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Crl.O.P.Nos.1504 and 1530 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2023

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

Crl.O.P.Nos.1504 and 1530 of 2022

and

Crl.M.P.Nos.595 and 606 of 2022

- | | |
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| 1. Raja | ... Petitioner in Crl.O.P.No.1504 of 2022 |
| 2. Barani | ... Petitioner in Crl.O.P.No.1530 of 2022 |

-Vs-

1. The State represented by
The Inspector of Police,
Manalmedu Police Station,
Mayiladuthurai District.

2. Prakashraj ... Respondents in **both Crl.O.Ps**
Common Prayer: Criminal Original Petitions filed under Section 482 of Cr.P.C, to call for the records in Crime No.757 of 2021 on the file of 1st respondent and quash the same.

In both Crl.O.Ps

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| For Petitioners | : Mr.R.Shivakumar
for M/s K.M.Vijayan Associates |
| For R1 | : Mr.A.Gopinath
Government Advocate (Crl.side) |
| For R2 | : Mr.G.Sriram |



Crl.O.P.Nos.1504 and 1530 of 2022

COMMON ORDER

These Criminal Original Petitions have been filed to quash the FIR in Crime No.757 of 2021 on the file of first respondent.

2. Heard the learned counsel for the petitioners, the learned Government Advocate (Crl.side) for the first respondent and the learned counsel for the second respondent and perused the materials available on record.

3. Both the petitions are arising out of the same Crime No.757 of 2021 and therefore, this Court is inclined to pass common order.

4. The case of the prosecution is that the defacto complainant lodged a complaint alleging that the defacto complainant and one Prabhakaran are brothers. A1 is running a provisional shop in the village. A1 approached the defacto complainant and informed that his brother is running M/s Chennai Grains Packing Company in Dubai and they are recruiting persons for the said company. Believing the words of A1, the defacto complainant, gave a sum of Rs.90,000/- and his brother Prabhakaran was employed in the said company. Thereafter, the accused failed to pay wages and as such, the said Prabhakaran informed the same to the defacto complainant. The defacto complainant advised



Crl.O.P.Nos.1504 and 1530 of 2022

the said Prabhakaran to return to India and he refused to do so. Thereafter, it was found that the said Prabhakaran died. When it was questioned by the defacto complainant, the accused threatened the defacto complainant with dire consequences. Hence, the complaint.

5. On receipt of the complaint, the first respondent registered FIR in Crime No.757 of 2021 for the offences punishable under Sections 420 and 506(2) of IPC, Section 10 and 24 of Emigration Act, 1983.

6. The learned counsel for the petitioners would submit that the first respondent is not a competent authority to register the FIR under Emigration Act. As per Section 3 of the Emigration Act, 1983, the Protector of Emigrants is the Central Government and the Central Government by its notification, would appoint a Protector General of Emigrants for taking appropriate action as against the accused. That apart, he also pointed out Section 10 of the Emigration Act, 1983 that only the recruitment agent can be prosecuted and not the employee. He further submitted that on proper Visa, the deceased was sent to Dubai. He had worked for two years. He was issued resident certificate by the Government of Dubai. One fine morning, the deceased left the company without informing anyone. On the same day, the employer viz., the second



Crl.O.P.Nos.1504 and 1530 of 2022

accused lodged a complaint before the authority concerned at Dubai. The Government of Dubai was not able to locate the deceased. They found one unknown body and kept the body in a cold storage. On verification, the complainant found that the person died by committing suicide. Thereafter, postmortem was conducted and they came to know that he died due to hanging. Thereafter, the deceased was settled finally by paying Rs.3,420 Dirhams. It was also duly accepted by Consulate General of India by issuance of receipt. In fact, the body was brought to India and the petitioners are still helping the family of the deceased. Therefore, no offence is made out as against the petitioners as alleged by the prosecution.

7. The learned counsel for the second respondent would submit that as per Section 16 of the Emigration Act, 1983, the employer also is liable to be punished. That apart, Section 26 of the Emigration Act, 1983 is very clear that all the offences under the Emigration Act are cognizable offences. Therefore, the first respondent is the competent authority to register the FIR.

8. The learned Government Advocate (Crl.side) appearing for the first respondent submitted that though the FIR was registered by the first respondent, after obtaining sanction from the competent authority, charge sheet



Crl.O.P.Nos.1504 and 1530 of 2022

will be laid. That apart, the FIR has been registered along with IPC offence.

Therefore, the grounds raised by the petitioners should be investigated in depth to unearth the truth.

9. The FIR is not an encyclopedia and it need not contain all facts and it cannot be quashed in its 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.

10. It is 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*** in the case of ***Sau. Kamal Shivaji Pokarnekhar 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



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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.

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.

.....

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



Crl.O.P.Nos.1504 and 1530 of 2022

WEB COPY

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."

11. In view of the above discussions, this Court is not inclined to quash the FIR in Crime No.757 of 2021 on the file of first respondent. Accordingly, these Criminal Original Petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed. The first respondent is directed to complete the investigation in Crime No.757 of 2021 and file a final report, within a period of twelve weeks from the date of receipt of a copy of this order.

27.11.2023

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
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G.K.ILANTHIRAIYAN. J.



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Crl.O.P.Nos.1504 and 1530 of 2022

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To

1. The Inspector of Police,
Manalmedu Police Station,
Mayiladuthurai District.
2. The Public Prosecutor,
High Court, Madras.

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and
Crl.M.P.Nos.595 and 606 of 2022

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