

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.06.2022

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.18272 of 2020
and
Crl.M.P.No.7144 of 2020

1. G.Marimuthu
2. S.Susila Sekar ...Petitioners

Vs

1. The State Rep. By
The Inspector of Police,
R-10, M.G.R. Nagar Police Station,
Chennai.
(Crime No.128 of 2020)

2. Srinivasan ...Respondents

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to call for the records culminating in Crime No.128 of 2020 on the file of the Inspector of Police, R-10, M.G.R. Nagar Police Station, Chennai and quash the same.

For Petitioners: Mr.S.Arivazhagan

For Respondents

For R1 : Mr.A.Gopinath
Government Advocate (Crl. Side)

For R2 : Mr.S.Sai Shankar

O R D E R

This petition has been filed to quash the F.I.R. in Crime No.128 of 2020 registered by the first respondent police for offences under Sections 406 & 420 of IPC, as against the petitioners.

2.The case of the prosecution is that the petitioners had received a sum of Rs.5,20,000/- from the second respondent/defacto complainant on a false promise that they will sell a land to him. When the defacto complainant asked them to return money, the petitioners gave two cheques each for Rs.1,00,000/-, but they were returned with an endorsement

insufficient funds. Hence, the defacto complainant lodged the present complaint as against the petitioners.

3.The learned counsel appearing for the petitioners submitted that the petitioners were paid a sum of Rs.2,00,000/- by way of two cheques. Though both the cheques were dishonoured, it will amount as repaid. If at all any grievances over the dishonoured cheques, the second respondent can very well proceed as against the petitioners under Section 138 of Negotiable Instruments Act. Further no offence is made out as against the petitioners under Sections 420 & 406 of IPC. Therefore he prayed to quash the F.I.R.

4.The learned Government Advocate (Crl. Side) appearing for the first respondent police submitted that the petitioners are arrayed as A1 & A2 and they received a sum of Rs.5,20,000/- on promising to sell a land to the defacto complainant. Thereafter, they failed to execute any sale document in favour of the defacto complainant and cheated him to the tune of Rs.5,20,000/-. He further submitted that the investigation is almost completed and the respondent police have only to file final report. Therefore, he prayed for dismissal of the present petition.

5.Heard Mr.S.Arivazhagan, learned counsel appearing for the petitioners, Mr.A.Gopinath, learned Government Advocate (Crl. Side) appearing for the first respondent and Mr.S.Sai Shankar, learned counsel appearing for the second respondent.

6.On perusal of the First Information Report revealed that the petitioners induced the defacto complainant to pay a sum of Rs.5,20,000/- and promised to look a house plot and register the same. Believing their words, the defacto complainant paid a sum of Rs.5,20,000/- and thereafter the petitioners failed to show any of the property and failed to register it, in favour of the defacto complainant. Both the offences under Sections 406 & 420 of IPC are clearly made out and this Court finds no ground to quash the FIR. 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 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., 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.

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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."

8. In view of the above discussions, this Court is not inclined to quash the First Information Report. Accordingly, this Criminal Original Petition stands dismissed. However, considering the crime is of the year 2020, the first respondent is directed to complete the investigation in Crime No.128 of 2020 and file a final report within a period of eight weeks from the date of receipt of copy of this Order, before the jurisdiction Magistrate, if not already filed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rts

To

1. The Inspector of Police
R-10, M.G.R. Nagar Police Station,
Chennai.
2. The Public Prosecutor,
Madras High Court,
Chennai.

+lcc to Mr.S.Arivazhagan, Advocate, S.R.No.40935

Crl.O.P.No.18272 of 2020
and Crl.M.P.No.7144 of 2020

KK(CO)
RGA(26/07/2022)