BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.01.2022

PRONOUNCED ON : 08.04.2022

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

Crl.O.P.(MD)No.22241 of 2018
and
Crl.M.P.(MD)No.10379 of 2018

Alexpandian : Petitioner/Accused No.2

Vs.

1.State represented by
The Inspector of Police,
Checkanurani Police Station,
Checkanurani,
Madurai District.
Cr.No.373 of 2018. : 1st Respondent/Complainant

2.Balamurugan,
S/o Ganapathi,
Branch Manager,
Royal Sundaram General Insurance Company Ltd.,
ATP Towers, No.12-A, 5th Floor,
Bye Pass Road, Madurai. : 2nd Respondent/Defacto complainant

PRAYER : Criminal Original Petition has been filed under Section 407 Cr.P.C, to call for the records pertaining to the impugned First Information Report in Crime NO.373 of 2018, on the file of the Inspector of Police, Checkanurani Police Station, Madurai and to quash the same as illegal.

For Petitioner : Mr.K.R.Laxman
For Respondents : Mr.R.Sivakumar
Government Advocate (Crl.Side)
for R.1
: Mr.S.Srinivasa Raghavan
for R.2

ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records pertaining to the F.I.R., in Cr.No.373 of 2018, on the file of the Checkanurani Police Station, Madurai and quash the same.

2. The petitioner is the second accused in Cr.No.373 of 2018, on the file of the first respondent police. On the basis of the complaint lodged by the second respondent, F.I.R. came to be registered in Cr.No.373 of 2018 on 15.11.2018 against one Jayapandi/first accused for the offences under Sections 406, 420, 465, 468 and 471 I.P.C. According to the prosecution, the first respondent police after examination of some witnesses and secret enquiry, they have come to know that the present petitioner was mainly involved in the alleged incidents and hence, he was implicated as the second accused in the above case. As already pointed out, the petitioner has sought to quash the F.I.R., in Cr.No.373 of 2018, but as already pointed out, the petitioner's name does not find place in the F.I.R. and only after initial investigation, he was implicated as the second accused.

3. The case of the prosecution is that the first accused Jayapandi is the owner of the lorry bearing Registration No.TN-22-T-7368, that the said lorry was involved in an accident on 12.08.2017 resulting in the death of one Paraman, that the legal representatives of the said Paraman have filed a claim petition in M.C.O.P.No.1859 of 2017 impleading the said Jayapandi as owner and the Royal Sundaram General Insurance Company as insurer, that the Insurance Company came to know that the policy submitted by the first accused is a fabricated document and that therefore, the Insurance Company through its Madurai Branch Manager has lodged a complaint against the first accused Jayapandi.

4. It is not in dispute that the said Royal Sundaram General Insurance Company has issued insurance policy to the first accused Jayapandi on 12.03.2015 insuring the said lorry for a period between 12.03.2015 and 11.03.2016 and that subsequently the first accused has taken insurance for the said vehicle from Iffco Tokyo General Insurance Company on 12.03.2015 for a period between 12.03.2016 to 11.03.2017. It is not in dispute that the first accused has produced the insurance policy covering his vehicle for a period from 12.10.2016 to 11.10.2017 and the said policy is now in dispute.

5. It is the specific case of the defacto complainant that they have not issued any such policy for the said vehicle to the first accused for the period between 12.10.2016 and 11.10.2017 and that the policy issued for the period from 12.03.2015 to 11.03.2016 has been tampered and instead of the said period, the present period from 12.10.2016 to 11.10.2017 has been mentioned. The defacto complainant in their complaint itself, has specifically stated that the Insurance Regulatory and Development Authority of India is the competent authority fixing the insurance policy amount, that they have fixed the policy amount at Rs.16,360/- for the period 2015-2016 and for the period 2016-2017 at Rs.22,577/-, but in the disputed policy, the policy premium amount was mentioned as Rs.16,960/- for the period from 12.10.2016 to 11.10.2017 instead of

Rs.22,577/-, that in the policy document, the date of issuance of policy has also been shown as 11.03.2015 and that previous name of the Company alone was mentioned in the disputed policy. By alleging the above reasons, the defacto complainant has taken a specific stand that the disputed policy is a tampered document.

6. Though the petitioner has alleged that he was an employee of the said Insurance Company, the same was disputed by the defacto complainant and according to him, he was only an agent at that time. The main contention of the petitioner is that the petitioner has already given insurance policy to the first accused for the period from 12.03.2016 to 11.03.2017, that when the vehicle was involved in the accident occurred on 12.08.2017 without insurance, the owner alone has fabricated the earlier insurance policy given to him and that therefore, the question of implicating the present petitioner does not arise at all.

7. It is the further case of the petitioner that the defacto complainant has specifically lodged the complaint implicating the owner of the vehicle Jayapandi and does not say anything about the present petitioner, that one Udayakumar who was working as a Head Constable in the concerned Police Station is the close friend of Jayapandi, that at the enquiry, the said Udayakumar without any material had started to abuse the petitioner stating that it was the petitioner who had tampered the insurance policy and issued to the first accused and that subsequently, the respondent police deleting the name of the original accused Jayapandi, has implicated the present petitioner as the only accused.

8. The learned Counsel for the petitioner would submit that the respondent police has then arrested the petitioner and recorded a confession statement so as to suit their case and for deleting the said Jayapandi from the case, that there are absolutely no allegation or averments in the F.I.R., pointing any overt act upon the petitioner, that the respondent police without considering the material aspect that the said Jayapandi has not renewed the policy after the expiry of the policy on 11.03.2017 and that after the occurrence of the accident on 12.08.2017, the said Jayapandi has tampered the earlier policy given by the petitioner for the period from 12.03.2015 to 11.03.2016 and the said Jayapandi has alone produced the said policy before the authorities and before the concerned Court.

9. The learned Government Advocate (Crl.Side) appearing for the State would submit that the respondent police has not deleted the owner Jayapandi from the case and that he is the first accused and after examination of some witnesses and enquiry, the present petitioner has been added as the second accused. He would further submit that the investigation revealed that the first accused has paid the premium amount to the second accused for taking insurance, that the second accused after receiving the amount, has not issued

any policy at that time and that subsequently after coming to know about the accident, he has created a fabricated policy with the help of previous policy for the period 12.03.2015 to 11.03.2016 and gave it to the first accused,who in turn submitted before the concerned authorities.

10. In pursuance of the directions of this Court, the first respondent has submitted a report wherein he has specifically stated that though the F.I.R., was registered against the first accused, subsequently they have added the present petitioner as second accused, that he has also examined some other witnesses and recorded their statement under Section 161(3) Cr.P.C., that there is prima facie materials to show that the accused 1 and 2 have tampered the policy which was issued for the period from 12.03.2015 to 11.03.2016 and altered the period of insurance as 12.10.2016 to 11.10.2017 in the same policy No.VCT0042690000100, that first accused has obtained anticipatory bail and surrendered before the concerned Court, that the present petitioner/second accused was arrested on 15.11.2018 and he gave a voluntary statement and that as per the advise of the Public Prosecutor, they have sent a request to the Revenue Transport Officer for issuance of necessary certificates and are awaiting reply.

11. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***Kaptan Singh Vs. The State of Uttar Pradesh and Others*** in Crl.A.No.787 of 2021, dated 13.08.2021 and the relevant passage is extracted hereunder:

> 9.1 At the outset, it is required to be noted that in the present case the High Court in exercise of powers under Section 482 Cr.P.C. has quashed the criminal proceedings for the offences under Sections 147, 148, 149, 406,329 and 386 of IPC. It is required to be noted that when the High *Court in exercise of powers under Section 482Cr.P.C. quashed the criminal proceedings, by the time the Investigating Officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the incident place and after taking statement of the independent witnesses and even statement of the accused persons, has filed the charge-sheet before the Learned Magistrate for the offences under Sections 147, 148, 149, 406, 329 and 386 of IPC and even the learned Magistrate also took the cognizance. From the impugned judgment and order passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/inquiry and even the statements recorded. If the petition under Section 482 Cr.P.C. was at the stage of FIR in that case the allegations in the FIR/Complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered.*

However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation/inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation. Even at this stage also, as observed and held by this Court in catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial. As held by this Court in the case of Dineshbhai Chandubhai Patel (Supra) in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the Investigating agency nor can exercise the powers like an Appellate Court. It is further observed and held that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof. At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a situation, it becomes the job of the Investigating Authority at such stage to probe and then of the Court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.

12. In the case on hand, not only the F.I.R., but the statement recorded under Section 161(3) Cr.P.C., and the insurance policies collected during the investigation are very much available before this Court. The petitioner has specifically admitted that he has given the insurance policy for the period from 12.03.2015 to 11.03.2016 issued by the Royal Sundaram General Insurance Company and for the subsequent year for the period from 12.03.2016 to 11.03.2017 issued by the Iffco Tokyo General Insurance Company. It is the specific case of the petitioner that the first accused Jayapandi has not renewed the policy after the expiry of the policy on 11.03.2017 and after the occurrence, he has tampered the period with the help of the policy issued for the period from 12.03.2015 to 11.03.2016 and that the petitioner has in no way connected with the alleged tampering and for using the same before the competent authorities.

13. According to the prosecution, the petitioner who was working as agent for the Insurance Company has received the premium amount, but failed to issue the policy at that time, that subsequently after coming to know about the accident, he has tampered the earlier policy issued for the period from 12.03.2015 to 11.03.2016 as if the same was issued for the period from 12.10.2016

to 11.10.2017 and gave it to the first accused, who in turn had used the same. As rightly contended by the learned Government Advocate (Crl.Side), whether the petitioner has tampered the insurance policy or the first accused has tampered the document, is the matter for further investigation and the same cannot be gone into, in the present petition filed under Section 482 Cr.P.C.

14. The learned Counsel for the defacto complainant would strongly contend that the person who had tampered the insurance policy is to be proceeded with, but at the same time, some of the agents like the present petitioner are acting against the interest of the Insurance Companies and are causing serious loss monetarily and also to the reputation of the companies and that such persons are to be dealt with iron hands.

15. It is pertinent to mention that the Hon'ble Supreme Court in in ***Dhruvaram Murlidhar Sonar vs The State Of Maharashtra*** reported in ***2019(18) SCC 191***, after considering the decision of the Hon'ble Supreme Court in ***State of Haryana and Ors. v. Bhajan Lal and Others, r***eported in ***1992 Supp (1) SCC 335***, has specifically held that exercise of powers under Section 482 Cr.P.C., to quash the proceedings is an exception and not a rule and that inherent jurisdiction under Section 482 Cr.P.C., though wide, has to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in Section itself. It is also settled law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 Cr.P.C., for quashing the criminal proceedings.

16. It is pertinent to note that this Court in exercise of its jurisdiction under Section 482 Cr.P.C., cannot go into truth or otherwise of allegations made in the complaint or delve into the disputed question of facts. A perusal of F.I.R., remand report, statements recorded under Section 161(3) Cr.P.C., and the status report filed by the first respondent makes out a prima facie case against the accused at this stage and three appear to be sufficient ground for proceeding against the accused.

17. In the above circumstances, I do not find any justification to quash the proceedings as against the petitioner, as the case does not fall in any of the categories recognised by the Hon'ble Apex Court, which may justify their quashing. Consequently, this Court decides that the above Criminal Original Petition is devoid of merits and the same is dismissed.

18. In the result, the Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous Petition is also dismissed. The first respondent police is directed to complete the investigation and file a final report before the jurisdictional

Court within a period of three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (CS I)

// True Copy //

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Sub Assistant Registrar(CS)

SSL

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, Checkanurani Police Station, Madurai.

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

+1 CC to M/s.K.R. LAXMAN, Advocate (SR-17849[F] dated 11/04/2022)

+1 CC to M/s.S. SRINIVASA RAGHAVAN, Advocate (SR-17845[F] dated 11/04/2022)

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MGJ(21.04.2022) 7P 5C