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CRL.O.P.No.9807 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.05.2023

CORAM:

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

CRL.O.P.No.9807 of 2023 &
Crl.M.P.No.6435 of 2023

1.M.Murugesan

2.M.M.Jeyanthi

... Petitioners/Accused

Vs.

1.The State rep by

Inspector of Police,

Hosur Town Police Station,

Hosur, Krishnagiri District.

... 1st Respondent / Complainant

2.N.M.Baskar

... 2nd Respondent / Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records pursuant to First Information Report in Crime No.559 of 2022 on the file of the first respondent herein and quash the same as abuse of process of law.

For Petitioner : Mr.R.Dhanasekar

For Respondent 1 : Mr.N.S.Suganthan,
Government Advocate (Crl. Side)

ORDER

This petition has been filed to quash the F.I.R. in Crime No.559 of 2022 registered by the first respondent police for offences under Sections 420, 294(b) & 506(1) of I.P.C, as against the petitioners.



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2. The case of the prosecution is that the petitioners are running a business in the name and style of M.J.Enterprises. The nature of the business is purchasing the House Sites and carry out construction work and thereafter, sell the same. The second respondent herein invested to the tune of Rs.2,49,52,709/- on various occasions in order to induct him as a partner in the said business of the petitioners. After developing so many properties, the second respondent was not given any share in the profit and in fact, he was not paid any salary.

3. The learned Counsel appearing for the petitioners would submit that the petitioners are innocent person and they have not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No.559 of 2022 for the offences under Sections 420, 294(b) & 506(1) of I.P.C, as against the petitioners. Hence he prayed to quash the same.

4. The learned Government Advocate (Crl. side) would submit that the investigation is almost completed and the final report is yet to be filed.



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5. Heard Mr.R.Dhanasekar, learned counsel appearing for the petitioners and Mr.N.S.Suganthan, learned Government Advocate (Crl. side) appearing for the first respondent.

6. It is seen from the First Information Report that there are specific allegations as against the petitioners 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.

7. 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.***, 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



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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."

8. In view of the above discussion, this Court is not inclined to quash the First Information Report. Accordingly, this Criminal Original Petition stands **dismissed**. Consequently, connected miscellaneous petition is closed.

04.05.2023

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Index : Yes / No
Speaking / Non Speaking order



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To

1. The Inspector of Police,
Hosur Town Police Station,
Hosur, Krishnagiri District.
2. The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN, J.
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