



CRL.O.P(MD)No.15006 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 23.08.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRL.O.P(MD)No.15006 of 2022

and

CrI.M.P(MD)No.9797 of 2022

1. M.Seenivasan,
2. Sukumar,
3. Nirmala,
4. Krish @ Krishwar,

: Petitioners

Vs

1.State through
The Inspector of Police,
S.S.Colony Police Station,
Madurai District.
Crime No.1094 of 2022

2. M.Jayamurugan,

: Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records and quash the FIR in Crime No.1094 of 2022 dated 22.06.2022 on the file of the first respondent.



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For Petitioner : Mr.Prabu R,
For R1 : Mr.M.Sakthi Kumar,
Government Advocate (Crl.Side)

ORDER

This criminal original petition has been filed seeking to quash the FIR in Crime No.1094 of 2022, dated 22.06.2022, on the file of the first respondent.

2.The learned counsel for the petitioners submitted that though it is admitted by the first petitioner that the defacto complainant received a loan amount of Rs.5,00,000/-, from the first petitioner, the other allegations stated in the complaint that the defacto-complainant repaid the amount with 10% interest, threatening of the defacto-complainant and the alleged incident took place on 25.02.2022 are false. The allegations made by the defacto complainant with regard the suit in O.S.No.355/2021 is also false. Based on the false allegations, this case has been registered against the petitioners. Hence the petitioners seeking to quash the FIR in Crime No. 1094/2022.



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3.The learned Government Advocate (Crl.side) appearing for the respondent police submitted that on receiving the complaint in Cr.M.P.No. 20/2022, from the learned Judicial Magistrate, No.5, Madurai, a case in Crime No.1094/2022, has been registered for the offences under Sections 294(b), 406, 506(1) IPC and Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 and the same is under investigation.

4. I have considered the submission of the learned counsel appearing for the petitioners and the learned Government Advocate (criminal side) appearing for the respondent police.

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

6.In the case on hand, on a perusal of records, it is seen that the defacto complainant received a loan amount of Rs.5,00,000/- from the first petitioner. For that, it is alleged that he had executed blank pro-notes, blank cheques and other documents for security purpose. According to the defacto complainant, he had paid the entire amount, which was obtained from the first petitioner/first accused and also paid some amount to the



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second accused person, who was engaged to file a suit in O.S.No.355/2021 for return of the documents filed in the. It is also alleged that the second accused person received a sum of Rs.11,00,000/- and he agreed to re-pay the amount and return the documents entrusted to one Pitchalu, who is no more. But the accused persons did not return the documents and also not paid the amount.

7.On a perusal of the impugned F.I.R, it is seen that the allegations made therein would *prima facie* make out a case for investigation by the police authority.

8.Further, the Hon'ble Supreme Court in the case of **R.P.Kapur v. State of Punjab (AIR 1960 SC 866)** and subsequent cases, has held that revisional or inherent powers for quashing the proceedings at the initial stage can be exercised only where the allegations made in the complaint or the first information report, even if taken at their face value and accepted in their entirety, do no *prima facie* disclose the commission of an offence or where the uncontroverted allegations made in the FIR or complaint and the evidence relied in support of the same do not disclose the commission of



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any offence against the accused, or the allegations are so absurd and inherently improper that on the basis of which no prudent person could have reached a just conclusion that there were sufficient grounds in proceedings against the accused or where there is an express legal bar engrafted in any provisions of the Code or any other statute to the institution and continuance of the criminal proceedings or where a criminal proceeding is manifestly actuated with mala fide and has been initiated maliciously with the ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge.

9.The Investigating Agency should have the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. It is not appropriate for this Court to quash the complaint since this Court finds no merit in this case.

10.If the allegations made in the First Information Report *prima facie* disclose a cognizable offences, interference with the investigation is not proper, because that amounts to interfere with the statutory power of the police to investigate cognizable offences in accordance with the provisions



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of Cr.P.C. Without thorough investigation, it is not possible or proper to hold whether the allegations made by the defacti-complainant are true or not. Hence, the investigation should have been allowed to continue, so that on filing of the final report under Section 173 Cr.P.C, the affected party could pursue its remedy against the final report in accordance with law.

11.In view of the above, the first respondent is directed to complete the investigation within a period of four weeks from the date of receipt of a copy of this order and file final report before the concerned Magistrate Court.

12.In the light of the above factual and legal positions, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

23.08.2022

Internet:Yes./No
Index:Yes/no
lr



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To

1.The Inspector of Police,
S.S.Colony Police Station,
Madurai District.

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



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V.SIVAGNANAM, J.

lr

ORDER IN
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