



Crl.O.P.No.2156 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2023

CORAM:

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

Crl.O.P.No.2156 of 2022

and

Crl.M.P.No.949 of 2022

V.S.Thamilan

... Petitioner

Vs.

1.The State represented by
The Inspector of Police,
District Crime Branch,
Vellore.
(Crime No.5 of 2021)

2.Ezhil Kumar

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for records in Crime No.5 of 2021 on the file of the first Respondent Police and quash the same insofar as the Petitioner is concerned.

For Petitioner	: Mr.P.Gunaraj
For R1	: Mr.A.Gopinath Government Advocate (Crl. Side)
For R2	: Mr.R.Thamarai Selvan



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ORDER

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This Criminal Original Petition has been filed to quash the FIR in Crime No.5 of 2021 on the file of the first Respondent Police.

2. Heard the learned counsel for the petitioner, 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. The crux of the allegation is that the respondent is running a Transport business along with his father-in-law and had purchased 115 vehicles through a finance called “Hinduja Leyland Finance Ltd.”. So far, the respondent had repaid a sum of Rs.12,79,82,703/- out of Rs.19,19,47,680/-. At that juncture, the Area Manager of the finance approached the respondent and assured that the petitioner purchased the entire transport for a sum of Rs.18,50,00,000/-. They also agreed to pay a sum of Rs.2,50,00,000/- as advance. However, they have not paid any advance amount and they have not executed any agreement to that effect. On assurance given by the petitioner, the original RC Book of all the vehicles, permit and insurance were handed over to the petitioner herein. However, they played the vehicles for 1 ½ years. Thereafter, the petitioner failed



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to pay any amount as assured by them. One fine morning, all the vehicles were left in the road. Thereafter, the vehicles were taken by the second respondent and had spent more than Rs.80,00,000/- to revive the vehicles. They played the vehicles for 1 ½ years and earned lakhs of rupees. Hence, the complaint.

4. On receipt of the complaint, the first respondent registered FIR in Crime No.5 of 2021, for the offences punishable under Sections 406, 420, 294(b), 506(1) and 120B of IPC.

5. The learned counsel for the petitioner would submit that as per the Memorandum of Understanding, there is an arbitration clause and now, the arbitration proceeding is pending before the Arbitrator. Therefore, all the allegations are civil in nature.

6. The learned Government Advocate (Crl.Side) appearing for the first respondent would submit that almost the entire investigation has been completed and they are about to file a final report. Only because of the interim direction granted by this Court that not to file a final report, it is pending.

7. A perusal of the entire complaint lodged by the respondent revealed



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that there is a prima facie case made out to constitute the offences under Sections 406, 420, 294(b), 506(1) and 120B of IPC. Admittedly, no single paise paid by the petitioner so far, after purchasing the vehicle numbering 115 to the tune of Rs.18,50,00,000/-. After a period of 1½ years, vehicles were again let in the custody of the respondent. Therefore, it has to be investigated in depth to unearth the truth.

8. Therefore, 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.

9. 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 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



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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.

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.

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9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view



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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."

10. Therefore, this Court is not inclined to quash the FIR in Crime No.5 of 2021, on the file of the first respondent. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous petition is closed. The first respondent is directed to complete the investigation in Crime No.5 of 2021 and file a final report, within a period of twelve weeks from the date of receipt of a copy of this order.

01.12.2023

Internet : Yes / No

Index : Yes / No

Speaking / Non Speaking order

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To

- 1.The Inspector of Police,
District Crime Branch,
Vellore
- 2.The Public Prosecutor
Madras High Court.



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G.K.ILANTHIRAIYAN, J.
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