



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 21.02.2022

CORAM:

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

Crl.O.P.(MD) No.3511 of 2022

A.Mercy Grace

...Petitioner

Vs.

1. The Inspector of Police
District Crime Branch
Kanyakumari
Kanyakumari District
(Crime No.40 of 2019)

2. Viju ...Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for records in crime No.40 of 2019 on the file of the 1st respondent police and to quash the same as illegal.

For Petitioner : M/s.Sureshkumar S

For Respondents : Mr.R.M.Anbunithi
No.1 Additional Public Prosecutor

ORDER

This petition has been filed to quash the proceedings in Crime No.40 of 2019 on the file of the 1st respondent police.

2. The date of alleged occurrence is said to be on 03.09.2018 and the date of information is on 21.12.2019. The Petitioner respectfully submits that, in respect of the complaint for the alleged payment of Rs.2,60,000 and for which receipt was issued and consequent issuance of alleged visa and ticket and his entry at the airport was restricted and further caused delay and for return of money, the said informant preferred complaint before the respondent Police, the case was registered in the above said crime number and in which, as on date 03.11.2021, there are two receipts, each for Rs.30,000 totally Rs.60,000 alone was found collected evidence by the respondent police and the alleged complaint against the petitioner for Rs.2,60,000 preferred by the de facto Complainant Viju itself is a false.

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.

4. The learned Additional Public Prosecutor would submit that the investigation is 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 twelve weeks from the date of receipt of a copy of this Order.

Sd/-

Assistant Registrar (CS II)

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/ /2022

Sub Assistant Registrar(CS)

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To

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

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

Cr1.O.P. (MD) No.3511 of 2022
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