BEFORE THE MADURAI BENGH OF MADRAS HIGH COURT
RESERVED ON : 28.02.2022
PRONOUNCED ON : 04.03.2022
CORAM
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN
Crl.O.P.(MD)No.57 of 2021
and
Crl.M.P(MD)No.26 of 2021

1.Abdul Gafoor
2.Gaabi Gafoor
3.Navarin Gafoor ... Petitioners/Accused Nos.1 to 3

Vs.

1.The State represented by,
The Inspector of Police,
District Crime Branch,
Karur District.
(Crime No.15 of 2019) ... 1st Respondent/Complainant

2.M.Mathan Kumar ... 2nd Respondent/
Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the F.I.R in Crime No.15 of 2019 on the file of the respondent police and quash the same as against these petitioners.

For Petitioners : Mr.S.R.Rajagopal
for Mr.K.Rajeshwaran
For R - 1 : Mr.B.Thanga Aravindh
Government Advocate (Crl. Side)
For R - 2 : Mr.G.Prabhu Rajadurai
for Mr.S.Gokul Raj

ORDER

This Criminal Original Petition has been filed to quash the FIR registered in Crime No.15 of 2019 on the file of the first respondent for the offences under Sections 120B, 294(b), 406, 420 and 506(i) of I.P.C.

2. There are eight accused in Crime No.15 of 2019, in which, the petitioners are arraigned as Accused Nos.1 to 3.

3. The case of the prosecution is as follows:-

3.1. The second respondent lodged a complaint alleging that he had contacted two officials namely Aravind, Deputy General Manager and Mahadev, H.R Manager, who are arraigned as Accused Nos.7 and 8 of the Company, namely Pinnacle Vehicles and Services Private

Limited in their office premises at NH47 Mannuthy Bye-pass, Kuttanellur Post, Thrissur, Kerala in connection with his car business at Karur. These two persons introduced the owners of the company viz., the petitioners herein and also the fourth and fifth accused and informed that Rajshree Motors is their sister concern. All of them jointly told the defacto complainant has to make a deposit amount of Rs.1,00,00,000/- (Rupees One Crore only) and it was mutually agreed that the amount fixed is only a formality for agreement purpose and that the amounts payable is according to his choice of business with them to deal with new Hyundai and Skoda Cars. They had further informed that the defacto complainant has to sign the agreement to be prepared by them; that they will supply cars and that the defacto complainant had to pay amounts as directed by them to the account of the fourth and fifth accused and also to their sister concern viz., Rajshree Motors besides payments directly to the company; that they also insisted that only after minimum payment of Rs.35,00,000/- agreement will be prepared by them to deal with their cars; that they jointly, orally agreed and undertaken that if all such payments that will be made by the defacto complainant as per their directions, all the first three accused are responsible for return of the deposit with 18% interest; that as they are doing car business in Kerala and other parts of India as well, the defacto complainant believed their words and paid a total sum of Rs.77,00,000/- on different dates as directed by them. Only after such payments to the tune of Rs.62,00,000/- made out of Rs.77,00,000/- by the defacto complainant through his company Bank accounts to their Bank accounts, they prepared an agreement and asked the defacto complainant for signing in the agreement and the defacto complainant informed all the above persons that he will sign the same without full consent of him as the agreement is prepared with clauses in favour of them only, for which, they replied that it is only a formality, but they will be genuine for returning his amounts given through the defacto complainant's company. Believing their words, the defacto complainant had signed in the agreement and it is to be noted that before preparing the agreement, Rs.62,00,000/- was paid which was not recorded in the agreement by them. Even after that also several payments of the balance sum of Rs.15,00,000/- was paid to them as directed on different dates.

3.2. For all payments made from 03.05.2019 to till date for the said sum of Rs.77,00,000/-, there is Bank accounts available with the defacto complainant. Thereafter, whenever the defacto complainant asked them to supply cars with some specified colours etc., they said one or other reasons and did not supply any vehicles as requested through his company, Mathan Car Decors. Whenever the defacto complainant contacted through phone for supply of cars, they are avoiding for one or other reasons and they are enjoying the above huge deposits made with the company as directed by all of them. As the defacto complainant was not satisfied with their services due to their failure to keep words and promises made to the defacto complainant to improve his business, the defacto complainant had stopped further payments and requested them to repay the abovesaid Rs.77,00,000/- deposited on 15.07.2019, for which, they replied that they will arrange the funds within a week's time. But they failed to repay the money and saying one or other reasons for repayment. Therefore, all the above persons cheated him. If the defacto complainant pressurizes for return of the sum of Rs.77,00,000/-, all of them are threatening that his life will be in danger and that he should not take any civil or criminal proceedings against them and they are liable to return his money with 18% interest. When the defacto complainant asked them for interest, they scolded him with filthy language and assaulted him in front of the other office staff members. Accused Nos.7 and 8 showed a knife in front of his face and gave life threat and accused Nos.4 and 5 threw a table weight on him and tried to kill him. All these things were done by all of them only at the instruction of the owners, viz., the petitioners herein. Hence, the defacto complainant lodged a complaint against the petitioners and other accused.

4. The learned counsel appearing for the petitioners submitted that the entire allegations does not disclose any material to attract the offences registered against the petitioners. There is no material evidence either oral or documentary to implicate the petitioners as an accused. The entire allegations are civil in nature, since there is a contractual dispute between the petitioners and the second respondent herein. All the allegations are related to breach of conditions of the contract and at the best could give rise only of a civil liability. The Pinnacle Vehicles and Services Private Limited was the Authorized Dealers of Skoda and Hyundai make of cars. The second petitioner is the Executive Director of the company and the petitioners 1 and 3 are not the share holders of the company, but holding honorary posts in the company. During the course of their business, the second respondent along with two other persons, as the defacto complainant agents represented that they have customers all over India and they would canvas their customers for purchasing the cars from the company at brand price fixed by the manufacturers approached the employees of the company. The customers routed through the second respondent would make deposit of the sale price of the car to the company account, as per their instructions, the cars were to be delivered to the customers. As per the arrangements, a written tri-partite agreement was entered between through his employees, defacto complainant and his agent on 06.06.2019. On that basis, several customers had deposited the amount in the company's account and the cars have been delivered on the basis of invoices raised as per their instructions. All these transactions were on the basis of car finance obtained by the end customers and the margin money was to be adjusted towards the deposits made by the defacto complainant. In fact, the company received several complaints from the customers alleging that no delivery of cars made by the agent of the second respondent and as such, the company lodged a complaint and the same has been registered in Crime No.702 of 2019 as against the agent of the

second respondent and their employees and it is pending for investigation. Therefore, only to escape from the clutches of law, the present impugned F.I.R has been registered as against the petitioners.

5. Heard the learned counsel appearing for the petitioners, the learned Government Advocate (Criminal Side) appearing for the first respondent and the learned counsel appearing for the second respondent and perused the materials available on record.

6. According to the defacto complainant, they made payments to the tune of Rs.77,00,000/- on different dates and the petitioners prepared an agreement. Thereafter, whenever the second respondent asked them to supply cars, one or other reasons, the accused persons did not deliver any vehicle.

7. That apart, the petitioners filed anticipatory bail application before this Court in Crl.O.P(MD)No.205 of 2020 and this Court dismissed the same, by an order dated 22.01.2020. Thereafter, the second petitioner was arrested and remanded to judicial custody. Hence, the second petitioner moved a petition for bail in Crl.M.P.No.188 of 2020 before the learned Sessions Judge, Karur. By an order, dated 03.03.2020, the second petitioner was granted bail on condition that the second petitioner was directed to deposit a sum of Rs.34,00,000/- (Rupees Thirty Four Lakhs only) to the credit of Crime No.15 of 2019 of the District Crime Branch, Karur. On such deposit, he was ordered to be released on bail. Insofar as the petitioners 1 and 3 are concerned, they filed second anticipatory bail application before this Court in Crl.O.P(MD)No.2708 of 2021 and this Court, again dismissed the same by an order dated 01.03.2021. Aggrieved by the same, the petitioners 1 and 3 filed Special Leave Petition before the Honourable Supreme Court of India in SLP(Crl.) No.3827 of 2021. By an order, dated 06.09.2021, the Honourable Supreme Court of India dismissed the Special Leave Petition. Therefore, there are specific allegations to make out a case against the petitioners for the offences under Sections 120B, 294(b), 406, 420 and 506(i) of I.P.C.

8. It is also 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 - 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."

The Honourable Supreme Court of India held that 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. Further complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature.

9. Further, it is seen from the First Information Report that there are specific allegation as against the petitioners, which has to be investigated. Further the FIR is not an encyclopedia and it need not contain all facts. Further, 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.

10. In view of the above discussion, this Court is not inclined to quash the First Information Report. Hence, this Criminal Original Petition stands dismissed. However, the first respondent is directed to complete the investigation and file a final report before the concerned Magistrate, within a period of twelve weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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<u>Note :</u>In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

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

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.GOKULRAJ, Advocate (SR-9983[F] dated 04/03/2022)

+1 CC to M/s.N.SATHEESHKUMAR, Advocate (SR-10420[F] dated 07/03/2022)

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04.03.2022

SP(CO)
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