



Crl.O.P.(MD) No.17146 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 16.11.2022

PRONOUNCED ON : 02.12.2022

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.O.P (MD) No.17146 of 2021

and

Crl.M.P.(MD) No.9299 of 2021

1.Periyakaruppan

2.C.Thangavelu

3.T.Pandiselvi

...Petitioners

VS

1.The Sub Inspector of Police,
District Crime Branch,
Sivagangai.
Crime No.18 of 2021

2.A.Irulappan

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for records in Crime No.18 of 2021 on the file of the Respondent and quash the same as against the Petitioners.

For Petitioners : Mr.J.Senthil Kumariah



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For R1 : Mr.B.Nambiselvan
Additional Public Prosecutor

For R2 : Mr.G.Hariharan

ORDER

This Criminal Original Petition had been filed to quash the FIR in Crime No.18 of 2021 on the file of the Respondent.

2.It is the submission of the learned Counsel for the Petitioners that the alleged offence took place from 01.01.2010 to 01.01.2017. The FIR was registered only on 04.08.2021. It is the further submission of the learned Counsel for the Petitioners that the Petitioners are noway connected to the offence under Sections 406, 468, 471, 420, 120B and 34 IPC. The defacto complainant, Irulappan, is the Director of LCM Civil Engineering (S) Private Limited and is having his Office at 25, Kaki Bukit Road, 4/05/35 Synergy @ K.B.Singapore 417800. He would further submit that based on request of the first Petitioner's son, Rajunarayanan, who is the friend of Meagavarnam, the brother of the defacto complainant, he was appointed as an Accountant in the Company of the defacto complainant.



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3.As per the FIR, the first Petitioner's son, Rajunarayanan, had married one Ezhilarasi on 13.09.2007. Being an employee of the defacto complainant, the defacto complainant borne out all the expenses connected with the marriage of the first Petitioner's son, Rajunarayanan. The complaint is false, *mala fide*, improper and lacks evidence to prove against the Petitioner. Ingredients of the offences under Sections 406, 468, 471, 420, 120B and 34 IPC are not made out as against the Petitioners. FIR was registered without proper investigation. Rajunarayanan, the first Petitioner's son, holds MS Degree in IT and the defacto complainant hired the first Petitioner's son only based on his qualifications. The FIR in Crime No.18 of 2021 was registered with *mala fide* intention.

4.It is the further contention of the learned Counsel for the Petitioners that the FIR was registered based on the false accusation. The Respondent Police had sent a report in Cr.M.P.No.13230 of 2019 to the Trial Court stating that all the transactions relating to the first Petitioner's son took place in Singapore and the defacto complainant did not submit the required documents to prove his allegations. As per the report of the District Crime



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Branch, Sivagangai, the complaint does not attract the jurisdiction of the learned Judicial Magistrate, Sivagangai.

5.The learned Judicial Magistrate, Sivagangai had passed orders in Cr.M.P.No.13230 of 2019 that the report of the District Crime Branch, Sivagangai does not find any material for commission of the cognizable offence as alleged by the defacto complainant. The defacto complainant had filed Cr.R.C.(MD) No.313 of 2021, challenging the impugned order dated 01.02.2020.

6.The learned Counsel for the Petitioner relied on the reported ruling of the Hon'ble Supreme Court in the case of ***Anand Kumar Mohatta and another Vs. State (NCT of Delhi), Department of Home and another*** reported in ***(2019) 11 Supreme Court Cases 706***, wherein it had been held as under:-

“Retention of money even after frustration of agreement by the accused - Money neither misappropriated nor converted by accused dishonestly for his own use, nor disposed of in violation of direction of law or contract by accused – Held, retention of money by accused in present case did not constitute offence under Section 406



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I.P.C - If at all, it had contours of a civil dispute.”

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“28. [In State of Haryana and Ors. v. Bhajan Lal and Ors.](#) 5, this Court has set out the categories of cases in which the inherent power under [Section 482](#) of Cr.P.C. can be exercised. Para 102 of the judgment reads as follows: -

“102. In the backdrop of the interpretation of the various relevant provisions [of the Code](#) under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under [Article 226](#) or the inherent powers under [Section 482](#) of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or 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 a case against the accused.



(2) *Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under [Section 156\(1\)](#) of the Code except under an order of a Magistrate within the purview of [Section 155\(2\)](#) of the Code.*

(3) *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

(4) *Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under [Section 155\(2\)](#) of the Code.*

(5) *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

(6) *Where there is an express legal bar engrafted in any of the provisions [of the Code](#) or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in [the Code](#) or the*



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concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

29. We are of the opinion that the present case falls under the 1st, 3rd and 5th category set out in the para 102 of the judgment in the case of Bhajan Lal (supra). In such a situation, the High Court erred in dismissing the petition of the Appellants filed under [Section 482](#) of Cr.P.C. This was a fit case for the High Court to exercise its inherent power under [Section 482](#) of Cr.P.C. to quash the FIR.

30. It is necessary here to remember the words of this Court in [State of Karnataka v. L. Muniswamy](#) and others⁶ which read as follows: -

“7.In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of



the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice.....””

7.The defacto complainant is the Director of LCM Civil Engineering (S) Private Limited Company. Instead of the Company, the defacto complainant had filed a complaint without producing any audit report before the first Respondent. Therefore, it is nothing but malicious prosecution. The FIR is registered without jurisdiction. Therefore, the Court may be pleased to quash the impugned order.

8.The learned Additional Public Prosecutor for the first Respondent vehemently objected to the line of argument of the learned Counsel for the Petitioners stating that the FIR is not an encyclopedia. The ingredients of the offences are made out. It is for the Investigation Officer to collect the materials necessarily to proceed with the investigation. Here in this case, as per the contents of the FIR, the occurrence had taken place in Singapore.

9.He would further submit that this Court has jurisdiction to consider the plea of the facts that the money transaction through the Bank, which was



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alleged to have been conducted by the Petitioners, was through the Banks in Sivagangai. Therefore, part of the crime had taken place in India. Therefore, this petition is not maintainable and is to be dismissed. What had been argued by the learned Counsel for the Petitioner is to be treated as valuable defense available to the Petitioner before the learned Trial Judge.

10.As per 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***, the power to quash the FIR, private complaint as well as the Charge Sheet shall not be exercised leniently. It shall be exercised sparingly. Therefore, the learned Additional Public Prosecutor sought to dismiss this petition as not maintainable.

11.The learned Additional Public Prosecutor for the first Respondent relied on the reported ruling of the Hon'ble Supreme Court in the case of ***Rajeev Kourav Vs. Baaisahab and others*** reported in ***(2020) 3 Supreme Court Cases 317***, wherein it had been stated as under:-

“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.

.....

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. ”

12. In the light of the rival submissions and in the facts and circumstances of the case as gathered from the contents of the FIR, the objection of the learned Additional Public Prosecutor regarding quashing of the FIR cannot at all be accepted, in the light of the reported ruling of the Hon'ble Supreme Court in the case of ***State of Haryana vs. Ch. Bhajan Lal***



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reported in **(AIR) 1992 SC 604**), wherein it had been stated that the High Courts can exercise the power to quash the FIR, private complaint as well as the Charge Sheet only based on the materials available with the prosecution.

13.The objections of the learned Additional Public Prosecutor that the FIR is not an encyclopedia and after collecting the materials by the Investigation Officer, whether the ingredients of the offences are attracted or whether the occurrence took place in India are to be considered cannot at all be considered in the facts and circumstances of the case. Even though it is an accepted fact that the FIR is not an encyclopedia, here as per the contents of the FIR with regard to the alleged misappropriation of the Company's amount by the first Petitioner's son, Rajunarayanan, the occurrence had not taken place in India. It was all in Singapore and the first Petitioner's son, Rajunarayanan had already left to India from Singapore. Therefore, the Respondent Police had registered the case in India. That will not hold good.

14.If what had been alleged in the FIR is true, the Audit Report that had been filed as a proof and any report from the Auditor has weightage,



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without which the alleged transaction between the first Petitioner's son, Rajunarayanan through the Bank account of the second Respondent/Complainant, is found unacceptable and unreasonable. Therefore, the argument of the learned Additional Public Prosecutor is rejected.

In the result, this Criminal Original Petition is allowed. The FIR in Crime No.18 of 2021 on the file of the first Respondent is quashed. Consequently, connected Miscellaneous Petition is closed.

Internet :Yes./No
Index :Yes/No
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02.12.2022

To

- 1.The Sub Inspector of Police,
District Crime Branch,
Sivagangai.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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SATHI KUMAR SUKUMARA KURUP, J.

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