



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.03.2022

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD) No.4997 of 2022

and

Crl.M.P(MD) No.3536 of 2022

1.Arunachalam

2.Balaji

... Petitioners/A1 & A2

Vs.

1. State Rep. by

The Inspector of Police,
Central Crime Branch,
Madurai City, Madurai.
(Crime No.47 of 2019)

... 1st Respondent/Complainant

2. Shanmugam

... 2nd Respondent/Defacto Complainant

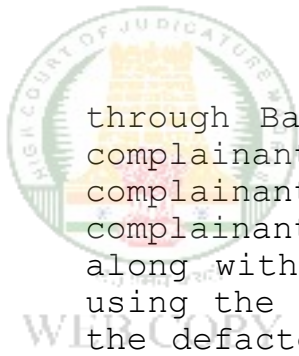
PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records relating to the Impugned FIR in Cr.No.47 of 2019 dt.8.11.2019 on the file of the 1st Respondent Police and Quash the same as the against the Petitioner as illegal.

For Petitioners	:	M/S.Ramanathan AN
For Respondents	:	Mr.R.M.Anbunithi
No.1	:	Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the proceedings in Crime No. 47 of 2019 on the file of the first respondent police.

2.The Case of the Prosecution was that the 2nd respondent/defacto complainant got introduction with this petitioners (Accused No.1 and 2) through his Manager, Thiyaneshwaran (Accused No.3) in the year 2016. It was agreed between the defacto complainant and the petitioners that the defacto complainant should purchase Pooja materials in India, export the same to Malaysia for Sri Chakara Marketing, which belongs to the petitioners. The petitioners will sell the same in Malaysia and repay the amount with proportionate share in profits. The further case of the defacto complainant is that initially on 25.05.2016 and on 01.08.2016, Pooja materials worth about Rs.30 Lakhs was exported through one other person license. Further on 05.08.2016, the defacto complainant has obtained individual license to export. After that on various dates the defacto complainant has exported Pooja materials worth about Rs.1.02 Crores. In turn, the petitioners have repaid Rs.49.03 Lakhs



through Bank and there was balance of Rs.80 Lakhs to the defacto complainant. It is submitted that the further case of the defacto complainant was that there was demand of Rs.80 Lakhs by the defacto complainant and the petitioners evaded the payment. The petitioners along with other accused have exported Pooja materials to Malaysia using the defacto complainant's Export License Number, due to which the defacto complainant had monetary loss in Income Tax Department. Hence, the present complaint for recovery of money.

3.The learned Counsel appearing for the petitioners would submit that the petitioners are innocent and they have not committed any offence as alleged by the prosecution.

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 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.

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.***, where in it is held 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.

6.....

7.....

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.

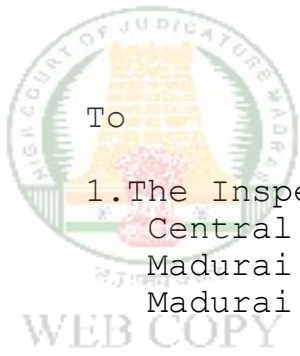
Sd/-

Assistant Registrar (WRITS)

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/ /2022

Sub Assistant Registrar(CS)



To

1.The Inspector of Police,
Central Crime Branch,
Madurai City,
Madurai.

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

CrI.O.P. (MD) No.4997 of 2022
17.03.2022

RS (24.03.2022) 4P-3C