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CrI.OP.No.7617 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2023

CORAM:

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

CrI.OP.No.7617 of 2022 and  
CrI.MP.No.4390 of 2022

Abuthahir

... Petitioner

Vs.

1.State rep by  
Inspector of Police,  
D-4, Kuniyamuthur Police Station,  
Coimbatore District  
2.Stanly Anthony

... Respondents

**PRAYER:**

Criminal original petition is filed under Section 482 of Cr.P.C. to call for the records in crime No.567 of 2021 on the file of the first respondent herein and to quash the first information report against the petitioner herein.

For Petitioner : Mr.A.Saranraj

For Respondents  
For R1 : Mr.A.Gopinath,  
Government Advocate(CrI.side)



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### **ORDER**

This Criminal Original Petition has been filed to quash the proceedings in crime No.567 of 2021 on the file of the first respondent registered for the offences under Sections 51 and 63(a) of Copy Right Act, 1957 against the petitioner.

2. The case of the prosecution is that the 2nd Respondent is the authorized person of M/s. Sahyadri Copyright Protection, M/s. Adithya Birla Fashion and Retail Limited is the brand owner, licensor and manufactures of well known brands of apparels Allen Solly, Peter England, Van Heusen and Lous Philips. The 2nd respondent came to know that the petitioner involved in the manufacture of duplicate materials in the name of the above said brands. The petitioner is owner of M/s. Arafa Readymade. The illegal act of the petitioner caused heavy loss to the 2nd Respondent and the general public purchased low quality materials under the name and style of original brands.

3. The learned counsel for the petitioner would submit that no *prima facie* made out to register FIR. Only on the complaint lodged by the second



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respondent, the first respondent registered FIR. No such products are manufactured by the petitioner. The petitioner is doing a business on retail basis. He used to purchase from various persons and sold the materials to public. He is not running any manufacturing unit and selling duplicate garments of Allen Solly and Louis Philippe as alleged by the second respondent.

4. On perusal of records, it is only an FIR. The second respondent lodged complaint that the petitioner manufactured duplicate materials, which has to be investigated by the investigation agency and then only, it is possible to unearth the truth. In this regard, 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.***, wherein it is held 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 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 that are alleged against the Respondents. The correctness or otherwise of the said*



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*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."*

5. In view of the above discussion, this Court is not inclined to quash the First Information Report. Accordingly, this Criminal Original Petition stands dismissed. However, the petitioner is also permitted to produce all the relevant materials before the first respondent during investigation. Consequently, connected miscellaneous petition is closed.

01.12.2023

Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order

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**G.K.ILANTHIRAIYAN, J.**

lok

To

- 1 Inspector of Police,  
D-4, Kuniyamuthur Police Station,  
Coimbatore District
2. The Government Advocate,  
High Court of Madras

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01.12.2023