



CrI.O.P.(MD) No.13795 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.08.2022

CORAM:

THE HONOURABLE MR. JUSTICE **V.SIVAGNANAM**

CrI.O.P.(MD) No.13795 of 2022

and

CrI.M.P(MD) Nos.8816 and 8818 of 2022

V.Senthilkannan,

: Petitioner

Vs

1. The State represented by
The Inspector of Police,
Karaikudi Crime Police Station,
Karaikudi.
Crime No.141 of 2015

2. Murugan,

: Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying this Court to call for the records in C.C.No.218 of 2020 on the file of the learned Principal District Munsif cum Judicial Magistrate, Karaikudi for the alleged offences under sections 406 and 420 IPC and quash the same.



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For Petitioner : Mrs. Lita Srinivasan,

For Respondent : Mr.E.Antony Sahaya Prabahar,

Additional Public Prosecutor

ORDER

This criminal original petition has been filed seeking to quash the charge sheet in C.C.No.218 of 2020 on the file of the learned Principal District Munsif cum Judicial Magistrate, Karaikudi.

2.The learned Counsel appearing for the petitioner submitted that the petitioner is an accused in C.C.No.218/2020, on the file of the learned Principal District Munsif cum Judicial Magistrate, Karaikudi. He was prosecuted for having committed the offences punishable under Sections 406 and 420 IPC. He worked as a Postman from the year 2010 to 2014 and whenever, he delivered a parcel and V.P Articles, he received the money from the receivers and did not deposit the same at post office and thereby misappropriated a sum of Rs.1,70,065/-. Hence he is prosecuted. In this case, prosecution cited 15 witnesses. They filed 15 witnesses' statement. All the witnesses did not say anything about the petitioner, who had collected the amount from the persons. Under these circumstances, there is no material and



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evidence for entrustment as well as receiving the amount and misappropriated a sum of Rs.1,70,065/- as stated by the prosecution in the absence of any entrustment and receiving money, no offence under Sections 406 and 420 IPC will be made out. Hence, the proceedings has to be quashed.

3.To support her argument, the learned Counsel appearing for the petitioner relied upon the judgments made by the Hon'ble Supreme Court in the case of ***Gurukanwarpal Kirpal Singh Vs. Surya Prakasam and Others*** in ***Spl.Crl.A.No.5485 of 2021, dated 12.05.2022*** and in the case of ***Rekha Jain Vs. The State of Karnataka and another in Crl.A.No.749 of 2022, dated 10.05.2022.***

4.The learned Additional Public Prosecutor submitted that the prosecution witnesses 9 to 12 are speaking about the mis-appropriation and further, the defacto-complainant also in his statement spoken about the mis-appropriation. Further, it was disclosed that on departmental enquiry, he admitted the mis-appropriation and repaid the amount of Rs.1,75,065/- and another witness/Anandhi also spoke that an enquiry was conducted and repayment was made by the petitioner. Under these circumstances, before



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commencement of trial, the proceedings cannot be quashed. Hence, pleaded to dismiss this petition.

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



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proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

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6.I have considered the matter in the light of the submissions made by both the parties.

7.On a perusal of records, it is seen that based on the complaint lodged by one Murugan, departmental enquiry has been conducted and during enquiry, the petitioner admitted the mis-appropriation and remitted the said amount. Hence he was prosecuted.

8.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.



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9. In view of the above, this Court is of the view that even though the mis-appropriated amount has been repaid, the criminal proceedings has to be continued. Therefore, I find no merit in this criminal original petition and the same is dismissed. Consequently, the connected miscellaneous petitions are closed.

26.08.2022

Internet: Yes
Index: Yes/No
Speaking/Non speaking order
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V.SIVAGNANAM, J.

lr

To

1.The Inspector of Police,
Karaikudi Crime Police Station,
Karaikudi.

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

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