



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.02.2022

CORAM :

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THE HONOURABLE **Mr. JUSTICE G.K.ILANTHIRAIYAN**

Crl.O.P. (MD)No.19584 of 2021

and

Crl.M.P. (MD)No.10936 of 2021

K.B.Sabarish Prem

... Petitioner/Accused

Vs.

1.State represented by

The Inspector of Police,

Cyber Crime Madurai District Police Station,

Madurai,

In Crime No.1 of 2021.

...1st Respondent/
Complainant

2.Shahir Shah

...2nd Respondent/
Defacto Complainant

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to First Information Report in Crime No.1 of 2021 on the file of the respondent police and quash the same as illegal with respect to the petitioner alone.

For Petitioner : M/s.W.Pamelin

For R1 : Mr.B.Thanga Aravindh
Government Advocate (Criminal side)

For R2 : Mr.Ajmal Khan
Senior Counsel
for M/s. Ajmal Associates

ORDER

This petition has been filed to quash the proceedings in Crime No. 1 of 2021 on the file of the first respondent.

2.The case of the prosecution is that the petitioner with the help of another one accused, had created a fake facebook account of the defacto complainant's Collage namely Annai Fatima College and



diverted the newly joining students by giving another link. Hence a case has been registered on the basis of the complaint given by the defacto complainant. The petitioner is a unnamed accused in this case.

3.The learned Counsel appearing for the petitioner would submit that the petitioner is innocent and he has not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No. 1 of 2021 for the offences under Sections 66, 66C, 66D, 71 and 74 of Information Technology and Sections 419, 420, 465, 468 and 471 of IPC as against the petitioner.

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

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

6. 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.

7.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.***, 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.



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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."

8. 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

<https://hcservices.ecourts.gov.in/hcservices/>



directed to complete the investigation and file a final report before the concerned Magistrate, within a period of twelve weeks from the date of receipt of a copy of this Order.

Sd/-

Assistant Registrar (AS)

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/ /2022

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Inspector of Police,
Cyber Crime Madurai District Police Station,
Madurai.

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

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-5864[F] dated
14/02/2022)

CrI.O.P. (MD)No.19584 of 2021

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RK(01/03/2022) 4P 4C