



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.02.2022

WEB COPY

CORAM:

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

Crl.O.P.(MD).No.2584 of 2022
and Crl.M.P(MD) No.1930 of 2022

S.Thirumalaiappan ... Petitioner/Accused No.1

Vs.

1.State rep. by
The Inspector of Police,
CCB, Tirunelveli City

... Respondent No.1/
Complainant

2.G.Gunasekaran

... Respondent No.2/
Defacto Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records pertaining to the impugned FIR in Crime No. 5 of 2019 dated 21.02.2019 Under Sections 120(b), 406,408,420 of IPC on the file of the first respondent in so far as the petitioner/Accused No.1 and quash the same.

For Petitioner : Mr.L.Pinaygash

For R-1 : Mr.R.M.Anbunithi
Additional Public Prosecutor

ORDER

The Criminal Original Petition has been filed to quash the proceedings in Crime No. 5 of 2019 for an alleged offences under Sections 120(b),406,408,420 of IPC.

2. The case of the prosecution is that the defacto complainant is the Liquidator of M/s.Karpagam Spinners(P) Ltd, establishment, Thiruppanikarisalkulam. The first accused is the Director of the said establishment and he was appointed as receiver for attachment of movable properties by the ESI Corporation Recovery Officer/A2. The defacto complainant mentioned that during his visit some of the machineries were found and misplaced which is worth about Rs.1,30,00,000/- and they clamed that the first and second accused are responsible for the said misplaced machineries of attached movable property. With the above allegations, the respondent police registered the above FIR.

3. The learned Counsel appearing for the petitioner would submit that the petitioner is innocent and he has not committed any



offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No. 5 of 2019 for the offences under Sections 120(b), 406, 408, 420 of IPC as against the petitioner.

4. The learned Additional Public Prosecutor would submit that the investigation is almost completed and the respondent police are about to file the final report before the concerned court.

5. Heard both sides and perused the materials available on record.

6. It is seen from the First Information Report that there are specific allegation as against the petitioner, 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.

7. 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."

8. 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 respondent police is directed to complete the investigation and file final report before the concerned Magistrate, within a period of eight weeks from the date of receipt of a copy of this Order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



To

1. The Inspector of Police,
CCB, Tirunelveli City

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

Copy to:

The Chief Judicial Magistrate,
Tirunelveli.

Cr1.O.P. (MD) .No.2584 of 2022
08.02.2022

MGJ(18.02.2022) 4P 4C