



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.02.2022

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD)No.8435 of 2021

and

Crl.M.P(MD)No.4332 of 2021

Naina Mohammed

... Petitioner/Accused No.1

Vs.

1.The State represented by,
The Inspector of Police,
District Crime Branch,
Virudhunagar District. ... 1st Respondent/Complainant

2.T.O.P.Thariq ... 2nd Respondent/Defacto Complainant

3.M.Jahangir ... 3rd Respondent

(R - 3 impleaded vide order dated 09.02.2022
made in Crl.M.P(MD)No.5383 of 2021)

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C.,
to call for the records relating to the FIR in Crime No.11 of 2020
on the file of the first respondent police and quash the same as
illegal insofar as the petitioner is concerned.

For Petitioner	: Mr.Mahaboob Athiff
For R - 1	: Mr.B.Thanga Aravindh Government Advocate (Crl. Side)
For R - 2	: Mr.S.A.Ajmal Khan
For R - 3	: Mr.G.Chandrasekar

ORDER

This Criminal Original Petition has been filed to quash the
proceedings in Crime No.11 of 2020 on the file of the first
respondent.

2. The case of the prosecution is that the second respondent
has given a complaint before the first respondent police on
07.11.2020 against the petitioner and other officer bearers alleging
that from 04.03.2019, he was in-charge of "Nallur Mohaideen Andavar
Pallivasal" at Aruppukkottai. On 04.03.2019, as per the order of the
Wakf Board, the administration of the mosque was taken from the
petitioner and other office bearers. Thereafter, the petitioner was
asked to hand over the charge and accounts in respect of the income
of the mosque. Already, a petition was given before the Revenue



Divisional Officer under Section 68 of the Wakf Act. However, the petitioner refused to hand over the charge stating that the interim stay against the order passed by the Wakf Board is in force. It is further alleged in the complaint that the petitioner obtained interim order on 05.03.2019 against the order, dated 04.02.2019 passed by the Chief Executive Officer. It is further alleged that the petitioner is misusing the letter head of the said Pallivasal. The petitioner and other office bearers without submitting the accounts illegally handling the administration and thereby cheated them. Hence, he sought for action against the petitioner and other office bearers. On receipt of the said complaint, the first respondent registered a case in Crime No.11 of 2020 for the offences punishable under Sections 406, 409 and 420 I.P.C and Sections 52A, 61(c), (e), (f), (h) of the Wakf Act, 1995 against the petitioner and other office bearers.

3. Heard both sides and perused the materials available on record.

4. 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.

5. 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.

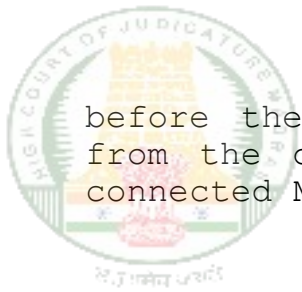
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9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint 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."

6. 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 a 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.

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Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

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

Order made in
CrI.O.P(MD)No.8435 of 2021
09.02.2022

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GC(10.03.2022) 4P 3C