



CrI.O.P.(MD) No.13535 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 03.08.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRL.O.P (MD) No.13535 of 2022

and

CrI.M.P(MD) Nos. 8620 and 8622 of 2022

1. R.Sankar
 2. V.Kandeswari
- ... Petitioners/Accused Nos.7 and 8

Vs

1. The Deputy Superintendent of Police,
CBCID, Madurai,
Madurai District.
 2. The Deputy Superintendent of Police,
CBCID South, Virudhunagar,
Virudhunagar District.
(Crime No.2 of 2016)
 3. The Inspector of Police,
Vanniyampatti Police Station,
Virudhunagar,
Virudhunagar District.
(Crime No.53 of 2014)
- ... Respondents/ Complainants
4. Murugan
 5. Pitchammal
- ... 4th Respondent/ LW.1
... 5th Respondent /LW.12



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PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records relating to the proceedings of charge sheet in C.C.No.5 of 2019 pending on the file of the learned Special Court for TNPID Act Cases, Madurai and quash the same as far as the petitioners/A7 and A8 herein.

For Petitioners : Mr.G.Mariappan

For R1 to R3 : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor.

ORDER

This Criminal Original Petition has been filed challenging the criminal proceedings in C.C.No.5 of 2019 pending on the file of the learned Special Court for TNPID Act Cases, Madurai.

2. The learned counsel for the petitioners submitted that the petitioners are accused Nos.7 and 8 in C.C.No.5 of 2019 pending on the file of the learned Special Court for TNPID Act Cases, Madurai. A complaint was given by one Murugan against the first accused viz., Best Plus Real Estate Private Limited, stating that the first accused defrauded the defacto complainant by receiving the amounts and failed to repay the same. Based on that, the respondent police registered a case in Crime No.1 of 2015 for



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the offences under Sections 147, 406, 420, 294(b) and 506(ii) I.P.C. After investigation, charge sheet was filed against the petitioners including 15 accused. The petitioners herein are accused Nos.7 and 8. The specific allegation against these petitioners is that they received money from one Pitchammal and thereby, made to deposit a sum of Rs.4,22,000/- (Rupees Four Lakhs and Twenty Two Thousand only). Kanagavalli was induced to part with a sum of Rs.4,03,500/- (Rupees Four Lakhs Three Thousand and Five Hundred only) and Muthumuniyandi had parted a sum of Rs.3,00,000/- (Rupees Three Lakhs only) and the said amounts have been deposited through the petitioners/accused 7 and 8. Apart from that, they have not instigated anyone and received the amount from any depositors and deposited in the first accused company viz., Best Plus Real Estate Private Limited. In these circumstances, the charges against this petitioners are not made out and they are unsustainable. He further submitted that the charges framed against the petitioners are totally unsustainable as they are not partner of the company and they never received any amount from all the depositors. However, the charges have been framed against the petitioners as though the petitioners along with other accused totally received a sum of Rs.4,79,75,500/- (Rupees Four Crores Seventy Nine Lakhs Seventy Five



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Thousand and Five Hundred only) from the 186 depositors and further charge that the petitioners misappropriate a sum of Rs.4,79,75,500/- (Rupees Four Crores Seventy Nine Lakhs Seventy Five Thousand and Five Hundred only). The deposit amount and further charge framed that the petitioners involved in criminal conspiracy and cheated the deposit amount are unsustainable. The charges are not properly framed. Hence, the petitioners pleaded to quash the entire criminal proceedings.

3. The learned Additional Public Prosecutor appearing for the respondents 1 to 3 submitted that it is not disputed that the petitioners are accused Nos.7 and 8. The petitioners are husband and wife. They received the amounts from (1) Pitchammal, (2) Kanagavalli and (3) Muthumuniyandi. These three persons deposited the amounts through these petitioners and thereby caused lost to the above said three persons. Therefore, the entire criminal proceedings cannot be quashed and it is not proper to quash the criminal proceedings before the commencement of trial and therefore, this petition may be dismissed.



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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.



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(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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5. I have considered the matter in the light of the submissions made by the learned counsel for both parties.

6. On perusal of the records, it reveals that initially, the complaint was given by one Murugan against the first accused viz., Best Plus Real Estate Private Limited with regard to the defraud committed by receiving amount and failed to repay the same. Based on that, the respondent police registered a case in crime No.1 of 2015 for the offences under Sections 147, 406, 420, 294(b) and 506(ii) I.P.C. After investigation, they found that the first accused viz., Best Plus Real Estate Private Limited received a total sum of Rs.4,79,75,500/- (Rupees Four Crores Seventy Nine Lakhs Seventy Five Thousand and Five Hundred only) from 186 depositors. That amount was not repaid to the depositors. The final report has been filed and the case was taken on file in C.C.No.5 of 2019, on the file of the learned Special Court for TNPID Act Cases, Madurai and the same was pending. After framing of charge, the case is posted for examination of prosecution witnesses.

7. On perusal of the records, the prosecution stated that these petitioners /accused No.7 and 8 received amount from only three persons



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i.e., (1) Pitchammal, (2) Kanagavalli and (3) Muthumuniyandi. Apart from the three persons, these petitioners have not received any deposit amount and no persons gave the amount to deposit through these petitioners. In these circumstances, the charge has been framed against these petitioners as though the petitioners along with others received the amount of Rs.4,79,75,500/- (Rupees Four Crores Seventy Nine Lakhs Seventy Five Thousand and Five Hundred only) from 186 depositors and further charge framed against the petitioners is that they misappropriated a sum of Rs.4,79,75,500/- (Rupees Four Crores Seventy Nine Lakhs Seventy Five Thousand and Five Hundred only). Even though, the charge is incorrect, the criminal proceedings against the petitioners cannot be quashed. Since the petitioners A7 and A8 received the amount from the above said three persons and criminal proceedings against them before the commencement of trial and letting evidence, I find it not proper and inappropriate to quash the criminal proceedings against the accused before the commencement of trial for letting evidence.

8. In view of Section 216 Cr.P.C, the Court may alter or add to any charge at any time before judgment is pronounced. The petitioners have to



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approach the trial Court to file required petition for altering the charge against them proportionate to the accusation level against them in the final report and the trial Court is directed to consider the application on merits and alter the charge and this Criminal original Petition is liable to be dismissed.

9. 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.

10. However, the learned Counsel appearing for the petitioner submitted that the second petitioner/A8 is working as a teacher in private school and the personal appearance of the second petitioner before the trial Court may be dispensed with.



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11. I have considered the submission of the learned counsel for the petitioners that, the second petitioner is working as a teacher in private school. Hence, the personal appearance of the second petitioner before the trial Court is hereby dispensed with, subject to the condition that the second petitioner shall appear before the trial Court, whenever required for further proceedings.

12. Accordingly this Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petitions are closed.

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Internet: Yes./No
Index: Yes/no
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5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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V.SIVAGNANAM, J.

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