



CRL.O.P (MD) No.11327 of 2022

.BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 27.06.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRL.O.P (MD) No.11327 of 2022

and

CrI.M.P(MD)No.7134 of 2022

Ravichandran

...Petitioner/Accused

Vs.

The Inspector of Police,
District Crime Branch,
Trichy District.
(In Crime No.20 of 2019)

... Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in C.C.No.526 of 2021 pending on the file of the Judicial Magistrate, Lalgudi and quash the same.

For Petitioner : Mr.P.Ganapathi Subramanian

For Respondent : Mr.E.Antony Sahaya Prabhakar
Additional Public Prosecutor

ORDER

This petition has been filed to quash the proceedings in C.C.No.526 of 2021 pending on the file of the learned Judicial Magistrate, Lalgudi.



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2.The learned counsel appearing for the petitioner submitted that the petitioner is an accused in C.C.No.526 of 2021 on the file of the learned Judicial Magistrate, Lalgudi. According to him, the petitioner has misappropriated the office money to the tune of Rs.43,20,021/- on various dates. After auditing, it was found and it was alleged that the amount was paid by the petitioner. But, actually, he has not paid the amount and it was given to various person, who were not arrayed as accused. This petitioner alone was charge sheeted. Hence, he filed this petition.

3.The learned Additional Public Prosecutor appearing for the respondent police submitted that the misappropriated amount has been paid to the father and brother of the petitioner. Now, the amount has been repaid with interest. The fact, who misappropriated the amount on various dates and transferred to various accounts has to be decided by let in evidence on merit and therefore, he pleaded to dismiss this petition.

4. I have considered the submission of the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the 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 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.



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6. In the case on hand, the fact reveals that the petitioner is an accused in C.C.No.526 of 2021. He has misappropriated the office money to the tune of Rs.43,20,021/-. After auditing, it was found by the Block Development Officer that a sum of Rs.43,20,021/- is repaid on various dates. According to the prosecution, after registering the case, the petitioner repaid the amount of Rs.43,20,021/- with interest. One Ravichandran has repaid a sum of Rs.30,000/- on 03.06.2022 and on 24.06.2020 a sum of Rs.1,07,799/- is paid and on the same date also a sum of Rs.9,680/- was also paid. Hence, he was charge sheeted. The fact, who misappropriated the amount on various dates and transferred to various accounts has to be decided by let in evidence.

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.

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 no *prima facie* disclose the commission of an offence or where the uncontroverted allegations made in the FIR or complaint and the evidence



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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.

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

27.06.2022

Index : Yes / No
vsd



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To

1. The Inspector of Police,
Jayamangalam Police Station,
Theni District.
2. Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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V.SIVAGNANAM, J.

vsd

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