



CRL.O.P(MD)No.6771 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 11.07.2022

CORAM

**THE HONOURABLE MR. JUSTICE V.SIVAGNANAM**

CRL.O.P(MD)No.6771 of 2022

- 1.Siva Kumar
- 2.Mohamed Azhaarudeen
- 3.Ismail Saber
- 4.Nasardeen @ Yasin
- 5.Marhupandiyar
- 6.Asik @ Ashik Rahuman
- 7.Asbar @ Mohammed Aswar Shaul
- 8.B.Uzman

... Petitioners

*Vs.*

- 1.The Inspector of Police,  
Devipattinam Police Station,  
Ramanathapuram District.

- 2.Rahuman Khan

... Respondents

**PRAYER:** Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records Crime No.366 of 2020 on the file of the first respondent and quash the same as against this petitioner.

|                 |                                                        |
|-----------------|--------------------------------------------------------|
| For Petitioners | : Mr.S.M.A.Jinnah                                      |
| For R1          | : Mr.A.Albert James<br>Government Advocate (Crl. Side) |
| For R2          | : Mr.A.Navesh Prabhu                                   |



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## **ORDER**

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This Criminal Original Petition has been filed to quash the FIR in Crime No.366 of 2020 on the file of the first respondent.

2.The petitioners are charged for the offences under Sections 147, 294(b), 342, 323, 365 and 506(ii) of IPC. According to the prosecution, all the accused persons said to have used the second respondent to smuggle gold from the Srilanka by way of paying a sum of Rs.20,000/- as commission. On 24.09.2022, the second respondent along with other accused persons said to have collected gold and six small size gold biscuits and the same were handed over to the first petitioner. On 25.09.2022, the first petitioner called the second respondent over phone and informed that the gold brought by him was mixed highly with copper. Thereafter, the petitioners said to have kidnapped the second respondent by using car bearing registration No.TN 65 AC 9261. Thereafter, the petitioners and other accused said to have assaulted the defacto complainant with hands. Hence, the present complaint.



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3.The learned counsel appearing for the petitioners submitted that the entire allegations against the petitioners are false. Hence, he prayed to quash the criminal proceedings against the petitioners.

4.The learned Government Advocate (Crl. Side) appearing for the first respondent submitted that the respondent police has registered the First Information Report in Crime No.366 of 2020 for the offences under Sections 147, 294(b), 342, 323, 365 and 506(ii) of IPC and the same is under investigation. . Hence, he prayed to dismiss this petition.

5.I have considered the submission of the learned counsel appearing for the petitioners and the learned Government Advocate (criminal side) appearing for the first respondent police.

6.The Hon'ble Supreme Court in **Indian Oil Corporation vs. NEPC India Limited and others [(2006)6 SCC 736]** laid down the principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings, which are relevant for the present purpose are:-



(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been



stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

7.In the case on hand, a perusal of records, it is seen that the petitioners and the second respondent said to have committed smuggling gold from Srilanka and involved illegal activities. Hence, it is inappropriate to quash the criminal proceedings. Therefore, this Court finds no merit to entertain this petition.



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8. Further, the Hon'ble Supreme Court in the case of **R.P.Kapur v. State of Punjab (AIR 1960 SC 866)** and subsequent cases, has held that revisional or inherent powers for quashing the proceedings at the initial stage can be exercised only where the allegations made in the complaint or the first information report, even if taken at their face value and accepted in their entirety, do not prima facie disclose the commission of an offence or where the uncontroverted allegations made in the FIR or complaint and the evidence relied in support of the same do not disclose the commission of any offence against the accused, or the allegations are so absurd and inherently improper that on the basis of which no prudent person could have reached a just conclusion that there were sufficient grounds in proceedings against the accused or where there is an express legal bar engrafted in any provisions of the Code or any other statute to the institution and continuance of the criminal proceedings or where a criminal proceeding is manifestly actuated with mala fide and has been initiated maliciously with the ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge.



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9.The Investigating Agency should have the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. It is not appropriate to quash the complaint since this Court finds no merit in this case.

10.If the allegations made in the First Information Report *prima facie* discloses a cognizable offences, interference with the investigation is not proper, because that amounts to interfere with the statutory power of the police to investigate a cognizable offences in accordance with the provisions of Cr.P.C. Without thorough investigation, it is not possible or proper to hold whether the allegations made by the complainant are true or not. Hence, the investigation should have been allowed to continue, so that on filing of the final report under Section 173 Cr.P.C, the affected party could pursue its remedy against the final report in accordance with law.

11.Therefore, the police will proceed to complete the investigation fairly on the same expeditious and submit the required final report to the learned Jurisdictional Judicial Magistrate who shall act in accordance with law.



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12.In the light of the above factual and legal positions, this Criminal Original Petition is dismissed.

**11.07.2022**

Internet: Yes./No

Index: Yes/no

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To

- 1.The Inspector of Police,  
Devipattinam Police Station,  
Ramanathapuram District.
- 2.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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**V.SIVAGNANAM, J.**

vsg

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