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Crl.O.P.Nos. 6395, 12516, 23470 of 2018 and 19829 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2023

CORAM:

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

Crl.O.P.Nos.6395, 12516, 23470 of 2018 and 19829 of 2019
and
Crl.M.P.Nos.3259, 6701, 13171 of 2018 and 10160 of 2019

Crl.O.P.No.6395 of 2018:-

1. J.Indra Kumari
2. Rajesh Lonappan

...Petitioners

-Vs-

1. State represented by
The Inspector of Police,
Central Crime Branch,
O/o. Commissioner of Police,
Vepery, Chennai.
(Crime No.28 of 2018)

2. Rajendrakumar

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the F.I.R dated 22.01.2018 in Crime No.28 of 2018 registered against the petitioners herein under Section 465, 468, 471, 420 and 506(i) IPC on the file of the respondent viz., The Inspector of Police, Central Crime Branch, O/o.Commissioner of Police, Vepery, Chennai and quash the same.

For Petitioners : Dr.D.Simon



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For R1 : Mr.L.Baskaran
Government Advocate (Crl.side)
For R2 : Mr.M.Venkadeshn

Crl.O.P.No.12516 of 2018:-

P.Jose ...Petitioner

-Vs-

1. State represented by
The Inspector of Police,
Central Crime Branch,
O/o. Commissioner of Police,
Vepery, Chennai.
(Crime No.28 of 2018)

2. Rajendrakumar ... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the F.I.R dated 22.01.2018 in Crime No.28 of 2018 registered against the petitioner herein under Section 465, 468, 471, 420 and 506(i) IPC on the file of the respondent viz., The Inspector of Police, Central Crime Branch, O/o.Commissioner of Police, Vepery, Chennai and quash the same.

For Petitioner : Dr.D.Simon
For R1 : Mr.L.Baskaran
Government Advocate (Crl.side)
For R2 : Mr.M.Venkadeshn

Crl.O.P.No.23470 of 2018:-



Crl.O.P.Nos. 6395, 12516, 23470 of 2018 and 19829 of 2019

1. Sachin @ Sajayan T.S.
2. Sujil Joy
3. Jainson

...Petitioners

-Vs-

1. State represented by its
The Inspector of Police,
CCB, Team-1,
Vepery, Chennai.
(Crime No.28 of 2018)

2. Rajendrakumar

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for all the records and quash all the proceedings in Crime No.28 of 2018 now pending investigation on the file of the first respondent.

For Petitioners : Mr.T.Noel Pio Valavan

For R1 : Mr.L.Baskaran
Government Advocate (Crl.side)

For R2 : Mr.M.Venkadeshnan

Crl.O.P.No.19829 of 2019:-

Pranav Kumar

...Petitioner

-Vs-

1. State represented by its
The Inspector of Police,
CCB, Team-1,
Vepery, Chennai.
(Crime No.28 of 2018)



Crl.O.P.Nos. 6395, 12516, 23470 of 2018 and 19829 of 2019

2. Rajendrakumar

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for all the records and quash all the proceedings in Crime No.28 of 2018 now pending investigation on the file of the first respondent.

For Petitioner : Mr.T.Noel Pio Valavan

For R1 : Mr.L.Baskaran
Government Advocate (Crl.side)

For R2 : Mr.M.Venkadeshnan

COMMON ORDER

These Criminal Original Petitions have been filed to quash the proceedings in Crime No.28 of 2018 registered against the petitioner herein under Section 465, 468, 471, 420 and 506(i) IPC on the file of the first respondent.

2. Heard the learned counsel on either side and perused the materials available on record.

3. The case of the prosecution is that the defacto complainant is the regular customer of Prince Jewellery and he knows the first accused, who is the former employee of the said Prince Jewellery and subsequently, he started his own firm namely Chennai Gold House and the defacto



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complainant knew the second accused, who is the Manager of the said Chennai Gold House. It is further alleged that the first and second accused had asked for financial assistance to the tune of Rs.5,00,000/- and the first and second accused had obtained the original sale deed document of the property of the defacto complainant's wife. They also obtained three blank stamp papers and four blank signed cheques. Subsequently, the accused informed that a sum of Rs.1,84,000/- was transferred the defacto complainant's account and thereafter, refused to return the remaining amount. When the defacto complaint asked to return the above said four cheques and documents, the accused asked a sum of Rs.34,00,000/- from the defacto complainant to return the said document. They also handed over the defacto complainant's document to one unknown person, who is residing in other State. Subsequently, the said unknown person issued legal notice to the defacto complainant and filed a case to threaten the defacto complainant. Hence, the present complaint.

4. On receipt of the complaint, the first respondent filed FIR in Crime No.28 of 2018 for the offences punishable under Sections 465, 468, 471, 420 and 506(1) of IPC.



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5. The learned counsel for the petitioners submitted that the accused and the second respondent are friends. The friendship also extended to other accused friends. Taking advantage of the friendship, the second respondent approached himself as businessman and informed that he is having influential contacts by which the business can be developed for all of them. Believing the said words, the petitioners used to lend money in favour of the defacto complainant. During the year 2010 – 2011, the defacto complainant borrowed money for interest. The defacto complainant and his wife promised to repay the said loan amount within a period of one or two months. However, they failed to return the amount which was borrowed by the defacto complainant. To their shock and surprise, the first accused received a legal notice from the wife of the defacto complainant on 26.10.2012, alleging that the first accused had obtained a sale deed vide Document No.112 of 2007, four blank cheques and blank stamp papers for the loan lent by the first accused. In fact, on the strength of the said notice, the defacto complainant and his wife also instituted a suit in O.S.No.6738 of 2012, on the file of the XVI City Civil Court, Chennai, restraining the first accused from demanding any money. Therefore, the entire allegations are false and no averments are made to constitute any of the offence.



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6. Whereas, a perusal of records revealed that the first accused engaged other accused persons from various states such as Kerala, Karnataka and Calcutta and misused the cheques and pro-notes executed by the wife of the defacto complainant and instituted various proceedings including for the offence punishable under Section 138 of Negotiable Instruments Act. Therefore, the entire allegations are constituted for the offences under Sections 465, 468, 471, 420 and 506(i) IPC. Hence, it requires investigation. When the allegations do not constitute any offence, then this Court can interfere with the investigation. Otherwise, this Court cannot interfere with the investigation to be conducted by the first respondent. Further, where the allegations made in the FIR, 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, the FIR can be quashed. Further, where the criminal proceeding is manifestly attended with malafide and/or where the proceedings 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. Therefore, inherent power should not be exercised to stifle a legitimate prosecution.



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7. Further, the grounds raised by the petitioners cannot be considered at this stage, since this Court cannot conduct a roving enquiry, when the investigation is pending on the file of the first respondent with regard to the impugned FIR. This Court cannot go into the merits and de-merits of the allegations for the reason that the petitioners allege that all the allegations are false.

8. Further the FIR is not an encyclopedia and it need not contain all facts and 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.

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 Pokarnekhar vs. the State of Maharashtra & ors.***, as follows:-



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"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.

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



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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."

10. In view of the above, this Court is not inclined to quash the FIR in Crime No.28 of 2018. The first respondent is directed to complete the investigation and file a final report, within a period of twelve weeks from the date of receipt of a copy of this order.

11. In the result, these Criminal Original Petitions are dismissed.



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Consequently, connected Miscellaneous petitions are closed.

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Internet: Yes

Index : Yes/No

Speaking/Non Speaking order
mn

To

1. The Inspector of Police,
Central Crime Branch,
O/o. Commissioner of Police,
Vepery, Chennai.
2. The Public Prosecutor,
High Court, Madras.

G.K.ILANTHIRAIYAN. J.

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