



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.03.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD)No.11793 of 2020

and

Crl.M.P(MD)No.5397 of 2020

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V.K.Gurusamy

... Petitioner/Accused No.1

Vs.

1.State represented by

The Inspector of Police,
Thallakulam Police Station,
Madurai City, Madurai.
(Crime No.228 of 2017)

... 1st Respondent/Complainant

2.Sampath

... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the First Information Report in Crime No.228 of 2017, dated 07.02.2017 on the file of the first respondent for offences under Sections 364, 302, 120(b) and 201 of I.P.C and quash the same as illegal as against the petitioner alone.

For Petitioner

: Mr.T.Lajapathi Roy

For R - 1

: Mr.R.M.Anbunithi

Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the FIR in Crime No.228 of 2017 on the file of the first respondent.

2.The learned counsel appearing for the petitioner would submit that already they handed over the bundle to the petitioner and even then, the petitioner herein failed to engage any new counsel on record and failed to appear before this Court by any Pleader or in person.

3.The case of the prosecution is that on 07.02.2017, the defacto complainant lodged a complaint before the first respondent and stated that his son namely Rajangam was missing on 06.02.2017. Therefore, the FIR in Crime No.228 of 2017 was registered by the first respondent as 'man missing'.

4.The learned Additional Public Prosecutor appearing for the first respondent would submit that initially the case was registered under 'man missing' and subsequently, altered the offences under Sections 364, 302, 120(b) and 202 of I.P.C. The petitioner is



arraigned as first accused along with other accused persons. Thereafter, the investigation has been transferred from the file of the first respondent to the Inspector of Police, Town Police Station, Karur and the investigation is still pending.

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

6. 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.

7. 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 Pokarnekhar 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 by the Trial to find out whether the case



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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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8.....

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."

8. 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 Inspector of Police, Town Police Station, Karur 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.

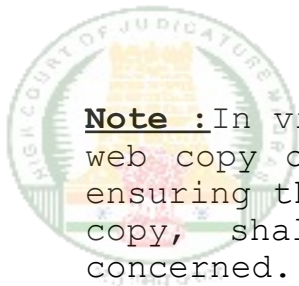
Sd/-

Deputy Registrar (LA&MC)

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/ /2022

Sub Assistant Registrar(CS)



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.

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To

- 1.The Inspector of Police,
Thallakulam Police Station,
Madurai City,
Madurai.
- 2.The Inspector of Police,
Town Police Station,
Karur.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-10775[F]
dated 09/03/2022)

Order made in
Crl.O.P (MD) No.11793 of 2020
08.03.2022

SJ(CO)
GC(23.03.2022) 4P 5C