



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.03.2022

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD)No.14014 of 2020

and

Crl.M.P(MD)Nos.6439 of 2020 and 3925 of 2022

K.Ganapathi Raja

...Petitioner/
Sole Accused

Vs.

1.The State rep by
The Inspector of Police,
City Crime Branch,
Madurai District.
(Crime No.59 of 2019)

... Respondent/
Complainant

2.K.Sebastin Selvam

...Respondent/
Defacto Complainant

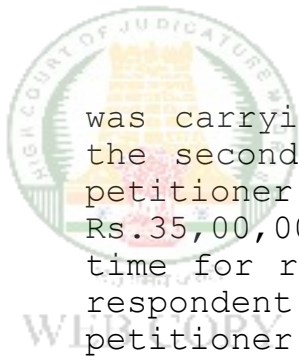
Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to the First Information Report in Crime No.59/2019 dated 14.12.2019 on the file 1st respondent and quash the same as illegal.

For Petitioner	:	Mr.C.M.Arumugam
For R1	:	Mr.K.Sanjai Gandhi Government Advocate(Criminal Side)
For R2	:	Mr.T.Lajapathi Roy

ORDER

This Criminal Original Petition has been filed to call for the records pertaining to the First Information Report in Crime No.59/2019 dated 14.12.2019 on the file of the first respondent and quash the same as illegal.

2. The case of the prosecution is that the second respondent appointed the petitioner as a Manager for his shop. However, the petitioner earned trust of the second respondent, on faith the whole administration of the business was entrusted with the petitioner including the operation of the financial affairs of the business as the second respondent suffered with ill health. When the second respondent went to the shop to know as to how the business



was carrying on, he felt the goods of the shop was reduced. Hence the second respondent got doubted and enquired the petitioner. The petitioner informed that he had swindled to the tune of Rs.35,00,000/- and was contrsucting a house. Therefore, he sought time for repayment but evaded later. On 18.10.2019, when the second respondent enter into the shop, he was denied entry by the petitioner and also refused to repay the alleged swindled amount of Rs.35,00,000/-.

3. The learned counsel appearing for the petitioner would submit that already the entire bundle has been handed over to the petitioner and also withdrawn their memo of appearance filed on behalf of them.

4. Though the counsel already handed over the bundle to the petitioner and had withdrawn their appearance, the petitioner failed to engage any counsel on their behalf to appear before this Court. Today, no one appeared in person or by new counsel.

5. The learned Government Advocate(Criminal Side) would submit that the investigation is completed and the respondent police are about to file the final report before the concerned court.

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

7. 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.

8. 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 Pokarnekar vs. the State of Maharashtra & ors.***, wherein it is held 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.

WEB COPY

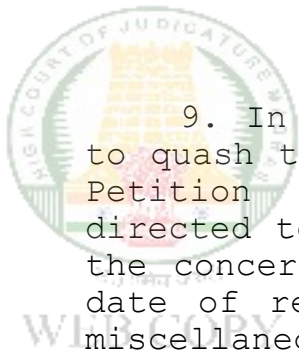
5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case 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.

6.....

7.....

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."



9. 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 respondent police is directed to complete the investigation and file 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/-

Assistant Registrar (CO)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

sn

To

1. The Inspector of Police,
City Crime Branch,
Madurai District.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD)No.14014 of 2020

25.03.2022

MGJ(07.04.2022) 4P 3C