



Crl.O.P.(MD) No.12186 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.07.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRL.O.P (MD) No.12186 of 2022

and

CRL.M.P(MD)Nos.7704 and 7705 of 2022

1.Ostin Raja

2.T.Nelson Raja

3.Chandra

... 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.124 of 2018 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 proceeding relating to the charge sheet in C.C.No.124 of 2018 on the file of the Judicial Magistrate No.I, Nagercoil.

2.The learned counsel appearing for the petitioners submitted that the petitioners are arrayed as A1 to A3. According to the prosecution, the first accused namely Osthin Raja induced the third respondent to purchase a Ford Flesta Modal Car bearing Registration No.TN 31 AY 6197, which stands in the name of A3, by saying that the car was purchased by obtaining bank loan and due amount of Rs.5,40,000/- has to be paid to the ICICI Bank, Chidambaram. Believing that words, the third respondent has paid a sum of Rs.6,39,600/-. But, ICICI Bank in Indara Gandhi Square Branch at Pondicherry, seized the car from the third respondent on the ground of non payment of car loan. Hence, the third respondent gave a complaint against the petitioners. Thereafter, the case was registered against the petitioners in Crime No.61 of 2012, for the offences punishable under Sections 120(b), 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.124 of 2018 by the



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4.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.

5.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 Ford Flesta Modal Car bearing Registration No.TN 31 AY 6197, which stands in the name of A3. According to the prosecution, the said car was purchased by A3 by obtaining loan of Rs.6,80,000/- from ICICI Bank, Pondicherry, in 59 installments. The first accused instigated the third respondent to purchase the car and the third respondent has paid the balance loan amount of Rs.5,40,000/- to the ICICI Bank, Chidambaram. Thereafter, the ICICI Bank Pondicherry, seized the car from the third respondent, due to which, the third respondent gave a complaint. The third respondent has paid the said amount through the accounts of the petitioners 2 and 3. 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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6. 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.

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

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

9. I have considered the submission. There is no specific allegation as against the petitioners 2 and 3. Therefore, considering the age and allegation as against them, the personal appearance of the petitioners 2 and



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

10. Consequently, connected miscellaneous petition in CrI.M.P(MD) No.7704 of 2022 stands closed and CrI.M.P(MD) No.7705 of 2022 stands ordered in respect of the petitioners 2 and 3.

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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