

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2022

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.21113 of 2020

and

Crl.M.P.No.8980 of 2022

1. K.Bagyalakshmi

2. Nandu @ K.Sri Sadur Vedagirinathan

... Petitioners/Accused 1, 2

Vs.

1. The State represented by its,
The Inspector of Police,
District Crime Branch,
Coimbatore District,
(Crime No.18 of 2020)

... Respondent/Respondent

2. S.Rani Swaminathan

... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in Crime.No.18 of 2020 pending on the file of the first respondent and quash the same.

For Petitioner : Mr.K.Myilsamy

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

For R2 : Mr.S.B.Viswanathan

O R D E R

This petition has been filed to quash the complaint in Crime.No.18 of 2020 pending on the file of the first respondent, for the alleged offences under Sections 406, 420, 468, 471 and 34 of IPC, as against the petitioners.

2. The case of the prosecution is that the second respondent's husband obtained housing loan to a sum of Rs.15,09,383/- and kept in his house. At that time, the petitioners approached the second respondent and insisted the

second respondent's husband to deposit the above sum to the second petitioner's bank by assuring him that it will procure huge interest. Believing the same, the second respondent's husband handed over the amount to the second petitioner. Thereafter, even after maturity, the second petitioner did not returned the money back to the second respondent's husband. Hence, the complaint.

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.18 of 2020, for the offences under Sections 406, 420, 468, 471 and 34 of IPC, as against the petitioners. Hence he prayed to quash the same.

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

5. Heard Mr.K.Myilsamy, learned counsel appearing for the petitioner, Mr.A.Gopinath, learned Government Advocate (Crl.Side) appearing for the first respondent and Mr.S.B.Viswanathan, learned counsel appearing for the second respondent.

6. It is seen that the second respondent's husband availed housing loan to construct a house and the same amount was deposited in the second petitioner's bank. Even assuming that the second respondent's husband availed housing loan, he has to construct house and as such he should not have deposited the same as alleged in the FIR. In fact, the petitioners are one of the subscribers in the chit conducted by the second respondent. All the money transactions mentioned in the FIR is with regards to chit transaction. In fact, after receipt of the entire chit subscription amount, the second respondent issued cheque in favour of the second petitioner for the chit amount. The cheque was presented for collection. However, it was returned for dishonour. The petitioners also proceeded with the offence punishable under Section 138 of the Negotiable Instruments Act. A perusal of records revealed that there was E-Mail communication between the second accused and the second respondent in respect of deposit amount. Therefore, there are allegations to attract the offences under Sections 406, 420, 468, 471 and 34 of IPC. That apart, the grounds raised by the petitioners are mixed question of fact and it cannot be considered in the quash petition. 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 CrI.A.No.255 of 2019 dated 12.02.2019 in the case of Sau. Kamal Shivaji Pokarnekar 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 discussion, this Court is not inclined to quash the First Information Report in Crime No.18 of 2020 on the file of the first respondent Police. However, the first respondent is directed to complete the investigation and file a final report, within a period of twelve weeks from the date of receipt of a copy of this order.

9. Accordingly, this Criminal Original Petition stands dismissed. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True copy//

Sub Assistant Registrar

mn/cda

To

1. The Inspector of Police,
District Crime Branch,
Coimbatore District,

2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.Mr.K.Myilsamy, Advocate SR.No.43191

+1cc to Mr.S.B.Viswanathan, Advocate SR.No.43645

Cr1.O.P.No.21113 of 2020
and
Cr1.M.P.No.8980 of 2022

SSN(CO)
GMY(25/07/2022)