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CRL.O.P.No.16586 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.08.2022

CORAM:

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

CRL.O.P.No.16586 of 2021
and CrI.MP.No.9058 of 2021

1.G.Pachaiyappan
2.D.Sundaraj
3.D.Mohanraj
4.D.Krishnamoorthy

... Petitioners

Vs.

The State by,
The Inspector of Police,
C4 Pennalurpet Police Station,
Tiruvallur
2.S.Prathaban

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records relating to FIR in crime No.248 of 2021 on the file of the Inspector of Police, C-4, Pennalurpet Police Station, Tiruvallur and quash the same as abuse of process.

For Petitioners : Mr.C.Ganesh Pandian

For Respondents

For R1 : Mr.A.Gopinath,
Government Advocate(crl.side)

ORDER



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This petition has been filed to quash the F.I.R. in Crime No.248 of

2021 registered by the first respondent police for offences under Sections 379, 430, 415, 464 of IPC and Section 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957 as against the petitioners.

2. The case of the prosecution is that the petitioners have ported silicon sand of 5 units which was not true, instead the petitioners dually having proper permission and bill to carry M-sand did carry only M-sand where the load of M-sand is still intact with the vehicle No.TN 23 AL 1498 is seized. The load of M-sand was a proper purchase from authorised M-Sand seller i.e. Sarvesh M-sand, Arasampalayam Village, Kinathakadavu, Coimbatore to deliver the load at Gummidipoondi (invoice No.541 dated 05.07.2021 and delivery dated 06.07.2021) with proper GST paid.

3. The learned Counsel appearing for the petitioners would submit that the petitioners are innocent persons and they have not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No.248 of 2021 for the offences under Sections 379, 430, 415, 464 of IPC and Section 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957, as against the petitioners.



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Hence he prayed to quash the same.

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4. The learned Government Advocate(crl.side) would submit that the investigation is almost completed and the first respondent police have only to file final report.

5. Heard Mr.C.Ganesh Pandian, learned counsel appearing for the petitioners and Mr.A.Gopinath, learned Government Advocate (crl.side) appearing for the first respondent.

6. It is seen from the First Information Report that there are specific allegations as against the petitioners to attract the offence, which have to be investigated in depth. Further the FIR is not an encyclopedia and it need not contain all facts and it cannot be quashed in the threshold. 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.

7. It is relevant to rely upon the judgment of the Hon'ble Supreme



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Court of India passed in **Crl.A.No.255 of 2019** dated **12.02.2019** in the case

of **Sau. Kamal Shivaji Pokarnekar 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



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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



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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."

8. In view of the above discussion, this Court is not inclined to quash the First Information Report. Accordingly, this Criminal Original Petition stands dismissed. However, the learned counsel for the petitioners would submit that all the bills produced by the petitioners are original.

9. Considering the above submission, the petitioners are directed to submit the original transit permit and other documents, if any, before the first respondent and on receipt of the same, the first respondent is directed to consider those documents and complete the investigation and file final report in crime No.248 of 2021 within a period of twelve weeks from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed.

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Internet : Yes / No

Index : Yes / No

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G.K.ILANTHIRAIYAN, J.
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To

1. The Inspector of Police,
C4 Pennalurpet Police Station,
Tiruvallur
- 2.The Public Prosecutor,
High Court, Madras.

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