



Crl.O.P.(MD) No.9750 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	16.06.2022
Delivered on	27.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.O.P.(MD) No.9570 of 2022

and

Crl.M.P(MDNos.6140 and 6695 of 2022

1.A.Arulraj

2.Aravind

... Petitioners/A1 and A2

Vs.

1.The Inspector of Police,
District Crime Branch,
Kanyakumari District.
(Crime No.16/2022)

2.M.Subramanian

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in crime No.16/2022 on the file of the Inspector of Police, District Crime Branch, Kanyakumari District and quash the same as illegal as against this petitioner/accused Nos.1 and 2.



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For Petitioners : Mr.N.Mohideen Basha
For Respondents : Mr.A.Albert James
Govt. Advocate (crl.side) (for R1)
Mr.S.Vashik Ali
for Mr.R.Murugan (for R2)

ORDER

This criminal original petition is filed to quash the proceedings in FIR No.16 of 2022 on the file of the first respondent.

2.Fact:- The petitioners are the father and son and they are running Jewelry shops, by name, Asirvatham Nadar and Sons Jewelers and Ganesh Shankar Enterprised. From the second respondent/defacto complainant, the petitioners borrowed money as a loan from the year 1995 onwards. For that, the petitioners while repaying interest, the second respondent gave a complaint against the petitioners to the respondent police on 26.04.2022 stating some allegation against them. The said complaint was registered by the respondent police in Crime No. 16 of 2022 on 26.04.2022 for the offences under Sections 294(b), 406, 418, 420, and 506(ii) IPC. In the complaint, it has been stated that from 02.07.2004 to 07.03.2015, the second respondent/complainant paid Rs.



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3,40,00,000/- to the petitioners through their bank account. When the respondent/complainant asked to repay the said amount, the petitioner by abusing filthy language, threatened to murder him. Hence, he filed the complaint.

3.The learned counsel appearing for the petitioners submitted that all the allegations made in the complaint are false one. The second respondent/complainant suppressed filing of two civil suits in O.S.Nos. 138 and 139 of 2020 for recovery of money, which are pending before the Principal District Court, Kanyakumari District and filing of cheque case against the petitioners in STC No.110 of 2020 which is pending before the Judicial Magistrate (Fast Track) Court, Nagercoil and also two previous complaints given by the petitioners. He further submitted that the petitioners executed three sale deeds to the second respondent/complainant. Suppressing all these facts, the second respondent/complainant filed the false case against the petitioners. The present complaint filed against the petitioners is misuse of process of law. Hence, the learned counsel prays for quashing the impugned First Information Report.



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4.The learned counsel appearing for the second respondent/complainant submitted that based on the complaint given by the second respondent, the First Information Report has been filed in Crime No.16 of 2022 on 26.04.2022. As per the allegation stated in the complaint, all the amounts have been paid by the second respondent/complainant only through bank account to the petitioners/accused. He further submitted that pending civil suits will not absolve the petitioners from any criminal offence committed by them. The complaint has to be investigated to find out whether any criminal offences have been committed by the petitioners and the investigating officer has to investigate the matter properly. Hence, the learned counsel prays for dismissal of this petition.

5.The learned Additional Public Prosecutor appearing for the first respondent police has also reiterated the contention raised by the learned counsel for the second respondent/complainant.



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6.I have considered the rival submissions of the learned counsel appearing on either side and perused the materials available on records.

7.It is seen that the complainant gave the complaint against the petitioners on 26.04.2022 which was registered in Crime No.16 of 2022 under Sections 294(b), 406, 418, 420 and 506(ii) IPC by the respondent police and the same is under investigation. Further, a perusal of the complaint would show that the second respondent/complainant gave a sum of Rs.3,40,00,000/- to the petitioners on various dates through RTGS procedure and the said amount has not been repaid by the petitioners. Since the petitioners cheated the complainant by refusing to repay the amount, the case has been registered.

8.Though the learned counsel for the petitioners contended that the respondent/complainant suppressed the pending two civil suits and one cheque case, this Court is of the view that it has to be find out whether all these case are relevant to the payment of the complainant to the petitioners. Further, in this case, the investigation is at initial stage.



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Therefore, this Court is of the view that the criminal original petition is liable to be dismissed.

9.It is too well settled that the First Information Report is only an initiation to move the machinery and to investigate into a cognizable offence and therefore, while exercising the power and deciding whether the investigation itself should be quashed, at most care should be taken by the Court and at that stage, it is not possible for the Court to shift the material or to way material, then come to the conclusion one way or the other.

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,



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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.

12. In the result, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed. Interim stay already granted in Crl.M.P(MD)No.6140 of 2022 is vacated.

27.07.2022

Internet: Yes
Index: Yes/No
Speaking/Non speaking order
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WEB COPY To

- 1.The Inspector of Police,
District Crime Branch,
Kanyakumari District.
(Crime No.16/2022)
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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V.SIVAGNANAM, J.

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