonated and he knew that was not his paternal uncle Anwaruddin. Despite that he had quietly signed the sale deed in favour of the petitioner, along with fake person represented himself as Anwaruddin. The aggrieved namely Anwaruddin himself had come down to Chennai and executed a sale deed in favour of the petitioner in rectification of the malpractice occurred. And he also did not give any complaint for impersonating him. The above conduct of Anwaruddin would only show that he did not want to precipitate the matter by giving a criminal complaint. Because that will have its repercussion against his brother's son, who is the *de facto* complainant.

29. As stated already a suit has been filed in C.S. No. 521 of 2011 for getting a relief of declaration that the sale deed dated 07.02.2005 is null and



Crl.O.P. No.2032 of 2021

void and partition. Hence it is up to the *de facto* complainant and other plaintiffs to prove before the Court that the sale consideration was not passed to even though the *de facto* complainant had executed the registered sale deed dated 07.02.2005 in favour of the petitioner.

30. The strange conduct of the defacto complainant and the materials available on record do not have the strength to prompt a prudent person to believe case of the prosecution. There are sufficient grounds for proceeding a criminal case of this nature against the petitioner and others.

30. In this regard it is relevant to refer the judgment of the Supreme Court held in *Priyanka Srivastava and Another Vs. State of Uttar Pradesh and others* reported in **2015 (3) MWN (Cr.)171**, the Supreme Court has made a reference about the case of *Lalita Kumari Vs. Govt. of U.P. (2014 (2) SCC 1)* and held as under:

“23. At this stage, we may usefully refer to what the Constitution Bench has to say in Lalita Kumari v. Govt. of U.P., 2013 (3) MWN (Cr.) 321 (SC): 2014 (2) SCC 1, in this regard. The Larger Bench had posed the following two questions:

i) Whether the immediate non-registration of FIR leads to scope for manipulation by the Police which affects the right of the victim/



Crl.O.P. No.2032 of 2021

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complainant to have a Complaint immediately investigated upon allegations being made; and

(ii) Whether in cases where the Complaint/information does not clearly disclose the commission of a cognizable offence but the FIR is compulsorily registered then does it infringe the rights of an Accused.

Answering the questions posed, the Larger Bench opined thus:

'49. Consequently, the condition that is sine qua non for recording an FIR under Section 154 of the Code is that there must be information and that information must disclose a cognizable offence. If any information disclosing a cognizable offence is led before an officer in charge of the Police Station satisfying the requirement of Section 154(1), the said Police Officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information. The provision of Section 154 of the Code is mandatory and the officer concerned is duty-bound to register the case on the basis of information disclosing a cognizable [pic] offence. Thus, the plain words of Section 154(1) of the Code have to be given their literal meaning.

....

72. It is, thus, unequivocally clear that registration of FIR is mandatory and also that it is to be recorded in the FIR book by giving a unique annual number to each FIR to enable strict tracking of each and every registered FIR by the superior Police Officers as well as by the Competent Court to which copies of each FIR are required to be sent. 'Information'

....

111. The Code gives power to the Police to close a matter both before and after investigation. A Police Officer can foreclose an FIR before an investigation under Section 157 of the Code, if it appears to him that there is no sufficient ground to investigate the same. The section itself states that a Police Officer can start investigation when he has 'reason to suspect the commission of an offence'. Therefore, the requirements of launching an investigation under Section 157 of the Code are higher than the requirement under Section 154 of the Code. The Police Officer can also, in a given case, investigate the matter and then file a Final Report under Section 173 of the Code seeking closure of the matter. Therefore, the



Crl.O.P. No.2032 of 2021

Police is not liable to launch an investigation in every FIR which is mandatorily registered on receiving information relating to commission of a cognizable offence.

....

115. Although, we, in unequivocal terms, hold that Section 154 of the Code postulates the mandatory registration of FIRS on receipt of all cognizable offences, yet, there may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of time. One such instance is in the case of allegations relating to medical negligence on the part of Doctors. It will be unfair and inequitable to prosecute a medical professional only on the basis of the allegations in the Complaint.'

After so stating the constitution Bench proceeded to state that where a preliminary enquiry is necessary, it is not for the purpose for verification or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence. After laying down so, the larger Bench proceeded to state:

'120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases, where there is abnormal delay/laches in initiating Criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the Accused and the Complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry. '

We have referred to the aforesaid pronouncement for the purpose that on certain circumstances the police is also required to hold a preliminary



CrI.O.P. No.2032 of 2021

enquiry whether any cognizable offence is made out or not.”

32. It has been stated already that the *de facto* complainant had filed a civil suit in C.S. No.521 of 2011 on 01.08.2011. However, he also tried to paint a criminal colour to a civil dispute. In such circumstances, the High Court is expected to invoke its power under 482 Cr.P.C in order to prevent abuse of the process of the court and to secure the ends of justice. In this regard it is relevant to cite the judgment of Supreme Court in ***Parbatbhai Aahir Vs. State of Gujarat [AIR 2017 SC 4843]***. In the said case, it is held as under:-

"15. The Broad Principles which emerge from the precedents on the subject, may be summarised in the following propositions:-

(i) Section 482 Cr.P.C preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inherent in the High Court.

(ii) The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.



Crl.O.P. No.2032 of 2021

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(iv) *While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.*

(v) *the decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulate.*

(vi) *In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.*

(vii) *As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned.*

(viii) *Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.*

(ix) *In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and*

(x) *There is yet an exception to the principle set out in Propositions (viii) and (ix) above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."*



CrI.O.P. No.2032 of 2021

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33. In the instant case, the materials only show the improbabilities of the case registered against the petitioner in every angle, Hence,I feel it is appropriate to quash the proceedings to secure the ends of justice.

34. In the result, the Criminal Original Petition is allowed and the proceedings in C.C. No.5074 of 2020 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai, is quashed in entirety. Consequently, connected miscellaneous petitions are closed.

11.11.2022

Index: Yes

Speaking order

Bkn



Crl.O.P. No.2032 of 2021

To:

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1. The Inspector of Police,
CCB Police, Team XVI,
Vepery, Chennai – 600 007.
2. The Chief Metropolitan Magistrate, Egmore, Chennai.
3. The Public Prosecutor,
High Court of Madras.



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CrI.O.P. No.2032 of 2021

R.N.MANJULA, J.,

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Pre-delivery order made in
CrI. O.P. No.2032 of 2021

11.11.2022