



Crl.O.P.(MD) No.12187 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 07.07.2022

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THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRL.O.P (MD) No.12187 of 2022

and

CRL.M.P(MD)Nos.7708 and 7709 of 2022

1.Ostin Raja

2.T.Nelson Raja

... Petitioners

Vs

1.The Inspector of Police,
District Crime Branch,
Nagercoil,
Kanyakumari District.

2.The Inspector of Police,
CBCID-OCU,
Tirunelveli,
Tirunelveli District.

3.Selvam

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records in connection with the charge sheet in C.C.No.322 of 2019 on the file of the Judicial Magistrate No.I, Nagercoil and quash the same.

For Petitioners : Mr.R.Russel Raj

For Respondents : Mr.E.Antony Sahaya Prabahar

1 and 2

Additional Public Prosecutor



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ORDER

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This Criminal Original Petition has been filed to quash the criminal proceedings in connection with the charge sheet in C.C.No.322 of 2019 on the file of the Judicial Magistrate No.I, Nagercoil.

2.The case of the prosecution is that the petitioners along with other accused have been prosecuted for cheating of various persons including the third respondent on the assurance of getting job at Karaikudi Alagappa University and Chithambaram Annamalai University and they have received a sum of Rs.7,00,000/- from the third respondent. Thereafter, the third respondent gave a complaint against the petitioners. Therefore, the second respondent Police has registered a case in Crime No.62 of 2012 for the offence under Sections 467, 468, 471 and 420 of IPC and the second respondent has filed a final report and the same has been taken on file in C.C.No.322 of 2019 by the learned Judicial Magistrate No.I, Nagercoil.

3.The learned counsel appearing for the petitioners submitted that the petitioners have not conspired together and cheated the third respondent.



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Even the third respondent has not stated anything about the second petitioner for having received money from him. In 161 statement of the other witnesses, they have not stated about the petitioners and other accused persons. In this case, there are many contradictions among the witnesses with regard to the deposit of amount in the bank accounts as stated by the first petitioner. Therefore, the criminal proceedings against the petitioners has to be quashed.

4.The learned Additional Public Prosecutor appearing for the respondents 1 and 2 submitted that the petitioners 1 and 2 are brothers. Further, the third respondent has paid a sum of Rs.2 lakhs in the ICICI bank account number, which was maintained by the petitioners in the name of CTOR travels for getting job at Annamalai University. Further, the petitioners and other accused persons said to have instigated the third respondent to pay a sum of Rs.7,00,000/- for getting DTP works at Karaikudi Alagappa University from one Sathappan Chettiyar, in which, the advance amount of Rs.2,00,000/- has been received from the third respondent. Thereafter, the first petitioner said to have introduced one Nagappan and gave a letter as Sathappan Chettiyar wrote a letter and



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requested the third respondent to pay the balance amount of Rs.5,00,000/-.

The third respondent has also paid a sum of Rs.5,00,000/- and the first petitioner has assured to get job to the wife of the third respondent as Liaison officer at Alagappa University and for that, the third respondent has paid a sum of Rs.4,15,000/- in the bank account of the second petitioner, Karur Vysya Bank account, Chithambaram.

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.

6.Considering the matter in the light of the submissions made by both the counsels and on a perusal of records, it is seen that the petitioners are brothers and A3 and A4 are friends. The third respondent has clearly stated about the payment of money deposited to the second petitioner's account as directed by the first petitioner and to various bank accounts for getting job to the third respondent as well as to his wife at Karaikudi Alagappa University and Chithambaram Annamalai University and all payments through bank accounts. Whether there is any conspiracy or cheating, it has to be decided only before the trial Court by let-in evidence. It cannot be decided while exercising power under Section 482 of Cr.P.C. Therefore, this Court is of the opinion that it is inappropriate to quash the criminal proceedings at this stage.



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7. On perusal of the charge sheet and the statement of witnesses shows that *prima facie* an offence and allegation made therein will have to be taken on the face value. If it could not be said that their prosecution would amount to an abuse of process of the Court, invoking inherent power, prior to the commencement of trial and leading of evidence, to quash prosecution is not desirable. Power should be exercised only in exceptional cases. Hence, I find no merits in the Criminal Original Petition.

8. At the initial stage, it cannot be quashed. Therefore, I find no merit in this criminal original petition and the same is dismissed.

9. However, the learned Counsel appearing for the petitioner submitted that the personal appearance of the petitioners before the trial Court may be dispensed with.

10. I have considered the submission. There is no specific allegation as against the second petitioner. Therefore, considering the age and allegation as against him, the personal appearance of the second petitioner



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before the trial Court is hereby, dispensed with. But, he should appear before the trial Court, whenever required for further proceedings.

11. Consequently, connected miscellaneous petition in CrI.M.P(MD) No.7708 of 2022 stands closed and CrI.M.P(MD) No.7709 of 2022 stands ordered in respect of the second petitioner.

07.07.2022

Internet: Yes./No
Index: Yes/no
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- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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V.SIVAGNANAM, J.

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and
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