



Crl.O.P.(MD) No.13829 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.11.2022

PRONOUNCED ON : 02.12.2022

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.O.P (MD) No.13829 of 2022

and

Crl.M.P.(MD) No.8858 of 2022

1.Priyadharshini

2.Vijayalakshmi

3.Laila

4.Sumathi

...Petitioners

vs

1.The Inspector of Police,
Thirumangalam Taluk,
Madurai.
Crime No.52 of 2021

2.Frances Amanda Murphy
Proprietor of Teddy Groups of Companies,
Tenkasi Road,
Alampatti Post,
Thirumangalam Taluk,
Madurai.

...Respondents



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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 FIR in Crime No.52 of 2021 on the file of the first Respondent and quash the same.

For Petitioners : Mr.R.Gandhi

For R1 : Mr.B.Nambi Selvan
Additional Public Prosecutor

For R2 : Mr.A.Natarajan, Senior Counsel
for M/s.A.Madumathi

ORDER

This Criminal Original Petition had been filed to quash the FIR in Crime No.52 of 2021 on the file of the first Respondent.

2.The learned Counsel for the Petitioners would submit that the Petitioners, who are the relatives of the family of the first accused, are the woman members. They are arrayed as accused 9, 13, 14 and 15 in Crime No.52 of 2021 on the file of the first Respondent/the Inspector of Police, Thirumangalam Taluk, Madurai. The learned Counsel for the Petitioners invited the attention of this Court to the contents of the First Information Report, a copy of which was enclosed with the typed set of papers filed



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along with this Criminal Original Petition. He also invited the attention of this Court to the Sections invoked against the accused in the FIR. The offences are under Sections 120B, 201, 403, 406, 408, 420, 465, 468, 471 and 506(1) IPC and Section 65 of Information Technology Act, 2000. The second Respondent is the complainant.

3.It is the further submission of the learned Counsel for the Petitioners that A1 is Gavaskar, A9, the first Petitioner is the wife of Gavaskar/A1, A13, the second Petitioner, is the sister-in-law of A1, A14, the third Petitioner is the mother-in-law of A1 and A15, the fourth Petitioner, is the mother of A1, Gavaskar. A1, Gavaskar was appointed as Manager for the Company belonging to the defacto complainant/second Respondent, Frances Amanda Murphy, Proprietor of Teddy Group of Companies, Tenkasi Road, Alampatti Post, Thirumangalam Taluk, Madurai.

4.Originally Gavaskar/A1 was appointed as Assistant Manager in the said Company. Since he was involved more with the Company in its business, the defacto complainant encouraged him and appointed him as Manager. Subsequently, he resigned his job and joined elsewhere.



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Subsequently, he came back and sought an appointment with the second Respondent/defacto complainant. This time, again the second Respondent appointed Gavaskar/A1 as Manager. On appreciation of his work in the Company, Teddy Exports, she had promoted him as General Manager. At that stage, some time in the year 2013, the defacto complainant/second Respondent left India to United Kingdom for the purpose of higher education of her son.

5.The defacto complainant/the second Respondent is originally from Ireland. She came to India and settled in Thirumangalam, Madurai. Her husband was having this Company, Teddy Exports, which was manufacturing bags and giving employment to around 300 women from the villages surrounding Madurai District. The husband of the defacto complainant had developed the Company and in the income derived from the Teddy exports, she had started Teddy Trust. It had Bank accounts. It had been doing social service for the downtrodden people and the children belonging to the downtrodden families. The husband of the defacto complainant died. Therefore, she had taken charge of the Teddy Trust and Teddy Exports. The couple had three children, two daughters and a son. The



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daughters were studying in the residential school in Kodaikanal. Some time in the year 2013, she left India to the United Kingdom for the purpose of higher education of her son. At that time, she was impressed by the work done by Gavaskar, A1. Therefore, she had entrusted the administration of the Teddy Trust as well as the Teddy Exports to Gavaskar, A1. The entire team of Staff and Officers, who were assisting the defacto complainant, were helping Gavaskar, A1 as General Manager. From United Kingdom, she was making enquiries with A1 regarding the development of the Company and the work done by A1, Gavaskar. She had returned to India in between and had been impressed by the work done by A1, Gavaskar and the team of Staff and Officers of the Teddy Exports.

6.While so, when the defacto complainant/the second Respondent came to her residence, the Security Guard of her residence informed her that in her absence, A1, Gavaskar had allowed his mother, his father, his brother, his brother's wife, his mother-in-law, his wife and sister-in-law to come freely in the premises of the Company and they had misused the faith reposed by her in A1 and utilized the opportunity to sell the properties of the Teddy Export and Teddy Trust by selling the vehicles, by withdrawing



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money from the Teddy Trust including the fee paid by the students studying in the School managed by the Teddy Trust and had acquired properties in the name of his father, his mother, his wife, his brother, his sister-in-law etc., Taken by surprise, the defacto complainant wanted to check the accounts of the Company. On her surprise check, she found so many defects. Therefore, she sought clarification from A1, Gavaskar. Gavaskar, A1 had initially gave evasive reply. Then, he informed her that he had withdrawn money from the deposits of the Bank accounts maintained by the Company as well as the Teddy Trust and had utilized it for purchase of the property in the name of his parents, brother and his wife etc and also challenged her that the computer details had been erased and the hard disk of the computer was also damaged. Therefore, she does not have the proof. If she ever challenged him, the family of A1 will kill her. She was taken back by the threat meted out to her.

7.The defacto complainant/second Respondent wanted to verify those details with the Auditor of the Company. The Auditor was also not cooperating. The Staff, who were assisting her till the date of her departure to United Kingdom, had been won over by Gavaskar, A1 and in collusions,



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they had conspired together and caused loss to the Company and Teddy Trust. Therefore, she had mentioned the name of A1, who is the General Manager of Teddy Exports and Teddy Trust, had conspired with her own Staff and Officers along with his family members particularly, the parents, wife of A1, his brother, his brother's wife and had purchased the properties in their names. Therefore, she had preferred the complaint to the Thirumangalam Police Station. As per the contents of the FIR, A1 along with others, A2 to A17, had caused loss of Rs.15 Crores to the Company.

8.The learned Counsel for the Petitioners also invited the attention of this Court to column number 3 in the FIR, where the date of occurrence is given as from 19.06.2014 to 30.10.2019. Column number 4 is the date of registration of the complaint. It is given as 21.02.2021.

9.As per the contents of the FIR, the defacto complainant came to know about the acts of omission and commission by the accused 1 to 17. She had verified the accounts by using the services of one Maniyan, the Auditor engaged by her to find out the fraud committed by the accused 1 to 17 by creating forged documents and misappropriating the accounts. She



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had knowledge of this facts as on 30.10.2019, as per the contents of the FIR, whereas, she had preferred the complaint only on 21.02.2021.

10.If what had been stated by the learned Counsel for the second Respondent/complainant was true, she would have preferred the complaint on the very next day, as the amount misappropriated, Rs.15 Crores, is the huge amount. But she had preferred the complaint only on 21.02.2021. It is only because of fixing the Police Station.

11.Usually, in cases of this nature, when huge amount is involved, the complaints are preferred only to the District Crime Branch directly by the people affected by fraud. Here in this case, the second Respondent had given the complaint before the law and order Police Station, Thirumangalam Police Station instead of filing the complaint before the District Crime Branch, Madurai. It is because under the pretext of 506(1) IPC, the Investigation Officer has the power to arrest the accused only to pressurize them for the amount that is alleged to have been misappropriated.



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12.It is the contention of the learned Counsel for the Petitioners that the second Respondent, who was running a Teddy Trust, was receiving funds from foreign countries for her social activities. After the death of her husband, she had decided to settle-down in United Kingdom. Therefore, she took her son to United Kingdom for higher studies and subsequently, planned to take her daughters also to United Kingdom and settle-down in United Kingdom.

13.While so, she herself had decided to withdraw the funds available in the Teddy Trust, so that she can settle-down in United Kingdom. To avert any future criminal cases, she had falsely given the complaint to escape from the criminal liability regarding mismanagement of funds of the Teddy Trust received by donations outside India and in that design, she had given this complaint and lodged the FIR.

14.The learned Counsel for the Petitioners invited the attention of this Court to the number of petitions filed before this Court seeking direction to register the FIR. When that is the case, here in this case, the first



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Respondent/the Inspector of Police, Thirumangalam Police Station, who is dealing with law and order cases, had registered the case promptly and arrested the accused.

15.The learned Counsel for the Petitioners also invited the attention of this Court to the remand request, copy of which is available in the typed set of papers seeking remand under the pretext of threatening the defacto complainant by the accused 1 to 17, after misappropriating the amount of the Company and submitted that this is nothing but a false case only to prevent her own misdeeds from being proved by any Agencies dealing with receipt of overseas donations for social work and the first accused, who had been appointed as Manager and later as General Manager, was made scapegoat along with her own staff and Auditor, as though they had misappropriated the amount of Rs.15 Crores.

16.The Deputy Superintendent of Police, Thirumangalam had himself involved in this case in pressurizing the accused 1 to 17 to settle the dues, failing which they will be sent to the jail. Only to fix the Police Station, she had taken time to give a complaint on 21.02.2021 for the occurrence that is



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alleged to have taken place some time between 19.06.2014 and 30.10.2019.

It is nothing but an embellishment by the team of Officers colluding with the defacto complainant. Even if the contents of the FIR are accepted in its face value, there are no overt acts to consider the Petitioners herein, who had alleged to have conspired to misappropriate the accounts of the Company and the assets of the Company to purchase the properties in their names.

17.The transactions of the Trust and the Company were done through on-line and by way of cheque. If the entire allegations are taken on its face value, there are no overt acts against the Women members of the family of A1. To attract the culpability for the offence under criminal breach of trust, there shall be entrustment on the property by the complainant. Here in this case, if the property for the purpose of argument is accepted, the property of the Teddy Export and Teddy Trust was entrusted only to A1. Except A1, the women family members of A1 cannot be incriminated for having indulged in the alleged offences to attract the ingredients of offences under Sections 403, 406 and 408 IPC. The Petitioners are neither servants nor Managers of the defacto complainant, as per the averments made in the complaint. The



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same is applicable to the offences attracting under Sections 465, 468 and 471 IPC, forgery and falsification of Bank accounts not attracting against the Petitioners, who are women relatives of A1. They did not have any job either with Teddy Export or with Teddy Trust.

18.To attract the provisions of Section 506(1) IPC, as per the contents of the FIR, A1, his father and his brother met the defacto complainant and threatened to kill her. Only to invoke Section 506(1) IPC, in order to remand the accused, the Police had falsely invoked Section 506(1) IPC with an ulterior motive of pressurizing the first accused and his family members to come around to accept the design of the defacto complainant. Even assuming without admitting, the ingredients of Section 506(1) IPC are not attracted.

19.Mere threat alone will not be sufficient to invoke Section 506 (1) or Section 506(2) IPC. It had been laid down by the Hon'ble Supreme Court and very many decisions of various High Courts in India that to attract Section 506 (1) or Section 506(2) IPC, firstly, the threat shall be a real threat believed by the complainant. Secondly, the victim was really



threatened. There was imminent danger to his/her life. For this proposition, the learned Counsel for the Petitioners cited reported ruling of this Court in the case of ***Dr.Subramanian Swamy Vs. C.Pushparaj*** reported in ***1998 (I) CTC 300***, wherein it had been stated as under:-

“13.So far as Section 504, IPC is concerned what is punishable under this Section is something very much graver than that, Section is something very much graver than that, in the sense insult intended to provoke a breach of the peace or the commission of the offence or whether it was likely that such provocation would cause breach of the peace. To constitute the essential elements of the offence under Section 504, IPC, there should have been an act or conduct amounting to intentional insult where that act is by the use of abusive words, it is necessary to know whether the using of those words amounted to intentional insult. In the absence of those words, it is not possible whether the ingredient of intentional insult is present. An insult even if gross one is not an offence in itself under Section 504, IPC. Part II of Sec. 506, IPC is attracted if the criminal intimidation includes threat to cause death or grievous hurt. Mere outburst is not sufficient to hold that it would fall within the mischief of Sec. 506, IPC. In the instant case, the averment in the complaint and the statements in the depositions, if taken together, there are no allegations in the whole complaint that the petitioner ever made any attempt or did any act in pursuance of his alleged expression. So also, the actual words used or supposed to have been used by the petitioner is not stated either in the complaint or in the



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depositions. Regarding criminal intimidation to whom it was intended, whether alarm was caused, it so, what are the actual words employed are not stated either in the complaint or in the depositions. In the absence of these averments touching the ingredients, mere mentioning of sections and putting a person to face the trial is nothing but the abuse of the process of the Court. The learned Magistrate has rightly dismissed the complaint holding that there is no prima facie case made out as per the allegations in the complaint and the statements made in the depositions. This is a case where even if the entire material placed before the Court are taken on its face value without evaluating, adding or subtracting anything, there will be no prima facie material to constitute the offences alleged against the petitioner. In such an event, to continue the proceedings is nothing but the abuse of the process of the Court and hence the complaint in PRC.No.51 of 1995 on the file of the Judicial Magistrate, Tambaram is quashed and the petition is allowed.”

20.The learned Counsel for the Petitioners also invited the attention of this Court to the ingredients of the offences under Section 420 IPC. As per Section 415 IPC, what is cheating is explained. There shall be a fraudulent motive right from inception. Here, on perusal of the contents of the FIR, it is found that the defacto complainant had delivered the property, (the assets of Teddy Export and Teddy Trust), in the administration of



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Gavaskar, A1. Inducement is very vital for attracting the provisions under Section 420 IPC.

21.Here, on perusal of the contents of the FIR, it is found that the defacto complainant had handed over the assets of the Company and the Trust to Gavaskar, A1. She had been visiting India very often between 2014 and 2019. She had not found anything missing. Therefore, the ingredients of Sections 415 and 420 IPC are not at all attracted. If Gavaskar, A1 had made her to believe right from the beginning with an evil motive to cheat her, then the ingredients of Sections 415 and 420 IPC are attracted. Here, there is no such averment in the FIR.

22.The learned Counsel for the Petitioners also invited the attention of this Court to Section 120(b) IPC. To invoke Section 120 (b) IPC, there shall be meeting of the minds. There must be an agreement among the accused to commit the offence severally or together. What is the role played by each of them had to be stated. Only *omnibus* allegation is found in the FIR. The entire family members have been roped in only for the purpose of remanding them, as though they had committed criminal conspiracy.



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Whether the family members of A1, Gavaskar to be held vicariously liable for the offence, is to be considered.

23.As per the criminal law, the relatives of the accused cannot be held liable for the criminal acts committed by the accused. Contrary to such accepted principles, the Petitioners herein had been roped in only for the purpose of pressurizing the accused to accept to the design of the defacto complainant. The third Petitioner, the mother-in-law of A1, Gavaskar and her husband are the retired Government servants. The husband died while he was in service. The third Petitioner had purchased the property out of her own income. She is an income tax assessee. The brother of A1 and his wife are the income tax assessee. They had purchased the property in their own names.

24.It is the further submission of the learned Counsel for the Petitioners that the cases involving Prevention of Corruption Act and involving Enforcement Directorate Investigations, the proceeds of crime if invested in properties will be attached. For IPC offences, these provisions are not applicable. As per the contents of the FIR, the documents registered



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with the Registration Department in the names of the Petitioners and other accused had been mentioned with the document numbers only with an intention to pressurize the Petitioners to come around to the design of the defacto complainant to accept it, so that, she can evade from criminal prosecution regarding misappropriation of foreign funds for her selfish needs.

25.Also, the learned Counsel for the Petitioners invited the attention of this Court to the reported ruling of the Hon'ble Supreme Court in the case of ***Chunduru Siva Ram Krishna and another Vs. Peddi Ravindra Babu and another*** reported in ***(2009) 11 Supreme Court Cases 203***, wherein it had been stated as follows:-

“35. No specific role is ascribed to any of the aforesaid persons except for stating that the huge quantities of paddy was diverted by Accused No. 1 and made to disappear with the active assistance of Accused No. 2 to Accused No. 9. Without ascribing any specific role to any one of them the aforesaid allegation appear to us to be very bald and vague. Similarly the allegations made against Accused No. 2 and Accused No. 3 that they had helped their father in purchasing some property is also very vague as no specific role is ascribed to them.



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36. In our considered opinion, no useful purpose would be served by allowing the prosecution against aforesaid accused persons (the appellants herein). There is no concrete and direct allegation against all these persons ascribing any definite role to each one of them in the offence alleged. The statements shown to us as allegations amounting to prima facie evidence against them, according to us, are very bald and vague statements on the basis of which no case could be made out.”

26. The learned Counsel for the Petitioners also invited the attention of this Court to the reported ruling of the Hon'ble Supreme Court in the case of ***State of Haryana vs. Ch. Bhajan Lal*** reported in ***(AIR) 1992 SC 604***, where the Hon'ble Supreme Court had given guidelines to the High Courts while exercising the extraordinary powers under Section 482 Cr.P.C. to quash the FIR or the Charge Sheet, under which 7 guidelines were issued. Here in this case, the case of the Petitioners is attracted under the 7th category. To wreak vengeance against all the family members of Gavaskar, A1, they have been roped in. The learned Counsel for the Petitioners in support of his contention relied on the following judgments of the Hon'ble Supreme Court as well as this Court:-



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i) In *Rekha Jain Vs. State of Karnataka and another* reported in

AIR 2022 Supreme Court 2268

ii) In *Central Bureau of Investigation, Hyderabad Vs. K.Narayana*

Rao reported in (2012) ***9 Supreme Court Cases 512***

iii) In *Dr.Subramanian Swamy Vs. C.Pushparaj* reported in ***1998***

(I) CTC 300

iv) In *Archana Rana Vs. State of Uttar Pradesh and another*

reported in ***(2021) 3 Supreme Court Cases 751.***

27.The learned Counsel for the Petitioners would submit that mere suspicion by the complainant itself is no cogent evidence. The inception itself for the motive (*mens rea*) is missing against the first accused, as per the admitted statement of the complainant. Therefore, the same will not be stretched for these Petitioners, who are neither employees nor Officials of the Teddy Export or Teddy Company. Therefore, the learned Counsel for the Petitioners seeks to quash the complaint.

28.Also, the learned Counsel for the Petitioners submits the value of the properties that the Petitioners are alleged to have purchased the property



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vide document numbers mentioned in the FIR. The total value of the property is only Rs.58,34,000/, which is nothing but the property purchased by their own income. They had been unnecessarily roped in by the defacto complainant.

29.By way of reply, the learned Senior Counsel for the second Respondent/defacto complainant would submit that the complainant/second Respondent is the citizen of Ireland. In order to do social service, she came to India and she became a permanent resident of India from 1992. She started Teddy Export at Thirumangalam, Madurai. Subsequently, she started a Higher Secondary School at Thirumangalam. She purchased buses to bring the children around the villages in Thirumangalam to the School. She was providing free lunch to the students of the School, who are from the downtrodden families in the villages around Thirumangalam. She had been providing free Milk to the undernourished children in the villages surrounding Thirumangalam. She had also been running a free Medical Trust to provide medical care to the villagers in and around Thirumangalam. She had given employment to nearly 300 women from the villages around Thirumangalam and she had employed them to manufacture the bags, which



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had been exported to various countries and she had been pioneer in eco-friendly bags to remove plastics from the use by the common man.

30.The learned Counsel for the Petitioners sought quashing of the FIR on the ground that the FIR had been registered only for the purpose of harassing the Petitioners. The FIR is not an encyclopedia. It will not contain all the particulars. It is the first step in proceeding against the invoking the criminal law in motion. There are very many rulings stating that the FIR is not an encyclopedia to cover the entire complaint. Only based on the FIR, the investigation proceeds.

31.In the course of the investigation, the Investigation Officer collects evidence and materials. After completion of the investigation, if the Investigation Officer arrives at a conclusion that certain offences are not attracted as there are no sufficient materials, the Investigation Officer has within his/her discretion to drop certain charges. On the other hand, if the Investigation Officer in the due course of investigation collects sufficient materials attracting any offences under IPC, in such circumstances, the Investigation Officer has the power to include the offences, thereby filing an



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alteration report before the Court concerned. If what had been argued by the learned Counsel for the Petitioners is to be accepted, it is to be considered only as valuable defense available to the accused/Petitioners before the Trial Court. This Court as High Court exercising the extraordinary powers under Section 482 Cr.P.C cannot consider the valuable defense or the circumstances leading to either conviction or acquittal. If the argument of the learned Counsel for the Petitioners is accepted, then it is to be considered only as valuable defense available to the Petitioners that they can exercise only at the time of trial. The first and foremost attack of the learned Counsel for the Petitioners was the delay in registering the FIR.

32.It is the further submission of the learned Senior Counsel for the second Respondent that as per the contents of the FIR, the second Respondent/defacto complainant came to know about the occurrence, committing of fraud, cheating etc only on 30.10.2019. She had to verify the accounts and other sources from her Company and Trust. For this, she need the services of the Auditor, which she had stated that she had engaged one Maniyan as a separate Auditor to find out the fraud. Therefore, for collecting sufficient materials to satisfy herself, she needed that time, which



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cannot be found fault. The FIR is registered on time. There is no delay or latches.

33.In cases of this nature, attracting offences under Sections 406, 408, 409 and 420 IPC, the complainants usually will not approach the Police immediately. They need time to furnish the particulars to the Investigation Officer. Here in this case, the Auditor of Teddy Export also colluded with A1. They created fraudulent accounts. The Auditor refused to bring the accounts and to give the same. At second time, A1 was appointed, and everything was perfect. Therefore, the complainant believed A1. She gave authorization. After getting authorization in favour of A1, he misused and committed criminal breach of contract. New properties were purchased in the names of his relatives.

34.The submission of the learned Counsel for the Petitioners that the FIR was registered not with the District Crime Branch, but before the law and order Police Station, Thirumangalam is not a subject matter for quash. By the proceedings of either the Commissioner of Police or the Superintendent of Police, the FIR registered in the law and order Police



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Station can be transferred to the file of District Crime Branch concerned.

Whatever income derived from the Company by the accused 1 and his relatives is investigated by the police. Then if there are sufficient materials, the Petitioners are also the accused.

35.The submission of the learned Counsel for the Petitioners to quash the FIR regarding the offence under Section 120 (b) IPC also cannot be accepted. It is to be considered only at the time of trial during adducing evidence. It is for the Court to draw presumptions from the conduct of the accused as per the evidence available before the trial Court and not by exercising the extraordinary powers of this Court under Section 482 Cr.P.C.

36.The learned Senior Counsel for the second Respondent/defacto complaint would submit that as per the contents made in the FIR, it is sufficient to proceed with the investigation. Investigation had just commenced. It is too early for this Court to invoke the powers of this Court under Section 482 Cr.P.C. No doubt, 15 Crores were embezzled and the Petitioners had colluded with Gavaskar, A1. In the end of the FIR, it is stated what are all the properties sold, the school fee paid by the students of



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the School, the School run by the defacto complainant/second Respondent was also misappropriated by Gavaskar/A1. Likewise, Gavaskar was helped by his wife, father, mother, brother, sister-in-law. Then, there is no necessity to invoke the extraordinary powers of this Court under Section 482 Cr.P.C. The ingredients of the FIR are sufficient not to invoke the extraordinary powers of this Court under Section 482 Cr.P.C. Only in the course of the investigation, materials had to be collected.

37.The complainant herself was the income tax assessee. She had given job, Tailoring, to 300 women, who manufactured bags, which were sent to foreign countries replacing plastic bags. The income derived from it had been spent on social work in Madurai. A1 had sold the vehicles of the Teddy Export, as per the FIR. This is sufficient to arrive at a conclusion that this is not a fit case to quash the FIR. Only to consider the definition, it is too early regarding each of the offences mentioned in the FIR. Regarding 506(2) IPC, it is stated that A1, his brother and his brother had threatened the complainant and his daughter to the extent of causing their death.



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38. Some case laws cited by the Petitioners may be relevant at the time of trial and some cases are too early to consider the case of the Petitioners by this Court under Section 482 Cr.P.C. The learned Senior Counsel for the second Respondent/defacto complainant relied on the ruling of the Hon'ble Supreme Court in the case of ***Ravindra Kumar Madhanlal Goenka and others Vs. Rugmini Ram Raghav Spinners Private Limited*** reported in ***MANU/SC/0635/2009***, wherein the Hon'ble Supreme Court had held as follows:-

“14. In the abovementioned case, this Court has taken the view that when the complaint does not disclose any criminal offence, the proceeding is liable to be quashed under [Section 482](#) CrPC. However, the same is not the situation in the present case. There is no denial of the fact that though 900 bales of cotton was already dispatched, but 100 bales of cotton are yet to be dispatched. The defence raised by the appellant hereinabove can be urged and proved only during the course of trial. While entertaining a petition under [Section 482](#) CrPC, the materials furnished by the defence cannot be looked into and the defence materials can be entertained only at the time of trial. It is well settled position of law that when there are prima facie materials available, a petition for quashing the criminal proceedings cannot be entertained. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion



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of its own. Pre-emption of such investigation would be justified only in very extreme cases.”

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39.The learned Senior Counsel for the second Respondent/defacto complainant would further submit that what are all argued by the learned Counsel for the Petitioners can be considered during trial. The Petitioners can furnish their IT details and about the income derived on their own part without this involvement to the Investigation Officer. Therefore, this Petition is to be dismissed as not maintainable.

40.The learned Additional Public Prosecutor for the first Respondent would submit that there are 18 accused. A9 and A13 to A15 are the Petitioners herein. A1 and others colluded by way of creating forged documents and created misappropriation of Rs.15 Crores. The FIR is the earliest document. The averments in the FIR cannot be taken tangible. It takes tangible shape only after collection of documents and other materials. The learned Additional Public Prosecutor invited the attention of this Court to the contents of the FIR. There are specific overt acts attributed to each of the Petitioner in the FIR. The learned Additional Public Prosecutor also



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invited the attention of this Court to the remand request made by the Investigation Officer. Therefore, the learned Additional Public Prosecutor seeks to dismiss this petition as it is too early and the investigation had been completed.

41.The learned Additional Public Prosecutor would further submit that the learned single Judge of this Court, vide order dated 01.08.2022 had directed the first Respondent to proceed with the case but not to file the final report till the disposal of this Criminal Original Petition. Therefore, the Investigation Officer was waiting for the disposal of this case. He would further submit that the investigation had been completed and draft charge sheet is also ready.

42.The learned Additional Public Prosecutor relied on the reported ruling of the Hon'ble Supreme Court in the case of ***Rajeev Kourav Vs. Baisahab and others*** reported in ***(2020) 3 Supreme Court Cases 317***, wherein it had been held as follows:-

“8.It is no more res integra that exercise of power under [Section 482](#) CrPC to quash a criminal proceeding is only



when an allegation made in the FIR or the charge sheet constitutes the ingredients of the offence/offences alleged. Interference by the High Court under [Section 482](#) CrPC is to prevent the abuse of process of any Court or otherwise to secure the ends of justice. It is settled law that the evidence produced by the accused in his defence cannot be looked into by the Court, except in very exceptional circumstances, at the initial stage of the criminal proceedings. It is trite law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under [Section 482](#) CrPC for quashing criminal proceedings. It is clear from the law laid down by this Court that if a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding.

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12.We have not expressed any opinion on the merits of the matter. The High Court ought not to have quashed the proceedings at this stage, scuttling a full-fledged trial in which Respondent Nos.1 to 3 would have a fair opportunity to prove their innocence.”

43.The learned Additional Public Prosecutor would further submit that 45 witnesses had been cited. Investigation had been completed and the draft charge sheet is also ready. If this Court directs the prosecution to file the Charge Sheet, they are ready to file the same today itself.



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44.By way of rejoinder, the learned Counsel for the Petitioners would submit that the rulings cited by the learned Senior Counsel for the second Respondent/defacto complainant are not applicable to the facts of the case. The contents of the FIR alone were relied by the learned Counsel for the Petitioners seeking to quash the FIR. The FIR is not an encyclopedia. The FIR should contain the ingredients of cognizable offences. But here no ingredient is made out. At the time of admission, it is fit for not to file the Charge Sheet.

45.On consideration of the rival submissions and on perusal of the contents of the FIR, the reliance placed by the learned Counsel for the Petitioners is found acceptable from the contents of the FIR attracting the guidelines issued by the Hon'ble Supreme Court in the case of ***State of Haryana vs.Ch.Bhajan Lal*** reported in ***(AIR) 1992 SC 604***, where the guidelines had been issued for quashing of the FIR. Here, as rightly pointed out by the learned Counsel for the Petitioners, guideline number 7 is attracted. The ruling of this Court in the case of ***Dr.Subramanian Swamy Vs. C.Pushparaj*** reported in ***1998 (I) CTC 300*** regarding the ingredients of



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Section 506 (2) IPC is attracted. Regarding the provisions of Sections 468, 406 and 428 IPC, as rightly contended by the learned Counsel for the Petitioners even for argument's sake, if it is considered to have indulged in the offences attracting Sections 420, 406 IPC etc, the women members of the family of A1, Gavaskar cannot be arrayed as accused, as they are not employed by the defacto complainant prior to her leaving for United Kingdom and she had never handed over the properties to them.

46.The 3rd and 7th categories are also attracted. The property that was alleged to have been acquired by the Petitioners out of their own income was not considered by the Investigation Officer. For the sake of argument, if A1 had purchased the properties in the names of the Petitioners herein, that cannot be a ground to include the names of the Petitioners in the FIR as they are not individuals with whom, the defacto complainant had handed over the properties of the Teddy Trust and Teddy Exports.

47.The submission of the learned Senior Counsel for the second Respondent that the second Respondent needed time to verify using the services of the Auditor as her own Auditor had colluded with A1 and to find



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out the truth regarding misappropriation of funds of the Trust and the Company forced her to engage the Auditor of her own and from him, to find out whether there had been misappropriation of funds. If the argument of the learned Senior Counsel for the second Respondent/defacto complainant is accepted, the Petitioners herein, against whom there are no ingredients to invoke Sections 406, 408, 409, 420 and 415 IPC, cannot be proceeded. It amounts to force them to face the ordeal of the trial, which is found unacceptable and unreasonable.

48.As rightly pointed out by the learned Counsel for the Petitioners, there are many number of petitions filed by the litigants seeking indulgence of the Court to register the FIR. While so, here it is a case, the FIR had been registered for the occurrence alleged to have taken place between 2014-2019, for which the FIR had been registered only in the year 2021. That gives doubts in the minds of the Court regarding the motive for such a belated FIR.

49.As rightly pointed out by the learned Counsel for the Petitioners, the offences attracting the provisions of Sections 406, 408, 409, 420 and



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415 IPC are not attracted as the Petitioners herein were not the employees or holding any post so as to take control of the assets of the Company to attract the provisions of Sections 420, 406 and 415 IPC. Regarding meeting of the minds, it is something to be considered only during trial. Mere invoking Section 120 IPC will not attract the offences alleged against the Petitioners. Even for the arguments sake, if A1 had with the funds available with him by misappropriating the account of the Teddy Trust and Teddy Exports and had purchased the properties in the name of the Petitioners herein, still the Petitioners are not criminally liable. If some one had purchased the property in their names, the women members of the family cannot be prosecuted as per the reported ruling of Hon'ble Supreme Court reported in **(2009) 11 Supreme Court Cases 203 (Chunduru Siva Ram Krishna Vs. Peddi Ravindra Babu and others)**.

50.In the light of the reported rulings cited by the learned Counsel for the Petitioners in **Dr.Subramanian Swamy Vs. C.Pushparaj** reported in **1998 (I) CTC 300**, in **Chunduru Siva Ram Krishna and another Vs. Peddi Ravindra Babu and another** reported in **(2009) 11 Supreme Court Cases 203**, in **Rekha Jain Vs. State of Karnataka and another** reported in **AIR**



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2022 Supreme Court 2268, in **Central Bureau of Investigation, Hyderabad Vs. K.Narayana Rao** reported in **(2012) 9 Supreme Court Cases 512**, in **In Dr.Subramanian Swamy Vs. C.Pushparaj** reported in **1998 (I) CTC 300** and in **Archana Rana Vs. State of Uttar Pradesh and another** reported in **(2021) 3 Supreme Court Cases 751**, the submission of the learned Additional Public Prosecutor and the reliance placed by him in **Rajeev Kourav Vs. Baisahab and others** reported in **(2020) 3 Supreme Court Cases 317**, the reliance placed by the learned Senior Counsel for the second Respondent/defacto complainant in **Chunduru Siva Ram Krishna and another Vs. Peddi Ravindra Babu and another** reported in **(2009) 11 Supreme Court Cases 203** and on perusal of the same, it is found that the submission of the learned Senior Counsel for the second Respondent/defacto complainant cannot at all be accepted, as the defacto complainant had given an *omnibus* allegation against the Petitioners herein, who have no role regarding administration of the Teddy Exports and Teddy Trust.

51. Even if the submission of the learned Additional Public Prosecutor that the investigation had been completed and the draft final report is also



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ready is accepted, the ingredients of offence under Sections 406, 408, 409, 420 and 415 IPC cannot be invoked regarding the female members of A1, Gavaskar. Even if that is taken to its face value, it cannot be considered to attract the provisions of offence under Sections 406 and 420 IPC.

52.In the light of the above rulings cited by the learned Counsel for the Petitioners, the offence under Section 506(1) IPC is alleged only against A1, his father and his brother. The names of the women family members had not been mentioned regarding threat to attract Section 506(1) IPC. Regarding conspiracy, it cannot be considered to attract conspiracy in this case. Regarding the ingredients to attract other offences, the role played by each of the accused severally or jointly is to be proved to attract the criminal proceedings. When the Petitioners herein had not occupied any post as either servant or as Officer either in Teddy Export or in Teddy Trust, the conduct of the Respondents in roping the Petitioners herein is found unacceptable, based on mere suspicion by the defacto complainant.

53.In the light of the above discussions, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is



closed.

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**In the result, this Criminal Original Petition is allowed. The FIR
in Crime No.52 of 2021 on the file of the first Respondent is quashed.**

Internet :Yes./No

02.12.2022

Index :Yes/No

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To

- 1.The Sessions Judge,
Special Court for Exclusive Trial of Cases under POCSO Act,
Thanjavur.
- 2.The Inspector of Police,
Thirumangalam Taluk,
Madurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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SATHI KUMAR SUKUMARA KURUP, J.

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Order made in
CRL.O.P (MD) No.13829 of 2022

02.12.2022