IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.11.2023

PRONOUNCED ON : 15.12.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.Nos.7755, 6055, 5797, 5960, 5787 and 7336 of 2021
&
Crl.M.P.Nos.3858, 3957, 3744, 3745, 3757, 3958, 4879, 5123, 3857 and 3758 of 2021

Crl.O.P.No.7755 of 2021

1.G.K.Development,
Represented by its Director,
No.42, North Phase Industrial Estate,
Eakkattuthangal,
Chennai – 600 032.

2.G.Karthick

3.G.Sundar ... Petitioners

Vs

R.Murugesh ... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the proceeding in C.C.No.601 of 2021 pending trial on the file of the learned XI Metropolitan Magistrate Court at Saidapet, Chennai and quash the same.

In Crl.O.P.Nos.7755, 6055, 5797, 5960 & 5787 of 2021

For Petitioners : Mr.V.Raghavachari, Senior Counsel for Mr.S.N.Arun Kumar

For Respondent : Mr.N.R.Elango, Senior Counsel for Mr.L.Dhamodharan

In Crl.O.P.No.7336 of 2021

For Petitioner : Mr.N.R.Elango, Senior Counsel for Mr.L.Dhamodharan

For R1 : Mr.A.Gopinath Government Advocate (Crl.Side)

For R2 : Mr.V.Raghavachari, Senior Counsel for Mr.S.N.Arun Kumar

COMMON ORDER

The Crl.O.P.No.7755 of 2021 has been filed to quash the proceedings in C.C.No.601 of 2021 pending trial on the file of the XI Metropolitan Magistrate Court at Saidapet, Chennai.

2. The Crl.O.P.No.6055 of 2021 has been filed to quash the proceedings in C.C.No.117 of 2020 pending trial on the file of the Fast Track Court at Alandur, Chennai.

3. The Crl.O.P.No.5797 of 2021 has been filed to quash the proceedings in C.C.No.116 of 2020 pending trial on the file of the Fast Track Court at Alandur, Chennai.

4. The Crl.O.P.No.5960 of 2021 has been filed to quash the proceedings in C.C.No.118 of 2020 pending trial on the file of the Fast Track Court at Alandur, Chennai.

5. The Crl.O.P.No.5787of 2021 has been filed to quash the proceedings in C.C.No.53 of 2020 pending trial on the file of the Fast Track Court at Alandur, Chennai.

6. The Crl.O.P.No.7336 of 2021 has been filed to quash the FIR in Crime No.53 of 2021 dated 16.02.2021 pending on the file of the first respondent against the petitioner.

7. The crux of the complaint is that the defacto complainant is a Managing Director of M/s.G.K.Developments Private Limited having its office at Chennai. It has another office at Maldives and commenced its operations in the month of June 2018. The defacto complainant and

his brothers are Directors in both the companies. They had acquaintance with the complainant's college mate, viz.,Venkatesh/A1, his brother Murugesh/A4 and his father Rajagopal/A3. Therefore, they had advantage and approached the complainant in the year 2015, when he was visiting Chennai from abroad and they wished to work together with an ill motive to misappropriate his hard earned money. The first accused informed that he had worked in construction company in Maldives and had knowledge about the business there. Both the brothers viz., A1 and A4, fraudulently and dishonestly induced to set up a business venture in India and Maldives and wanted him to engage them to manage its operations. The complainant trusted them and reposed confidence on them and intended to invest and promote the business in India. The complainant established M/s.G.K. Developments Private Limited in the month of November 2016 with his brother Sundar, since the complainant was in abroad. Since he could not able to look after the day to day operations of the companies, he engaged A1 and A4 to look after the day to day operations of both the companies in India and Maldives. As remuneration for such operations, they were getting 10% to 15% share in the profits of the company. However, there were no returns of the company for the first two years. After two years, the complainant managed to get a big contract with Singapore client for civil construction work in the airport at Maldives. The first accused was managing operations in Maldives and the fourth accused was managing the Chennai office.

8. While being so, in the month of September 2018, the accused 1 & 4 had requested the defacto complainant for a sum of Rs.3.50 crores for making an advance payment to buy land in Chennai. In the circumstances, in the month of December 2018, when the complainant verified the accounts of the company, he came to know that a sum of Rs.3.50 crores were taken from the company's fund against some invoice transaction for some items and machinery paid to a firm named “RS Enterprises”. These invoices for the items and machinery are nothing to do with the activities of complainant's company. The said transaction has not been approved by the complainant. Further, on verification, he came to know that a sum of Rs.3 crores has been misappropriated on various dates from the accounts of the company in India by creating false records and false accounts including a lump sum of unauthorised and fraudulent bank transfers to the tune of Rs.1.21 crores to a firm named “Sundra Engineering”. It is a proprietor concern and owned by the second accused.

9. Further A1 and A4 conspired illegally and looted a sum of Rs.3.50 crores by fabricating false invoice to the shell firm named "RS Enterprises", which belonged to their father viz., the third accused. A1 and A4 had utilised the money to purchase a property at Guduvancherry in the name of their parents. When it was questioned by the complainant, A1 and A4 agreed to settle all the misappropriated fund in full. They also begged not to register a police complaint for cheating. Thereafter, the first accused voluntarily resigned from the complainant's company on 27.03.2019 from its Directorship. Thereafter, the authorisation of A1 and A4 were revoked. The brother of the complainant was contracted as one of its Director of the company in Maldives. Therefore, the accused had conspired together over a period of time and had siphoned the company's money using forged and fabricated documents by breaching the trust which had reposed and cheated the complainant's company.

10. Later the complainant had came to know that the company called "RS Enterprises" is a shell firm started only for the purpose of defrauding him and siphoning off money from his companies . The said company had never involved in any business transaction as stated by A1

and A4. Even after the cancellation of the authorisation of A1 and A4, they are still in possession of (i) original documents, such as, Incorporation Certificate, Project Agreements, MOU and others. (ii) signed letter heads 20 numbers and signed empty papers 20 numbers (iii) signed cheque leaves from 012853 to 012875 in total 23 numbers and signed cheque leaves Nos.87078, 87093, 95765,95803, 95841, 104814, 104821, 104842, 104881, 104889, 104895, 104897, 104898, 104926, 104940, 104956, 104959, 104962, 104977, 104982, 104998, 105000, 105022, 105023, 105028, 105029, 105030, 105044, 105053, 105074, 105078, 105081, 105086, 105088, 105118, 105131, 105139, 105141, 105145, 105152, 105153, 105174, 105234, 105236, 105239, 105245, 105259 to 105266, 105268 to 105300 in total 87 numbers with some of the cheque leaves were signed in blank (iv) office furnitures, such as, Work stations, A/c units and company safe vault (v) office IT assets, such as, Computer, Printers and others (vi) bikes 2 Nos-Honda Activa TN-09-CP-3561 and Yamaha Alpha and (vii) employees documents, such as, Degree certificates, Passports and others.

11. The complainant had handed over the signed cheque leaves to A1 & A4 in order to facilitate his business operations without

any delay and interruptions, and the same are in possession of A1 and A4. In this regard, the complainant lodged a complaint as early as on 15.10.2019 before the Deputy Commissioner of Police, as against the accused for misappropriation of money to the tune of Rs.6.50 crores and also to recover the documents, including the signed cheque leaves, which were illegally in possession of the accused. However, no action was taken on the complaint lodged by the complainant. Thereafter, he came to know that the said complaint was closed on the ground that there is no prima facie case has been made out as against the accused to attract any offence.

12. On perusal of the records revealed that the complaint dated 15.10.2019 was enquired and the same has been closed on 27.08.2020. Once again the complainant lodged a complaint on 12.10.2020. However, it was also closed by a closure report on the ground that the complainant failed to submit necessary documents, since he was staying in abroad. At last, the first respondent registered FIR in Crime No. 53 of 2021 for the offences under Sections 409, 420 read with 34 of IPC and 109 of IPC.

13. There are totally four accused, in which the petitioner in Crl.O.P.No.7336 of 2021 is arrayed as first accused. In fact, the complainant lodged a complaint as early as on 06.09.2019 itself before the Commissioner of Police, Vepery, Chennai. It was not considered and as such, he had sent reminder on 15.10.2019. In the earliest complaint itself, the complainant categorically stated that the accused had misappropriated the fund to the tune of Rs.6.50 crores and purchased lands from the crime proceeds. Further they are also in possession of all original documents along with signed and blank cheques. However, it was closed by a closure report dated 27.08.2020 stating that all the allegations are pertaining to money transaction and no prima facie case has been made out to attract any offence as against the accused. Once again the complainant lodged a complaint in C.No.632/DC-CCB-II/Genl/2020 before the Deputy Commissioner of Police. The first accused also lodged a complaint in C.No.149/AC-EDF-II.Genl/2020 before the Assistant Commissioner of Police for the very same set of allegations. However, the same was also closed by a closure report on 18.11.2020 on the ground that no prima facie has been made out to register the FIR.

14. A1 and A4 utilised the cheque leaves, which were in possession of them, on the ground that the complainant and his brother are Directors of the company called "M/s.G.K. Developments Private Limited". During the work process, the fourth accused was engaged as service provider for the procurement of materials, imports of goods, man power and other allied works. The company M/s.G.K.Developments Private Limited had availed the service of the fourth accused. As per the arrangements, the payment for the service rendered by the fourth accused has to be settled on completion of every three years. The work commenced in the year 2016 and after completion of the work by the fourth accused, the complainant issued cheques towards legally dischargeable debts. The cheque bearing No.012853 dated 30.09.2019 drawn on AXIS Bank, Ekkattuthangal, issued for a sum of Rs.2,37,51,000/- and another cheque bearing No.012854 dated 15.10.2019 drawn on AXIS Bank, Ekkattuthangal, issued for a sum of Rs.1,01,79,000/-. Both cheques were presented for collection and the same were returned with an endorsement "Account closed". After causing statutory notice, the fourth accused lodged a complaint as against the accused for the offence under Sections 138 and 142 of the Negotiable Instruments Act. The fourth accused also lodged private complaint for

the very same transaction punishable under Sections 409, 420, 34 and 109 of IPC. The same has been taken cognizance in C.C.No.601 of 2021 on the file of the XI Metropolitan Magistrate. Saidapet, Chennai. The C.C.No.53 of 2020 on the file of the FTC, Alandur was challenged by the petitioner in Crl.O.P.No.5787 of 2021 and he has also challenged the private complaint filed by the fourth accused in C.C.No.601 of 2021 on the file of the XI Metropolitan Magistrate, Saidapet, Chennai in Crl.O.P.No.7755 of 2021.

15. Likewise, the first accused utilising the cheques, which were in possession of A4, and presented the cheques for collection as if those cheques were issued by the complainant that the complainant and his brother were Directors of the company by name M/s.Arunachala Consultants Pvt. Ltd., and GK Developments Pvt. Ltd. They had been engaged in carrying on business activities in Civil Engineering Works. They engaged the fourth accused for their companies and availed the service of the fourth accused in Civil Infrastructure Works. The fourth accused was issued with an order dated 03.06.2016 by the complainant, which was mutually agreed that the 30% of the total value of the business leads will be paid as a commission. After discharging of the service of

the first accused to the utmost satisfaction, the complainant's company had to pay commission at Rs.30,00,00,000/-. The said amount was paid by way of cheque bearing Nos.105260, 105261, 105262, each for a sum of Rs.10,00,00,000/-. The first accused was presented the cheque bearing No.105262 dated 07.02.2020 for collection and the same was returned with an endorsement "Payment stopped by Drawer". After causing statutory notice, the first accused lodged a complaint for the offence punishable under Sections 138 and 142 of Negotiable Instruments Act in C.C.No.116 of 2020 on the file of the Fast Track Court, Alandur, Chennai. Further, the first accused presented another cheque bearing No.105260 dated 31.01.2020 for collection and the same was returned with an endorsement "Payment stopped by Drawer". After causing statutory notice, the first accused lodged a complaint for the offence punishable under Sections 138 and 142 of Negotiable Instruments Act in C.C.No.117 of 2020 on the file of the Fast Track Court, Alandur, Chennai. The first accused also presented another cheque bearing No.105261 dated 04.02.2020 for collection and the same was returned with an endorsement "Payment stopped by Drawer". After causing statutory notice, the first accused lodged a complaint for the offence punishable under Sections 138 and 142 of Negotiable

Instruments Act in C.C.No.118 of 2020 on the file of the Fast Track Court, Alandur, Chennai.

16. The learned Senior Counsel appearing for the petitioner in Crl.O.P.No.7336 of 2021 and the respondent in Crl.O.P.Nos.5787, 7755, 5797, 5960 and 6055 of 2021 submitted that the FIR cannot be sustained in the eye of law. It is registered on the third complaint lodged by the complainant in Crime No.53 of 2021. Therefore, the FIR cannot be sustained and it is liable to be quashed. All the transactions between the parties are civil in nature that too money transaction. If at all any dispute with regard to payment of dues, if any, the complainant can very well approach the Civil Court for appropriate remedy. As stated supra, admittedly, the complainant/second respondent in Crl.O.P.No.7336 of 2021 lodged a complaint even as early as on 06.09.2019 itself. He also sent a reminder and on enquiry the said complaint was closed by a closure report dated 27.08.2020. Thereafter, another complaint was lodged by the complainant/second respondent and the same was also enquired and closed by a closure report dated 18.11.2020. Therefore, no FIR was registered on the complaint lodged by the complainant/second respondent. It shows that the complainant repeatedly knocking the doors

of the first respondent. At last, FIR in Crime No.53 of 2021 was registered on his third complaint.

17. It is seen from the First Information Report that there are specific allegations as against the petitioner in Crl.O.P.No.7336 of 2021 to attract the offence, which has to be investigated in depth. 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.

18. 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 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 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."*

19. In view of the above, this Court finds no ground to quash the FIR and the quash petition filed by the accused and it is liable to be dismissed. Accordingly, Crl.O.P.No.7336 of 2021 is dismissed.

20. Insofar as the other quash petitions filed by the complainant in Crime No.53 of 2021 as against the complaints lodged by

the first accused and the fourth accused for the offence punishable under Sections 409, 420, 34 and 109 of IPC and by way of private complaint for the offence punishable under Sections 138 and 142 of Negotiable Instruments Act on the ground that the alleged cheques were in possession of the first and fourth accused, while they were looking after the companies of the complainant called M/s.G.K. Developments Private Limited situated at Chennai as well as Maldives, in order to facilitate business operations without any delay and interruptions. As early as on 06.09.2019 itself, the complainant lodged a complaint with specific allegations that A1 and A4 were in possession of alleged cheques which were presented by A1 and A4 and initiated the proceedings under Sections 138 and 142 of Negotiable Instruments Act in the complaint in C.C.No.53 of 2020 on the file of the Fast Track Court, Alandur, Chennai and the complaints in C.C.Nos.116 to 118 of 2020 on the file of the Fast Track Court, Alandur, Chennai. Though it was not registered under a FIR, the complainant made out a case that the alleged cheques were not issued for any legally enforceable debt. It is also seen from the averments in all the complaints filed by A1 and A4 for the offences punishable under Section 138 and 142 of Negotiable Instruments Act reveals that the cheques were issued for services rendered by them.

However, A1 and A4 did not even whisper about what services rendered by them and no piece of evidence produced by them to substantiate the said allegations. They produced the alleged returned bank advice legal notice with acknowledgement card. Therefore, all the alleged cheques were misused by A1 and A4 in order to escape from the clutches of law in Crime No.53 of 2021. That apart, A4 also filed another complaint in C.C.No.601 of 2021 for the offences under Sections 138 and 142 of Negotiable Instruments Act with the allegations that the alleged cheques were issued only to cheat the fourth accused even after knowing that the cheques were issued from the closed accounts. Therefore, the complaints lodged by A1 and A4 are nothing but a clear abuse of process of Court and are liable to be quashed.

21. In view of the above, the proceedings in C.C.Nos. 601 of 2021 and C.C.Nos. 116 to 118 & 53 of 2020 are hereby quashed. Accordingly, Crl.O.P.Nos.7755, 5787, 5960, 5797 & 6055 of 2021 are allowed. Consequently, connected miscellaneous petitions are closed.

15.12.2023

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Index:Yes/No
Internet:Yes/No
Speaking/Non-speaking

To
1. The XI Metropolitan Magistrate,
Saidapet, Chennai.

2. The Fast Track Court,
Alandur, Chennai.

3. The Inspector of Police,
Central Crime Branch,
EDF-II, Team IV,
Vepery, Chennai – 600 007.

4. The Public Prosecutor,
High Court, Madras.

G.K.ILANTHIRAIYAN,J.

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