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Crl.OP.Nos.5224 of 2022, etc batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2022

CORAM:

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

CRL.O.P.Nos.5224, 11196, 14225 of 2022 & 15127, 22359 of 2021
and WP.No.25209 of 2022 and CrI.MP.Nos.2828, 6419, 7791 of 2022, 8254 of
2021 & WMP.Nos.24153 & 24154 of 2022

Crl.OP.No.5224 of 2022

1.K.Tarun Krishna Prasad
2.K.Srinivasa Rao

... Petitioners/A1 & 2

Vs.

1.The State, rep. by the Inspector of Police,
Crime Branch CID,
Metro Wing, Egmore,
Chennai 600 008
2.R.Rajesh

... Respondents

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records in crime No.4 of 2021 under Sections 147, 323, 347, 384, 420 of IPC pending investigation on the file of the first respondent police and to quash the same.

For Petitioners : Mr.C.Emalias
for Mr.P.Srinivasan

For Respondents

For R1 : Mr.E.Raj Thilak,
Additional Public Prosecutor
For R2 : Mr.K.Balasubramaniam



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Crl.OP.No.11196 of 2022

Sivakumar

... Petitioner/A5

Vs.

1.State

Represented by
Inspector of Police,
Crime Branch CID,
Metro Wing, Egmore,
Chennai 600 008
(crime No.4 of 2021)

2.M.Rajesh

... Respondents

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records in crime No.4 of 2021 on the file of CBCID – HQRS, Metro – Chennai and to quash the FIR in crime No.4 of 2021 on the file of CBCID – HQRS, Metro – Chennai against the petitioner/A5.

For Petitioner : Mr.M.Velmurugan
for Mr.A.Kalaivanan

For Respondents

For R1 : Mr.E.Raj Thilak,
Additional Public Prosecutor

For R2 : Mr.K.Balasubramaniam

Crl.OP.No.14225 of 2022

Venkata Sivanaga Kumar Kantheti

... Petitioner/A3

Vs.

1.The State, rep. by the Inspector of Police,
Crime Branch CID,
Metro Wing-I, Egmore,
Chennai 600 008



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2.R.Rajesh

... Respondents

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records culminating in the FIR in crime No.4 of 2021 pending on the file of the first respondent i.e. The Inspector of Police, Crime Branch CID Metro Wing, Egmore, Chennai-08 and to quash the same.

For Petitioner : Mr.S.Sheik Thanveer Ahamed

For Respondents

For R1 : Mr.E.Raj Thilak,
Additional Public Prosecutor

For R2 : Mr.K.Balasubramaniam

Crl.OP.No.15127 of 2021

1.Pandiyarajan

2.G.P.Giri

... Petitioners/A6 & 9

Vs.

1.The State rep by,
The Inspector of Police,
Crime Branch CID,
Metro Wing, Egmore,
Chennai 600 008

2.R.Rajesh

... Respondents

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records culminating in the FIR in crime No.4 of 2021 pending on the file of the first respondent i.e. The Inspector of Police, Crime Branch, CID Metro Wing Police and to quash the same.

For Petitioners : Mr.S.Karthikeyan

For Respondents

For R1 : Mr.E.Raj Thilak,
Additional Public Prosecutor

For R2 : Mr.K.Balasubramaniam



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Crl.OP.No.22359 of 2021

Saravanan

... Petitioner/A10

Vs.

1.The State of Tamilnadu,
Rep. by the Inspector of Police,
Crime Branch CID,
Metro Wing, Egmore,
Chennai 600 008
(crime No.4 of 2021)

2.Rajesh

... Respondents

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records relating to the FIR in crime No.4 of 2021 on the file of the first respondent and to quash the same as against the petitioner.

For Petitioner : Mr.S.Anil Sandeep

For Respondents

For R1 : Mr.E.Raj Thilak,
Additional Public Prosecutor

For R2 : Mr.K.Balasubramaniam

WP.No.25209 of 2022

R.Rajesh

... Petitioner

Vs.

1.The Government of Tamilnadu,
Department of Home,
Rep by its Secretary,
St.George Fort, Chennai 600 009
2.The Director General of Police,
No.1, Dr.Radhakrishna Salai,
Mylapore, Chennai 600 004
3.The Director General of Police,



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- Crime Branch CID,
24, Pantheon Road, Komaleeswaranpet,
Egmore, Chennai, Tamilnadu 600 008
4.The Commissioner of Police,
132, EVK Sampath Road,
Vepery, Periyamet,
Chennai 600 007
5.The Central Bureau of Investigation (CBI),
Rep. by its Director,
Rajaji Bhavan Complex, 3rd Avenue,
Besant Nagar, Chennai 600 090

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents to consider the facts and circumstances of the case, transfer the investigation in FIR.No.4 of 2021 dated 24.06.2021 which was registered on 24.06.2021 by the third respondent to the fifth respondent and consequently investigate crime and to lay the charge sheet before the trial court concerned within the stipulated time.

For Petitioner : Mr.P.Vijendran

For Respondents

For R1 to 4 : Mr.E.Raj Thilak,

Additional Public Prosecutor

COMMON ORDER

All the Criminal Original Petitions have been filed praying to quash the FIR in Crime No.4 of 2021 dated 24.06.2021 on the file of the Inspector of Police, Crime Branch, CID Metro Wing Police, Egmore, Chennai registered for the offences under under Sections 147, 323, 347, 384 and 420 of IPC as against the petitioners; the writ petition has been filed praying to direct



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the respondents to consider the facts and circumstances of the case, transfer the investigation in FIR.No.4 of 2021 dated 24.06.2021 which was registered on 24.06.2021 by the third respondent to the fifth respondent and consequently investigate crime and to lay the charge sheet before the trial court concerned within the stipulated time.

2. The case of the prosecution is that A1 is the son of A2 in crime No.4 of 2021 under Sections 147, 323, 347, 384, 420 of IPC. A5 to A10 are police personnels. A4 is a close associate of A3. As per the allegations in the FIR, A3 and the defacto complainant are known to each other and A3 had invested crores of amount in the company run by the defacto complainant / Rajesh. Since the defacto complainant did not keep his words and not returned both the invested money and the profits from the company, A3 approached the Thirumangalam Police Station and lodged a complaint on 10.05.2019, and before the Commissioner of Police, Vepery on 16.05.2019. Based on the complaint dated 10.05.2019, Thirumangalam Police called upon the defacto complainant for enquiry. It appears that during the enquiry, the defacto complainant promised to return the amount invested by A3 in defacto complainant's company. Again the defacto complainant did not keep his words. A5 to A10 under the influence of A3 and A4, forced the defacto complainant



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and his mother Vidhya to execute the properties which stand in his name and

his mother Vidhya to A3. Fearing the torture of police, the defacto complainant executed a general power of attorney in favour of A3 on 20.06.2019, registered as document No.8899 of 2019, SRO, Ambattur in respect of the property bearing plot No.9378, MIG Type measuring an extent of 180 sq.mt (1937 sq.ft) with building thereon comprised in S.No.582/82, Ambattur Village. After this incident, the defacto complainant and his fiance were staying in a hotel at Coimbatore. A6 forcibly had taken them to a farm house at Redhills and kept them illegally along with Vidhya and the brother of the fiance. A6 assaulted the defacto complainant and forced him to bring the original documents of the property from his house. The police personnel did not even provide proper food for them. The defacto complainant had executed another document on 05.10.2019 in the name of A1. On 06.10.2019, again a document was executed in favour of A1.

2.1 It is further alleged in the FIR that the police personnel along with A3 and A4 kept the defacto complainant and his mother in a farm house illegally for five days. The accused have obtained a blank cheque for Rs.1,25,00,000/- from one Katupakkam Ramesh who is the friend of the defacto complainant. On 10.10.2019, the accused have taken the defacto



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complainant to “God Speed Security System”, Virugambakkam, wherein A6,

A3, A2, A1, Vidhya, the fiance of the defacto complainant, the brother of the fiance, their parents and his friend Vijayalakshmi were already present. On that day also, they have forcibly obtained signatures in 100 blank bond papers / stamp papers, 20 unfilled cheques and had taken laptop, camera, passport and licence. Since there was no action for his complaint given earlier, the defacto complainant has given the present complaint to the Director, CBCID in C.No.035/018833 / Crime II (3)/2021 dated 22.06.2021. On receipt of the said complaint, the first respondent registered a case in crime No.4 of 2021 under Sections 147, 323, 347, 384, 420 of IPC against A1 to A10 on 24.06.2021.

3. The learned counsel for the petitioners in Crl.OP.No.5224 of 2022 would submit that the petitioners are arrayed as A1 and A2. Insofar as allegations as against the petitioners are concerned, on 05.10.2019, Susaibella who is the power holder of a property in plot No.1, measuring an extent of 2520 sq.ft. comprised in old survey No.9, new sub division No.9/3B1A situated at Annanur Railway Station Road, 1st Cross Street, (Kulakarai Street) Iyyapakkam Village (the owner of the property is defacto complainant) executed a sale deed in document No.14509/2019, SRO, Ambattur in favour of A1. On 06.10.2019, a GPA was executed in favour of A1 by defacto



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complainant and his mother Vidhya in respect of a property of plot No.1/179 to an extent of 180 sq.mts. (1937 sq.ft.) comprised in survey No.827 part in Tirur Village, SRO Manavalan Nagar as per GPA No.3499 of 2019. On 10.10.2019, the accused have taken the defacto complainant to God Speed Security System, Virugambakkam wherein A6, A3, A2 and A1, Vidhya, fiancé of the defacto complainant, brother of the fiancé, their parents and his friend Vijayalakshmi were already present. It is alleged that on that day also they have forcibly obtained signatures in 100 blank bond papers / stamp papers, 20 unfilled cheques and had taken laptop, camera, passport and licence.

3.1 He further submitted that the petitioners have no connection whatsoever with the defacto complainant before the execution of the documents. The third accused is the friend of the second accused approached him in the year 2017 for hand loan to the tune of Rs.4 crores. In turn, the second accused had given a sum of Rs.4 crores to the third accused. Third accused informed that he is going to invest the said amount in IT business and he will get huge profits out of the investments. He also promised that he will repay the said amount in a short period. As a security, he also executed promissory note in favour of the second accused. However, the third accused failed to repay the amount and as such, the second accused insisted for return of



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petitioner herein who is arrayed as A2 was not even present on 03.10.2019 or 04.10.2019 at Chennai. Therefore, there is no specific overt act as against the petitioners.

3.3 He further submitted that on the complaint lodged by the defacto complainant, it was treated as current paper No.035/018833/Crime II(3)/2021. It was enquired and closed. In fact, on receipt of the said complaint, the petitioners were issued summons to appear for enquiry. Therefore, the petitioners apprehended arrest at the hands of the first respondent and filed petition for anticipatory bail before this Court in Crl.OP.No.8433 of 2021. The first respondent informed before this Court that on the complaint received from the defacto complainant, it was enquired and the same was closed. Therefore, there is no other complaint pending against the petitioners and recorded the said submission, this Court closed the petition filed for anticipatory bail by order dated 14.06.2021. After closing the said complaint, without any further complaint, the first respondent registered the present impugned FIR as against the petitioners. In fact, the first respondent failed to produce the said complaint along with the FIR. Whereas in the FIR, the first respondent stated that as per the order of the DGP, CBCID to register FIR dated 22.06.2021, the present FIR has been registered. However, it was not produced anywhere. After disposal of



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the petitioners' anticipatory bail petition by order dated 14.06.2021, within a period of 10 days, the impugned FIR has been registered as against the petitioners and others. Therefore, the impugned FIR is nothing but clear abuse of process of law and it cannot be sustained as against the petitioners.

3.4 The learned counsel for the petitioner in Crl.OP.No.14225 of 2022 submitted that the petitioner, who is arrayed as A3, compromised the issues with the second respondent in the following manner as follows:

(i) It is submitted that as per the power of attorney executed by the second respondent in favour of the petitioner in TNHB colony, Ayyappakkam, Chennai, the second respondent undertakes to give life certificate as and when requested by the petitioner for re-conveyance of the property else the second respondent / defacto complainant undertaks to appear before the SRO to execute the sale deed in favour of the petitioner or the proposed purchaser.

(ii) It is submitted that second respondent said to have received a sum of Rs.4.5 crore from one Mr.Venkatesh who had business transaction with the petitioner. It is further submitted



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the second respondent in order to clear his liability with the said Venkatesh, he has earlier executed a power of attorney in favour of the petitioner for the property which is situated at Ayyapakkam which is worth about Rs.3 crore and the second respondent said to have given a loan of about Rs.1.2 crore to one, Kattupakkam Ramesh. Now the second respondent in order to clear the liability which he owes to Venkatesh, he agrees to give consent to the petitioner/A3 to collect the said sum of about Rs.1.2 crore.

(iii) It is submitted that after the receipt of the aforementioned sum of about Rs.1.2 crore from the said Kattupakkam Ramesh, the second respondent is not liable to pay any sum to the said Venkatesh as the petitioner/A3, if at all if there is any claim, the petitioner/A3 need to take appropriate steps to recover the balance amount from the said Venkatesh.

Accordingly, they entered into joint compromise memo dated 23.03.2022. As such, the second respondent is not willing to continue the case as against the petitioner and agreed to withdraw the complaint.



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3.5 The learned counsel for the petitioner in Crl.OP.No.11196 of 2022

submitted that the petitioner is arrayed as A5. As per the FIR, entire allegations are set out as against A3, A4 and another arising out of business rivalry transactions, due to which the properties of the defacto complainant were coercively obtained from him. After registration of FIR, A1 and A2 entered into an amicable settlement with the defacto complainant and the alleged property which has been coercively obtained from the defacto complainant, has been reconveyed to the defacto complainant by cancelling the previous sale deeds by way of deed of cancellation dated 21.02.2022 registered vide document No.2312 of 2022 and another deed of cancellation dated 22.02.2022 registered vide document No.748 of 2022. They also filed joint compromise memo before this Court in Crl.OP.No.12546 of 2021. In pursuant to the said compromise, they were granted bail, in which the defacto complainant also undertook to file a consent affidavit to quash the FIR in Cr.No.4 of 2021. Therefore, the entire allegations are made out as against only A1 to A4 and there is absolutely no allegation as against the other accused persons.

3.6 The learned counsel for the petitioners in Crl.OP.No.15127 of 2021 would submit that the petitioners are arrayed as A6 and A9. They are police officials and they are nothing to do with the alleged occurrence as



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alleged by the defacto complainant. The third accused had already lodged complaint before the Commissioner of Police in the month of May 2019 alleging that the defacto complainant had agreed to execute document in his favour. Therefore, the petitioners have not threatened the defacto complainant and the entire allegations are totally false and concocted one. Further, the alleged occurrence took place in the year 2019 whereas the complaint lodged only in the year 2020. It is only after thought and there is absolutely no explanation for the belated complaint. As such, the present FIR is nothing but clear abuse of process of law and it has been lodged with malicious intention to wreak vengeance as against the police officials.

3.7 The learned counsel for the petitioner in Crl.OP.No.22359 of 2021 submitted that the petitioner is arrayed as A10. The petitioner while he was serving as Inspector of Police of V5 Thirumangalam Police Station, he had enquired the complaint lodged by the third accused which had been received by him from the Office of the Assistant Commissioner of Police on 11.05.2021 as current paper in RC.No.5/AC/Tmr/PG/19. It was filed as against the defacto complainant. Therefore, the petitioner did not even aware about the sums of money that is being spoken about the present impugned FIR. In fact, all the allegations are related to the offence committed in the month of October 2019.



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Therefore, at the time of alleged occurrence, the petitioner was transferred from V5, Thirumangalam Police Station, Chennai to Anti Vice Squad, Chennai. As such, he has nothing to do with the allegations levelled as against him in the impugned FIR.

4. Per contra, the learned counsel for the complainant filed counter and it revealed that due to the illegal confinement, life threat and harassment caused by the accused persons, the complainant's mother had fallen sick and she was admitted in ICU ward at Apollo Hospital on 27.10.2019. Thereafter, she was shifted to SIMS Hospital, Vadapalani, Chennai. Therefore, for her continuous treatment, he had spent Rs.14 lakhs. In fact, the second accused came to the hospital and threatened the second respondent. During the year 2019, due to dispute in the business transaction between one, Venkatesh and the third accused, the defacto complainant was forced to execute power of attorney in favour of the third accused in respect of the property situated at Iyappakkam for the loan availed from him to the tune of Rs.2 crores. After execution of power of attorney in favour of the third accused, on behalf of the said Venkatesh, there was no transaction between the defacto complainant and the third accused at any point of time. Only on the continuous threat, the defacto complainant executed power of attorney in favour of the third accused.



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On influence of A1 to A3, the defacto complainant and his family members were kept in illegal confinement by the police personnels who are arrayed as A5 to A10 herein.

4.1 He further submitted that in the anticipatory bail petition filed by A1 and A2 in Crl.OP.No.12546 of 2021, they had given undertaking that they will cancel two sale deeds which were forcibly executed in their favour. As per the orders of this Court, A1 and A2 have cancelled two sale deeds. Only thereafter, the defacto complainant signed the affidavit and memorandum of understanding in respect of the property situated at Iyappakkam. However, after filing of the affidavit, when the defacto complainant visited the subject property, came to understand that the third accused entered into an agreement for lease with five persons and received a sum of Rs.26 lakhs as lease amount. The third accused executed the said lease deed as if he is the owner of the property. Even after the order passed by this Court in Crl.OP.No.12546 of 2021, the possession of the property has not been handed over to the defacto complainant. Therefore, there is no compromise between the defacto complainant and A1 to A3. Hence, he has withdrawn the affidavit given in favour of A1 and A2 and also withdrew the memorandum of understanding signed with A3 for violating the order of this Court and also acting in a



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fraudulent manner creating documents as if he is the owner of the property and induced five tenants on receipt of huge sum.

5. The learned counsel for the petitioner in WP.No.25209 of 2022 would submit that after registration of FIR, the ruling party of the Government was changed and the entire investigation is at a standstill since the higher police officials were involved in this case. Though so many representations made by the defacto complainant, the investigation is still under progress without any move. Apart from the allegations made in the FIR, the defacto complainant's former partner, the wife of the said Venkatesh was sexually abused by the second accused. Some of the whatsapp messages have also been produced before this Court. A5 to A10 are police personnels who are all occupying the superlative disc of the Department committed crime and looted the property worth about number of crores. Therefore, no proper investigation could be conducted under the subordinate officers against higher rankings of the police department. He further pointed out that the Hon'ble Supreme Court of India repeatedly held that if the punishment was given to the criminal for an offence, but the same offence was committed by the police personnel, the same punishment should be given to him in double times.



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6. The learned Additional Public Prosecutor filed status report and revealed that after registration of FIR, so far 64 witnesses and 58 case related documents / properties were seized from the custody of the accused persons. Eight accused persons were arrested and remanded to custody. During the investigation, sexual offences were also against woman found and accordingly, they are going to alter the FIR. All the police personnels were examined and their respective statements were recorded. The other police personnels who were involved in this case and other suspected persons were also enquired while interrogation. Therefore, there are specific allegations as against all the accused persons in the FIR and have to be investigated in depth to unearth the truth. He also submitted that all the accused persons fall under Prevention of Corruption Act. Therefore, they are going to alter the FIR by including the offence under Prevention of Corruption Act. Further, investigation already commenced and they are about to file final report. At this stage, the investigation cannot be transferred to any other investigation agency.

7. Heard, Mr.P.Vijendran, the learned counsel for the petitioner and Mr.E.Raj Thilak, the learned Additional Public Prosecutor appearing for respondents 1 to 4 in WP.No.25209 of 2022; Mr.S.Anil Sandeep, the learned counsel for the petitioner in Crl.OP.No.22359 of 2021, Mr.S.Karthikeyan, the



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learned counsel for the petitioners in Crl.OP.No.15127 of 2021, Mr.M.Velmurugan, the learned counsel for the petitioner in Crl.OP.No.11196 of 2022, Mr.S.Sheik Thanveer Ahamed, the learned counsel for the petitioner in Crl.OP.No.14225 of 2022, Mr.C.Emalias, the learned counsel for the petitioner in Crl.OP.No.5224 of 2022 and Mr.K.Balasubramaniam, the learned counsel for the second respondent in all the criminal original petitions and Mr.E.Raj Thilak, the learned Additional Public Prosecutor appearing for the first respondent in all the criminal original petitions.

8. The case of the complainant is that he completed B.Sc. Animation Technology in Anna University in the year 2013 and came into contact with one, Venkatesan, the then owner of “Sai Soft” a software company, who encouraged the complainant to start a data entry center(Business Processes Outsourcing-BPO Centre) saying that he would give projects to work on and required the complainant to deposit a security amount of Rs.10,00,000/-. The complainant's mother is a government teacher. He explained the business opportunity and requested her help. She being mother also agreed and she obtained a loan through the society for Rs.15,00,000/- from which he deposited Rs.10,00,000/- as security to the said Venkatesan in his Indian Bank Account through online mode and used the remaining 5 lakhs to start a company named



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“VRN Infosys”. In February 2014, at No.15, Rajaji Street, Senthil Nagar, Thirumullaivoyil, Chennai-62, it was duly registered (SSI Licence Number 2013/33/ 28787) and started the company with a number of 25 workers.

9. The further case of the complainant is that until June, 2014, the said Venkatesan had been giving payment regularly for work. It approximately Rs.25,00,000/- every month, but thereafter upto May 2015 and thereafter little fluctuation to making payment due to business loss. However, he was trying to run the company after getting borrowing loan from his friends and banks. When he had been asking the said Venkatesh repeatedly to pay the due amount stating that he has no other option except to die, it was replied that he was going to sell his company, “Sai Soft Tech” to one, Venkata Sivanaga Kumar @ Siva and he wants to explain about the company's natures, working and about the projects deals. Accordingly, he explained. Therefore, Venkatesh and Siva mutually entered transaction. Venkatesan had paid him the due amount of Rs.5.5 crores little by little from 2016 to 2018, for which income tax was duly paid and the debt that he had incurred from his friends and banks were repaid. Little bit remaining was being. He had also bought (i) 2000 sq.ft plot from one, Raja in Ayapakkam on 12.06.2017 through document Number 1754/18, (ii) 2000 sq.ft. Plot from one, Parameshwaran in Sevapet in 2018 and (iii) on 05.02.2018 a



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2520 sq.ft. plot from one, Gupta through document Number 1754/2018.

Through his close friend David Jones, he had lent the remaining amount to a few people, Rs.1.29 crores to Ramesh from Kattupakkam, Rs.25 lakhs to Deva Sahayam from Arakkonam, Rs.9.53 lakhs to Magesh from Thirumullaivoyil and Rs.17 lakhs collectively to 9 colleagues of David Jones. He borrowed another Rs.2 crores from Venkatesan in the year 2017 and started constructing house in Ayappakam and after that in Annanur and also started a company named “God Speed Security Systems” at No.11/A, Kaliamman Kovil Street, Virugambakkam, Chennai.

10. The further case of the complainant is that he had given his company “God Speed Security Systems” to MR.Venkatesan in June 2018 due to his inability to repay the debt. He also accepted for the amount of Rs.2 crores and there was no standing debts between him and Venkatesan thereafter. On April 2019, he received a call from a person who claiming to be from the CBI, stating that Venkatesan has cheated Siva to the extent of Rs.20 crores and have transferred most of the amount to him and enquired him what he had done with that amount. He replied that he will provide necessary information in his office. The call was suddenly hung up without any reply. Some of the policemen have come to his house on May of 2019 and took him to the Thirumangalam Police



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Station. One, Saravanan, Inspector of Police enquired about his property under the cloud of threatening. He disclosed about the Sevvapettai and Ayapakkam properties. The Inspector of Police, immediately sent Siva, Kodambakkam Shri and 2 other policemen to his house. They came and confiscated his original documents about the above said properties and brought back to the police station with his mother.

11. The further case of the complainant is that the Inspector of Police compelled him to make alienate the property in favour of the said Siva. He resisted and explained how the property was purchased. Therefore, the Inspector of Police got angry and started beating in front of his mother. No mother will tolerate such a police crime and spontaneously his mother intervened and requested the Inspector that she will convince her son to transfer the property according to their wish. Thereafter they were let in his house and also directed as to be present through Sub Registrar Office, Ambattur. This incident was informed to the said Venkatesh through the cellphone. As per their plan, next day Siva, Kodambakkam Shri and some other policemen came to his house and took him to the Sub Registrar Office, Ambattur, where some of the lawyers were also present with one, Rajesh Kanna, Inspector of Police, Anna Nagar Police Station. The Inspector brought the Siva also and enquired and



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also directed him to give in writing. Accordingly, he has given and thereafter brought to one, P.Dhinakaran, Additional Commissioner of Police(North). He enquired and let him out. After one week, one, Saravanan, Inspector of Police, Thirumangalam called through his cell and directed to appear before the Additional Commissioner of Police, P.Dinakaran, IPS. Accordingly, he went there, where A2-Srinivasa Rao, A3-Sivanaga Kumar were also sitting with him. The Additional Commissioner of Police immediately instructed that either to make registration in favour of them (A2, A3) or whoever preferred by them. He resisted the proposal. The said Saravanan, Inspector of Police intervened. P.Dinakaran, IPS further threatened that if he will not do, they can do anything. After a month, Saravanan, Inspector of Police, Thirumangalam Police Station called and directed him to appear before the Police Station. Accordingly, he appeared.

12. The further case of the complainant is that the Inspector of Police told that his two documents were being with Siva and therefore without any objection to make registration in favour of him and otherwise he and his mother would be killed by Siva's henchmen. He has no other options except to execute sale deed in favour of Siva and therefore on 20.06.2019, the power of attorney was registered at Sub Registrar Office, Ambattur. This illegal activities of the



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police have created panic in his mind and therefore, he and his fiancée hidden themselves in a hotel at Coimbatore. However, on 30.09.2019 at about 3 a.m., somebody knocked the door and they opened the door. Heavy footsteps entered into the room. Among them, one, Pandiyarajan, Sub Inspector of Police, Thirumangalam Police Station informed with light words but hard information that unless he comes with them, they may do anything against his fiancée. Therefore, he agreed to follow them. They brought to farmhouse at Sengundram, Chennai under the threat of the said Pandiyarajan and his henchmen. On 02.10.2019, his mother, his fiancée and her brother were brought to the same farmhouse and detained there. In these circumstances, one, Sivakumar, Assistant Commissioner of Police, Thirumangalam came about at 10 a.m. as like hero of cinematic style. He immediately put a question that one, Venkatesh gave sum of Rs.7.5 crores to him and what he did. He replied about the same. Pandiyarajan, Sub Inspector of Police kicked him with the heavy force and he was collapsed. Thereafter Sivakumar being like a hero declared that goondaas of Andhra Pradesh would rape his fiancée and also kill her brother and his mother and buried there itself. They will also register a case as if he is keeping and put into the jail. Thereafter he has no other ways and agreed to their wishes. His fiancée and her brother and his mother were detained.



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13. The further case of the complainant is that the Assistant Commissioner of Police directed the said Pandiyarajan to bring his all documents from his house. The illegal direction was perfectly executed by the said Pandiyarajan. All along Siva and his henchmen were there. Pandiyarajan indiscriminately attacked him and it was not tolerated and therefore agreed to their wishes. Accordingly he registered the Annanur property in favour of one, Tharun Krishna Prasad on 05.10.2019. The next day, 06.10.2019 he made registration about the Sevvapettai property to the same Tharun Krishna Prasad. Even after execution was over, his fiance and her brother and his mother were detained in the same farmhouse. Apart from the above said criminal activities, he was brought to the Thirumangalam Police Station and the Said Ramesh also brought to there. In this cumulative cloud, Sivakumar, Assistant Commissioner of Police threatened the said Ramesh to give Rs.1.25 crores to Siva instead of him and also illegally obtained signature in 3 cheques worth about 1.25 crores and thereafter let him free. Thereafter the police personnel and other henchmen created number of documents. He does not know about the details of creation. He and his fiance were brought to the office of “God Speed Security System” where his relatives were available and also Pandiyarajan, Siva, and his son Tharun Krishna Prasad and other henchmen were also present there. They obtained signature on number of deeds which were already prepared and also



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got signatures on bond papers and stamp papers. Apart from the obtained signatures, nearly about 20 unfilled cheque leaves and also looted laptop, camera, passport, driving licence and its originals.

14. In pursuant to the registration of FIR, the first and second accused filed anticipatory bail petition before this Court in Crl.OP.No.12546 of 2021. While this Court granting anticipatory bail, the petitioners were ready and willing to cancel the sale deed executed in their favour and also filed undertaking affidavit before this Court. However, they failed to cancel the sale deed for the reason that the defacto complainant did not cooperate while executing the cancellation of sale deed. In the meanwhile, the police filed petition to cancel the anticipatory bail granted to them in Crl.MP.No.858 of 2022. In the said petition, this Court directed the defacto complainant to appear before the Registrar Office to cancel the sale deeds. In view of the said direction, the defacto complainant appeared before the Sub Registrar concerned and cancelled the sale deeds. Subsequently, though the defacto complainant entered into compromise with A3, that was not acted upon since after cancelling the sale deed, the third accused executed lease agreement with the third parties and received huge sum in respect of the subject property. Therefore, the possession and enjoyment of the subject property was not



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handed over to the defacto complainant so far. Some of the accused filed anticipatory bail petition before the Sessions Court as well as before this Court and obtained anticipatory bail. The third accused was arrested and remanded to judicial custody on 25.11.2021.

15. During the investigation, statements of the witnesses were recorded under Section 164(5) of Cr.P.C. It revealed that the offence of kidnap committed by A3, A6, A7, A8, A9 and subsequent wrongful confinement at a private farm house near Red Hills, Chennai. It was tortured by the accused persons and the police personnels forcing him to register property worth about 5.5 crores in favour of the first accused and the third accused. It also revealed that the defacto complainant and his family members were kidnapped and kept in wrongful confinement at a farm house at Red Hills, due to which the defacto complainant also attempted to commit suicide by consuming phenoil at toilet in order to avoid torture. Even then, the first respondent did not take any steps to secure the police personnels i.e. A5, A6 and A10 as directed by this Court. Non bailable warrant has been issued against them and tenth accused was arrested and remanded to judicial custody. The fifth accused approached this Court and obtained anticipatory bail. Sixth accused also obtained anticipatory bail before this Court. Therefore, there are specific allegations as against the accused



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persons and prima facie made out to register the FIR for the offences under

Sections 147, 323, 347, 384 and 420 of IPC.

16. That apart as per the allegations, all the police personnels exercised their power against the defacto complainant and it shows their high handedness against the defacto complainant. Even assuming that there was a joint compromise between the parties, it may not exonerate the alleged excessive force and abuse of power alleged to have been committed by the police personnels. Further, 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.

17. It is 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*** in the case of ***Sau. Kamal Shivaji Pokarnekhar vs. the State of Maharashtra & ors.***, wherein it is held 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.

.....

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."

18. In view of the above discussion, this Court is not inclined to quash the First Information Report. Accordingly, all the Criminal Original Petitions stand dismissed. Consequently, connected miscellaneous petitions are closed.

19. Insofar as writ petition for transfer of investigation from the file of the Inspector of Police, Crime Branch CID Metro Wing, Egmore, Chennai in Crime No.4 of 2021, the Hon'ble Supreme Court of India held in the case of ***Rubabbuddin Sheikh Vs. State of Gujarat and others*** reported in (2010) 2 SCC 200 that it is difficult to accept the contentions that after filing charge



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sheet, it is not open to the court to order change of investigation. In an appropriate case, when the court feels that the investigation by the police authority is not in the proper direction and in order to do complete justice in the case and as the high police officials are involved in the said crime, it was always open to the court to transfer the investigation to an independent agency like CBI. In order to make sure that justice is not only done but also is seen to be done and considering the involvement of the State police authorities and particularly higher police officials of the State, it would be appropriate to transfer the investigation to the file of the CBI authorities for proper and fair investigation. Under these circumstances, this Court has no hesitation to exercise the power under **Article 226 of the Constitution of India** to transfer the investigation from the State agency to an independent agency like CBI.

20. Accordingly, the writ petition stands allowed and the entire investigation in Crime No.4 of 2021 pending on the file of the third respondent in the writ petition is hereby withdrawn and transferred to the file of the fifth respondent in the writ petition for further investigation and the third respondent is directed to send the entire case diary to the fifth respondent forthwith. On receipt of the entire case diary, the fifth respondent is directed to complete the investigation and file final report within a period of six months from the date of



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receipt of the entire case diary. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

20.09.2022

Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order
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To



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G.K.ILANTHIRAIYAN, J.

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7. The Public Prosecutor,
High Court of Madras

CRL.O.P.Nos.5224, 11196, 14225 of 2022 & 15127,
22359 of 2021 and WP.No.25209 of 2022

20.09.2022