



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2022

CORAM:

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

Crl.O.P.(MD) No.4031 of 2022

in

Crl.M.P(MD)No.2935 of 2022

KrishnaMohan

...Petitioner/Accused No.1

Vs.

1. State Rep. by
The Inspector of Police,
Kovilpatti East,
Thoothukudi District.
(Crime No. 1166 of 2021)

...1st Respondent/Complainant

2. Subramanian

...2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records pertaining to the case registered in First Information Report in Crime No. 1166 of 2021 on the file of the 1st respondent and quash the same in respect of the petitioner as illegal.

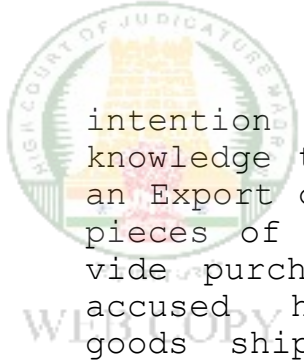
For Petitioner : Mr.G.Anto Prince

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

ORDER

This Criminal Original Petition has been filed to quash the proceedings in Crime No. 1166 of 2021 on the file of the first respondent police.

2. The informant is the public limited company and engaged in manufacture of yarn, woven and knitted fabrics as well as garments. It is a leading exporter of textile products for nearly 14 years. The informant company is having factories in various places in Tamil Nadu including one at Arasanoor, Sivagangai District in the name of Shri Chintamani Textiles Mills. The informant further submits that the first accused had been appointed as Vice President(Marketing) at the informant factory. The second accused Chief Executive Officer of M/s.Cottex Collections and the third accused is the Co-Ordinating services of the said collections. The informant further states that taking advantage of the absolute authority, the first accused joined hands with the second and third accused and with dishonest



intention conspired to deceive the informant company with full knowledge that there is no genuineness goods sale, had brought in an Export order from M/s.Virtual apparels, USA for supply of 60000 pieces of T.Shirts and 16,200 Tank tops worth about 148050/- USD vide purchase order No.1021 dated 22.01.2021, in which all the accused had fixed a commission @14.62% on the FOB value of the goods shipped. Further the accused persons also cheated the informant and obtained the commission for agents to use for freight charges before the delivery of goods. When the informant company even paid the commission requested by the accused persons to meet payment of the freight charges the payment from the buyer was not received by the informant as promised by all the three accused. At this stage the company has come to know that the buyer is not a genuine party and the order in their names is a bogus one. Further the accused persons have also cheated the informant on various dates and through various persons. Therefore it is clear that the company sustained wrongly loss of Rs.1,46,23,400/-(including commission and demurrage charges) and the accused obtained wrongful gain of the same amount.

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. 1166 of 2021 for the offences under Sections 120(B), 465,409,468,420 of IPC as against the petitioner.

4. The learned Additional Public Prosecutor would submit that the investigation is still pending.

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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8.....

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. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

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To

1. The Inspector of Police,
Kovilpatti East,
Thoothukudi District.
2. The Additional Public Prosecutor
Madurai Bench of Madras High Court

+1 CC to M/s.G.ANTO PRINCE, Advocate (SR-9495[F] dated 02/03/2022)

ORDER MADE IN
Crl.O.P.(MD) No.4031 of 2022
02.03.2022

PKP/12.03.2022/4P/4C