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CRL.O.P.NO.13244 OF 2021

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 16.11.2022**

**CORAM**

**THE HON'BLE MS.JUSTICE R.N.MANJULA**

**CRL.O.P.NO.13244 OF 2021**

**AND CRL.M.P.NOS.7279 OF 2021 AND 2719 OF 2022**

1.Joseph Colman  
2.Sasikala  
3.J.Monica Joseline

... Petitioners

**VS.**

1.State by Inspector of Police  
V-7, Nolambur Police Station,  
Nolambur, Chennai – 600 037.

2.U.Balaji

... Respondents

**PRAYER:** Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in Crime No.108 of 2021 dated 28.04.2021 on the file of the 1<sup>st</sup> respondent, the Inspector of Police, V-7, Nolambur Police Station, Chennai and quash the same.

For Petitioners : Mr.C.Manishankar  
Senior Counsel  
for Mr.P.R.Dhilip Kumar

For Respondent-1 : Mr.A.Damodaran  
Additional Public Prosecutor

For Respondent-2 : Mr.M.Manivasagam  
for M/s.M.Manivasagam Associates



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## **ORDER**

The petitioners are the accused 1 to 3 in Crime No.108 of 2021 on the file of V-7, Nolambur Police Station, Nolambur, Chennai. On the complaint given by the second respondent / defacto complainant, the above case has been registered for the offences under Sections 468, 471, 420 and 506(ii) IPC.

2. The case of the prosecution is that the property situated in Door No.8/113, Kavimani Salai, Mogappair West, measuring an extent of 3150 sq.ft., was owned by the second respondent / defacto complainant, by virtue of his purchase in the year 1994. He was in possession and enjoyment of the same. The family of the defacto complainant was residing in one portion of the said property and the rest of the portions was let out for rent.

2.1. The petitioners approached the second respondent during the month of November 2020 for taking the property on rent to establish a Supermarket Stores by name M/s.CSK Super Store. The monthly rent was agreed at Rs.80,000/- and the advance amount was agreed at Rs.10,00,000/-. The petitioners paid token advance of Rs.5,000/- and



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gave two post-dated cheques bearing cheque Nos.039256 and 039257 dated 18.11.2020 drawn on Indian Bank, Nolambur Branch towards the rest of the advance amount. It was requested by the petitioners that the cheques should be put for collection after getting their instructions.

2.2. Excepting the token advance of Rs.5,000/- no further payment has been made. Since the petitioners requested the second respondent to hand over the key for making some alterations in the shop suiting to their business, the second respondent handed over the key to the petitioners. However, the second respondent demanded to give back the key back to him. But the petitioners refused to hand over the key.

2.3. When the second respondent made continual demands to return the key on 11.01.2021 at about 10.00pm, the first petitioner scolded the second respondent and his wife in filthy language and threw away the key on to their face.

2.4. Subsequently, the petitioners gave a police complaint by creating a false lease deed, wherein, it is stated that the petitioners had paid a total sum of Rs.20,00,000/- in three instalments. The first



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respondent police after investigation found that the lease deed brought by the petitioners is a forged one.

2.5. The first petitioner engaged goondas and made life threat to the second respondent and his wife. Even the second respondent was not allowed to go to the police station and lodge a complaint. With great difficulty, the second respondent preferred a complaint and on the basis of which a case has been registered in Crime No.108 of 2021 for the alleged offences under Sections 468, 471, 420 and 506(ii) IPC.

3. The learned counsel for the petitioners submitted that it is true that the first petitioner approached the second respondent, requesting to lease out the ground floor of the subject property facing the road, for running a Supermarket; during November 2020, the second respondent received two post-dated cheques bearing Nos.039256 and 039257 dated 18.11.2020, drawn on Indian Bank, Nolambur Branch. On 07.11.2020, the petitioners paid a sum of Rs.5,00,000/- as initial advance and in view of that the second respondent allowed the petitioners to commence the alteration work inside the shop.

3.1. On 01.01.2021, a lease deed was entered into between the



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third petitioner and the second respondent. According to the terms of the lease, the period of lease would commence from 01.01.2021 and a monthly rent is agreed to be paid at Rs.80,000/- per month and the advance amount as Rs.20,00,000/-. The first petitioner had paid the total advance of Rs.20,00,000/- through three installments on 07.11.2020, 18.11.2020 and 01.01.2021.

3.2. The second respondent promised to give back the cheques after signing the lease deed and on payment of Rs.10,00,000/- as advance. But he did not return the cheques. The second respondent was giving troubles to the petitioner and his family by disconnecting electricity supply, water connection and by picking up frequent quarrels. Hence, the petitioners preferred a complaint against the second respondent through online portal of Tamil Nadu Police. The petitioners have spent a sum of Rs.80,00,000/- for interior designs and other works.

3.3. On 14.01.2021, the third petitioner issued a legal notice and called upon the second respondent not to cause any hindrance to his business and also to return the post-dated cheques.

3.4. The third petitioner has filed a Suit in O.S.No.59 of 2021 for permanent injunction restraining the defacto complainant and



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their men, agents, servants or any other person claiming through them from in anyway interfering with the peaceful possession and enjoyment of the third petitioner in getting the shops.

3.5. The case given by the second respondent is false and it is for the purpose of grabbing more money from the petitioners. The second respondent with the help of the police had unauthorisedly constructed a wall to the height of the first floor covering the entire portion by preventing ingress and egress of the rented premises.

3.6. The learned counsel for the petitioners further submitted that the lease amount of Rs.20,00,000/- was paid by him through cash in three instalments and to raise the said money, he had availed loan from one Andavar Nidhi Limited. The second respondent is in the habit of making such false complaints. One Paramasivam who was the previous tenant of the second respondent was evicted only by the money given by the petitioners as advance.

3.7. The petitioners have spent lot of money in altering the



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shop by doing lot of interior works suiting to their business. The second respondent with his henchmen, has been causing frequent problems to the petitioners' business. Even though the Civil Suit is pending, the first respondent police had given criminal colour to the civil suit by receiving a false complaint from the second respondent.

3.8. Mr.C.Manishankar, learned Senior Counsel for the petitioners cited the judgment of the Hon'ble Supreme Court held in ***BINOD KUMAR AND OTHERS VS. STATE OF BIHAR AND ANOTHER [2014 (10) SCC 663]*** in order to support his point that a civil cause of action cannot be converted into a criminal case.

3.9. It is further submitted that the materials available on record do not have anything worth to substantiate the case against the petitioners. It is a sheer abuse of process of the Court. Hence, the Court should invoke its power under Section 482 Cr.P.C., in order to quash the proceedings. In support of his above argument, he also cited the decision of the Hon'ble Supreme Court rendered in ***PROF.R.K.VIJAYASARATHY AND ANOTHER VS. SUDHA***



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***SEETHARAM AND ANOTHER [2019 (16) SCC 739].***

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4. The learned Additional Public Prosecutor submitted that there are lot of facts to be unearthed; there are grounds to suspect that the lease agreement claimed by the petitioners itself is a forged one. The complainant has alleged that the petitioners were causing all sorts of threats and restricted their movement from the house by unlawfully bringing their henchmen near the premises. The investigation is now in midway and half of the investigation had already been done. When the police issued notice under Section 41A Cr.P.C., to the first accused and asked him to appear along with documents, the first accused appeared for enquiry, but did not produce the original lease agreement. He has stated that the lease agreement was given to his Advocate who was conducting a Civil Suit. When there are *prima facie* materials available for investigation, the first respondent police should be allowed to continue their investigation and it is not an appropriate case to quash the proceedings as claimed by the petitioners. Hence, this petition should be dismissed.

5. Heard the submissions made on either side and perused



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the materials available on record.

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6. The fact that the subject premises belonged to the second respondent defacto complainant is not denied. In one portion of the said property, the second respondent is residing and the petitioners have approached the second respondent to lease out an extent of 1800 sq.ft., facing the road side for the purpose of establishing a Supermarket by name M/s.CSK Super Store. Even according to the petitioners, during the month of November 2020, the second respondent received two post dated cheques bearing Nos.039256 and 039257 dated 18.11.2020 drawn on Indian Bank, Nolambur Branch, Chennai.

7. However, it is claimed by the petitioners that the advance payment has been made through cash and not by encashing the cheques issued by them to the second respondent. When the petitioners had issued cheques towards the payment of the advance amount, there can not be any reason to make cash payment also and that too without getting any receipts from the second respondent. Normally, huge payment in lakhs would not be made in cash. The above circumstances and other probabilities of the case would reveal the truth only if the investigation is



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allowed to be done.

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8. The learned Senior Counsel for the petitioners submitted that the second respondent's previous tenant by name Paramasivam had refused to vacate the property, because the second respondent did not give back the advance amount given by him. In this regard also, the second respondent had given a complaint to the police and only thereafter, the said Paramasivam had vacated the premises. In the said complaint, the second respondent has stated that he had received Rs.5,00,000/- from the first petitioner and the previous tenant Paramasivam had agreed to receive the said sum towards his advance amount. The said complaint was dated 26.09.2020. Subsequently, a Memorandum of Understanding was entered between the previous tenant Paramasivam and the second respondent on 17.10.2020 wherein it is stated that the said Paramasivam had got back the total advance amount of Rs.12,25,000/- by cash.

9. By making the above submissions, the learned counsel for the petitioners stated that the advance amount received by the said



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Paramasivam was from the advance amount paid by the first petitioner, who was the subsequent tenant of the second respondent.

10. The specific contention of the second respondent is that the alleged Lease Agreement dated 01.01.2021 itself is a forged one and the signature seen in the Lease Deed is not that of the second respondent. Only if the first respondent police is allowed to have the access to the said Lease Deed, it can be found out whether the signature affixed in the said deed was made by the second respondent or his signature has been forged. The said Lease Deed was not produced before the first respondent police, though the second respondent has given a complaint on 01.03.2021.

11. The third petitioner had filed a Civil Suit in O.S.No.59 of 2021 on 05.02.2021. Even though it is claimed by the petitioners that the original of the Lease Agreement dated 01.01.2021 was given to the petitioners' counsel to be filed in the Court for the Civil Suit, the particulars of documents shown in the third petitioner's plaint before the Civil Court would show that the third petitioner had produced only the xerox copy of the lease agreement. In that case, the petitioners could have



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produced the original Lease Deed for the examination of the first respondent Police or even for the forensic test. But he did not produce.

12. In fact, it is submitted by the learned counsel for the second respondent that because of the continual troubles given petitioners, the second respondent was compelled to sell away the property to a third person. The encumbrance certificate in respect of the subject matter would show that the second respondent's wife has executed a Sale Deed in favour of some third parties in respect of the subject matter.

13. In order to quash the FIR by exercising the powers of this Court under Section 482 Cr.P.C., the materials available on record should be of such a standard that it will not probabalize a case for the prosecution, even it is uncontroverted. No doubt, the matter would have been civil in nature, if the parties had not taken the law into their hands and involved themselves in criminal offences. The complaints given by the defacto complainant discloses the criminal actions committed by the petitioners. The third petitioner, who is the daughter of the first petitioner is said to be the person, in whose name the lease was obtained from the



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second respondent. Even when the first respondent police asked the petitioners to produce the original lease deed, the petitioner has not produced the same, in order to dissipel the doubts about its genuineness.

14. It is pertinent to note that while dismissing the petition filed by the petitioners for anticipatory bail, this Court has observed in its common order dated 14.06.2021 in CrI.O.P.Nos.8472, 8473 and 8474 of 2021 that the Lease Agreement is silent about the cheques said to have been issued by the petitioners to the defacto complainant. Further, no material has been produced to show that the petitioners have paid Rs.20,00,000/- as advance to the second respondent.

15. So these gaps escalate the doubts which cannot be left as such without making proper investigation. Even though it was brought to the attention of the Court that a complaint is given by the second respondent against one Paramasivam and in which he had mentioned about the receipt of Rs.5,00,000/- from the first petitioner, no proof is produced for the rest of the payment. The first respondent police has got a duty to examine the original of the Lease Deed dated 01.01.2021, in order to find out whether any forgery has been committed in the signature



of the second respondent. As stated already, the petitioners have not produced the said original document so far for investigation. Even though the matter gives an appearance of a civil dispute, there are some elements which would attract criminal action through a detailed investigation.

16. In the judgment cited by the learned Senior Counsel for the petitioners in ***BINOD KUMAR AND OTHERS VS. STATE OF BIHAR AND ANOTHER*** reported in ***[2014 (10) SCC 663]*** also it is observed as under:

*“8.In proceedings instituted on criminal complaint, exercise of the inherent powers to quash the proceedings is called for only in case where the complaint does not disclose any offence or is frivolous. It is well settled that the power under [Section 482 Cr.P.C.](#) should be sparingly invoked with circumspection, it should be exercised to see that the process of law is not abused or misused. The settled principle of law is that at the stage of quashing the complaint/FIR, the High Court is not to embark upon an enquiry as to the probability, reliability or the genuineness of the allegations made therein.”*

17. As per the above dictum of the Hon'ble Supreme Court in the above case, the Court cannot embark upon a roving enquiry at the



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threshold stage itself and assume the role of the investigative agency.

Since there are sufficient materials available to suggest a criminal case, I feel the investigation should be allowed to continue.

18. In the result, the Criminal Original Petition is **dismissed**.

Consequently, connected miscellaneous petitions are closed.

**16.11.2022**

Index : Yes/No  
Internet : Yes/No  
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**R.N.MANJULA, J.**

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