



Crl.O.P.(MD) No.13103 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 25.08.2022

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THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRL.O.P (MD) No.11310 of 2022

and

CrI.M.P.(MD).No.7124 of 2022

Jamal Anish Fathima

...Petitioner

VS

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

2.Saran

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying this Court to call for the records in Crime No.21 of 2021 dated 21.11.2021 on the file of the first respondent Police and quash the same.

For Petitioner : Mr.K.Paramaraj

For 1stRespondent : Mr.M.Sakthi Kumar

Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed to quash the First Information Report in Crime No.21 of 2021 dated 21.11.2021 on the file of the first respondent Police.

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2.The learned counsel appearing for the petitioner submitted that the petitioner has not committed any offence as alleged by the prosecution and the father of the petitioner has sent a sum of Rs.1,74,467/- to her account. Otherwise, she did not have any knowledge about the misappropriation committed by her father. Therefore, he prayed to quash the FIR against the petitioner.

3.The learned Government Advocate (Crl.Side) appearing for the first respondent Police submitted that on the complaint given by the Head Clerk of Additional District Court, Virudhunagar, a case in Crime No.21 of 2021 has been registered against the petitioner's father alleging that the Head Clerk of Additional District Court, Virudhunagar, namely, M.Ushen Akbar, misappropriated a sum of Rs.28,10,000/- from MCOP deposited amount and diverted the same to various accounts including the petitioner has received the amount from him. He further submitted that the investigation is going on. Under these circumstances, it is not proper to quash the FIR. Hence, he prayed for dismissal of the petition.



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

5.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



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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.

6.In the case on hand, a perusal of records, it is seen that throughout Tamil Nadu several misappropriation have been done in various Courts by several Staff members of the Courts. Hence, the High Court directed to verify the accounts pertaining to MCOP cases. Thereafter, the Head Clerk, Additional District Court, Virudhunagar, on scrutinizing the records and accounts, found that M.Ushen Akbar, then the Head Clerk, Additional District Court, Virudhunagar, misappropriated a sum of Rs.28,10,000/- from MCOP deposited amount and diverted the same to various accounts. The petitioner is the daughter and she has received a sum of Rs.1,74,467/- in her account.

7.On perusal of impugned F.I.R, it is seen that the allegation therein would *prima facie* make out a case for investigation by the police authority.



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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. The first respondent Police is directed to file a final report within a



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period of four months from the date of receipt of a copy of this order.

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12.In the light of the above factual and legal positions, this Criminal Original Petition is dismissed. Consequently connected miscellaneous petition is closed.

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To:

1. The Inspector of Police,
District Crime Branch,
Virudhunagar District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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V.SIVAGNANAM, J.

vsg

ORDER IN
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