



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2022

CORAM:

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

Crl.O.P. (MD)No.1653 of 2020

and

Crl.M.P(MD) No.771 of 2020

WEB COPY

1.Mathew K.Churian

2.George Thomas

... Petitioners/Accused Nos.2 & 3

Vs

1. The State through

The Inspector of Police

District Crime Branch,

Theni District.

... Respondent/De jure Complainant

2.A.Mokket

... Respondent/Defacto Complainant

**Prayer:** Criminal Original Petition filed under Section 482 Cr.P.C. to Call for the entire records connected with the case in Crime No.1 of 2020, pending on the file of the first respondent police and quash the same as illegal insofar as it relates to the petitioners are concerned.

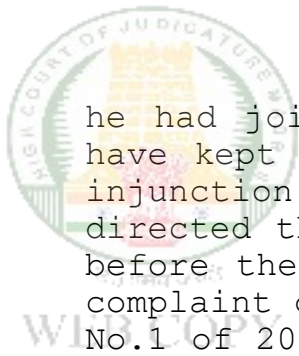
For Petitioners : Mr.S.Malaikani

For R1 : Mr.B.Thanga Aravindh  
Government Advocate(Crl.Side)

### **ORDER**

The criminal original petition has been filed to quash the proceedings in Crime No.1 of 2020 pending on the file of the first respondent.

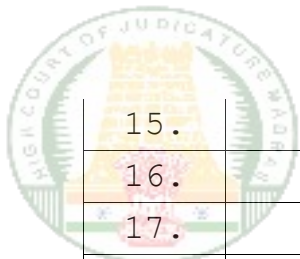
2.The case of the prosecution is that the second respondent pledged his 68.5 grams of gold chain and another chain with the S.P.Netbanking Company and obtained Rs.85,000/-. Then, he went to redeem his jewels from the said company and came to know that one S.P.Raja, who is the owner of the said company had re-pledged his jewels with the Kosamattam Finance company and the company refused to return the jewels. Thereafter, on 07.01.2011, the second respondent and others went to lodge a complaint and came to know that already a FIR had been registered on the complaint of some others as against the S.P.Raja in Crime No.3 of 2011. The Kosamattam company told the authorities and general public that only after the completion of the said criminal case pending between the said S.P.Raja and the Kosamattam company the jewels will be returned. Then, the defacto complainant lodged a complaint, FIR had been registered by the first respondent as against the Kosamattam finance in Crime No.18 of 2014. Then, one S.P.Raja filed a writ petition in W.P.No.20307 of 2013, he said in the writ petition that



he had joined as party and Kosamattam finance company accepted to have kept all the jewels with them. Therefore, this Court granted injunction in M.P.No.1 of 2013 and in the final hearing, this Court directed the defacto complainant herein, to lodge a fresh complaint before the first respondent. The defacto complainant had lodged a complaint on 07.01.2020, for which, FIR had been registered in crime No.1 of 2020 for the offences under Sections 406 and 420 of IPC and Sections 10-A and 16 (7) of the Tamil Nadu Pawn Brokers Act, 1943 and summons had been issued by the first respondent on 20.01.2020.

3.On perusal of records, it is revealed that as directed by this Court in W.P(MD)No.20307 of 2013, by order dated 21.11.2019, directed the victims to lodge a fresh complaint before the District Crime Branch, Theni, namely, the first respondent herein and directed the first respondent to register the complaint and complete the investigation and file a final report within a period of six months. The entire investigation shall be personally monitored by the Superintendent of Police, Theni District. Accordingly, the first respondent had registered the FIR and now, the investigation is under progress in Crime No.1 of 2020 for the offences under Sections 406 and Section 10-A and 16 (7) of Tamil Nadu Pawn Brokers Act, 1943, as against the petitioners and another. Infact, the first respondent already enquired 23 witnesses and recorded their statements. Accordingly, the victims have pledged their respective jewels and borrowed loan and made similar crime had been to the second respondent herein as follows:

| <b>S.No.</b> | <b>NAME</b>  | <b>PLEGGED<br/>JEWEL<br/>(Gms)</b> | <b>LOAN<br/>AMOUNT<br/>(Rs)</b> |
|--------------|--------------|------------------------------------|---------------------------------|
| 1.           | Mokkat       | 93.3                               | 75,000                          |
| 2.           | M.Muthu      | 122.5                              | 1,09,500                        |
| 3.           | Ravichandran | 44.72                              | 33,200                          |
| 4.           | Selvam       | 13.9                               | 11,000                          |
| 5.           | P.Muthu      | 72.7                               | 49,500                          |
| 6.           | Nagadevan    | 55.56                              | 34,000                          |
| 7.           | Muniammal    | 116.3                              | 1,05,000                        |
| 8.           | Sasikaladevi | 11.8                               | 9,400                           |
| 9.           | Madasamy     | 411                                | 2,90,000                        |
| 10.          | Logamani     | 493.4                              | 4,11,000                        |
| 11.          | Chinnasamy   | 580.5                              | 5,55,000                        |
| 12.          | Muthupandi   | 23                                 | 17,000                          |
| 13.          | Arivu        | 15.3                               | 16,200                          |
| 14.          | Gautham      | 26.7                               | 20,500                          |



|     |                   |       |          |
|-----|-------------------|-------|----------|
| 15. | Palaniammal       | 67    | 62,000   |
| 16. | Palpandi          | 52.6  | 40,000   |
| 17. | Gunasekaran       | 96.2  | 36,000   |
| 18. | Rasu              | 437.5 | 3,50,000 |
| 19. | Nandhakumar       | 144   | 1,05,000 |
| 20. | O.Sathish         | 142.1 | 1,38,000 |
| 21. | Mohamad Imrankhan | 185.6 | 15,100   |
| 22. | Thameem Muthar    | 338.7 | 1,45,100 |
| 23. | Haseena Begum     | 656.7 | 6,43,000 |

4. That apart there are more other victims said to have pledged the jewels with the first accused and same in the custody of the second and third accused. Therefore, there is a prima facie case made out to register the FIR for the offences under Sections 406, 420 of IPC and Sections 10-A and 16 of the Pawn Brokers Act.

5. 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."

6. 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 police is directed to complete the investigation and file 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 (Writs)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)



To

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

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

+1 CC to M/s.S. MALAIKANI, Advocate ( SR-17320[F] dated 07/04/2022 )

Crl.O.P.(MD)No.1653 of 2020  
05.04.2022

MGJ(20.04.2022) 5P 4C