IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.08.2023

Coram:

The Hon'ble Mr.Justice V.SIVAGNANAM

Crl.O.P.No.17893 of 2021
and Crl.M.P.Nos.9831 & 9832 of 2021

Mr.P.S.Deivaraj

...Petitioner

Versus

Mrs.G.Indhira

...Respondent

This Criminal Original Petition is filed under Section 482 of Cr.P.C praying to quash the complaint in C.C.No.95 of 2020 dated 09.10.2019 on the file of the learned Fast Track Judicial Magistrate No.II, Coimbatore.

For Petitioner : Mr.M.Manimaran
For Respondent : Mr.J.Pothiraj

ORDER

This criminal original petition has been filed by the petitioner seeking to quash the complaint in C.C.No.95 of 2020 dated 09.10.2019 on the file of the learned Fast Track Judicial Magistrate No.II, Coimbatore.

2. The brief facts of the case are as follows:

One Mr.Krishnamoorthy had entered into a Sale Agreement dated 23.10.2017 with the respondent, for selling the property comprised in S.F.No.453/2 measuring to an extent of 1.75 Acres situated at Sulur Village, Coimbatore. The said Sale Agreement was registered as Document No.9666 of 2017 on the file of Sub Registrar Office, Sulur. Pursuant to the execution of Sale Agreement dated 23.10.2017, the respondent had paid a sum of Rs.35,00,000/- as advance amount to the said Krishnamoorthy, but, thereafter, the respondent had dropped her idea of purchasing the said property and hence, she insisted the said Krishnamoorthy to return back the advance amount of Rs.35,00,000/- paid by her. While so, the said Krishnamoorthy informed the respondent that the petitioner is intended to purchase the said property and hence, he assured that out of the total advance amount of Rs.35,00,000/-, he would return Rs.5,00,000/- through his source and so far as remaining advance amount of Rs.30,00,000/- is concerned, he would return the same through the petitioner who intended to purchase the said property. After receiving a sum of Rs.5,00,000/- from the said Krishanmoorthy, the respondent had cancelled the Sale Agreement dated 23.10.2017 vide Cancellation Deed dated 04.01.2019.

2.1. The persons viz., (i) S.Vijaya (ii) K.Selvi (iii) S.Govindaraj (iv) K.Malliga (v) S.Ravi (vi) N.Kanagaraj (vii) M.Krishnaveni (viii) Shanthi (ix) Maheswari & (x) Shanmugam are the original owners of aforesaid property and they had executed a Power of Attorney dated 04.01.2019 in favour of Mr.N.Krishnamoorthy and appointed him as their Power Agent. Subsequently, on behalf of the original owners of the property, the said Krishnamoorthy (Power Agent of the original owners of property) had settled the property in favour of the petitioner and his friend Sivakumar by way of execution of Sale Deed dated 07.01.2019 in their favour, for a sale consideration of Rs.76,30,000/-. The said Sale Deed was registered as Document No.193 of 2019 on the file of Sub Registrar Office, Sulur. Pursuant to the execution of Sale Deed dated 07.01.2019, the petitioner and his friend Sivakumar had paid the entire sale consideration to the said Krishnamoorthy.

2.2. After the purchase of aforesaid property, the respondent issued a notice to the petitioner and demanded him to pay a sum of Rs.30,00,000/- which she paid as advance to the said Krishnamurthy. Upon receipt of the notice issued by the respondent, the petitioner had issued a cheque bearing No.516161 dated 26.04.2019 for a sum of Rs.30,00,000/- drawn on ICICI Bank, Tiruchengode Branch, to the respondent. On 24.07.2019, when the respondent presented the said cheque for collection in City Union Bank, Sivanandha Colony, Coimbatore Branch, the same was returned on 25.07.2019 with an endorsement, "Other Reason". Therefore, the respondent had issued a Legal Notice dated 24.08.2019 to the petitioner. After the receipt of said Legal Notice, the petitioner had sent a Reply Notice dated 06.09.2019 to the respondent. Thereafter, the respondent had sent a Rejoinder dated 05.10.2019 to the petitioner, but, there was no response for the same. Hence, the respondent had filed a complaint before the Court of Fast Track Judicial Magistrate No.II, Coimbatore seeking to punish the petitioner and to direct him to pay compensation to her. The said complaint was taken on file in C.C.No.95 of 2020. Aggrieved over the complaint filed by the respondent, the petitioner has filed the present petition before this Court.

3. The learned counsel for the petitioner contended that the petitioner and his friend Sivakumar had purchased the property vide Registered Sale Deed dated 07.01.2019 and they had also paid the entire sale consideration of Rs.76,30,000/- to the said Krishnamurthy. He further submitted that the disputed cheque was not issued by the petitioner and the Account No.080501501078 mentioned in the disputed cheque is not operated by the petitioner. The respondent had sent the Rejoinder dated 05.10.2019 along with a copy of the disputed cheque. From a perusal of the copy of disputed cheque, the petitioner came to know that the Account Number mentioned in the dispute cheque stands in the name of one Mr.A.Nasar Basha S/o. Ahmed Basha. There is no connection between the petitioner and the said Nasar Basha. The disputed cheque is a fabricated cheque created by the respondent. The learned counsel drew the attention of this Court to a copy of the Letters dated 06.07.2021 issued by the Bank Authority of ICICI Bank

Ltd., Tiruchengode Branch, wherein, it is stated that the petitioner is maintaining three accounts in ICICI Bank Ltd., Tiruchengode Branch. The details of the said accounts are as follows:

S.No.	Account No.	Type of Account	Year of Opening the Account
1	080501000574	Savings Account	2010
2	080505006785	Current Account	2013
3	080505008835	HUF Current Account	2017

Therefore, the learned counsel prayed this Court to quash the complaint in C.C.No.95 of 2020 on the file of the Court of Fast Track Judicial Magistrate No.II, Coimbatore.

4. The learned counsel appearing for the respondent has not refuted the above submissions made by the learned counsel for the petitioner.

5. Heard the learned counsel on either side and perused the materials placed before this Court.

6. From a perusal of the materials on record, it is seen that the

petitioner is the accused in C.C.No.95 of 2020 on the file of the Court of Fast Track Judicial Magistrate No.II, Coimbatore. The respondent had filed a complaint against the petitioner, wherein, it is stated that one Krishnamoorthy had entered into a Sale Agreement dated 23.10.2017 with the respondent, for selling a property mentioned above. Pursuant to the said Sale Agreement, the respondent had paid a sum of Rs.35,00,000/- as advance to the said Krishnamoorthy, but, subsequently, the respondent had decided to drop the plan of purchasing the said property. Hence, the respondent requested the said Krishnamoorthy to return the advance amount of Rs.35,00,000/- paid by her, for which, the said Krishnamoorthy had assured that out of the total advance amount, he would pay Rs.5,00,000/- from his source and as regards the remaining amount, he would pay the same through the petitioner who intended to purchase the said property. After receiving a sum of Rs.5,00,000/- from the said Krishnamoorthy, the respondent had cancelled the Sale Agreement dated 23.10.2017. On 07.01.2019, the petitioner and his friend had purchased the said property from the said Krishnamoorthy. Thereafter, in order to settle the advance amount received by the said Krishnamoorthy from respondent, the petitioner had issued a cheque bearing No.516161 dated 26.04.2019 for a sum of Rs.30,00,000/- drawn on ICICI Bank, Tiruchengode Branch, to the respondent. When the respondent presented the said cheque for collection, the same was returned on 25.07.2019 with an endorsement, “Other Reason”. Hence, the respondent had issued a Legal Notice dated 24.08.2019 to the petitioner, for which, the petitioner had sent a Reply Notice dated 06.09.2019 to the respondent. Then, the respondent had sent a Rejoinder dated 05.10.2019 to the petitioner, but, there was no response for the same.

7. According to the petitioner, the disputed cheque was not issued by him and the Account No.080501501078 mentioned in the disputed cheque is not operated by him. Further, the Account Number mentioned in the disputed cheque stands in the name of one Mr.A.Nasar Basha S/o. Ahmed Basha. So, the disputed cheque is a fabricated cheque created by the respondent.

8. Before going to decide the issue on hand, it is pertinent to extract Section 138 of the NI Act hereinbelow:

*“**138. Dishonour of Cheque for insufficiency, etc, of funds in the account. -** Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for [a terms which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both:*

Provided that nothing contained in this section shall apply unless -

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of

the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation. - For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability."

A reading of the above provision makes it clear that if any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned unpaid by the Bank, either because of the reason that amount standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, the person who drawn such cheque shall be deemed to have committed an offence under Section 138 of the NI Act.

9. A perusal of the copy of Letters dated 06.07.2021 issued by the Bank Authority of ICICI Bank Ltd., Tiruchengode Branch shows that the petitioner is maintaining three accounts in ICICI Bank Ltd., Tiruchengode

Branch. The details of the said accounts are as follows:

S.No.	Account No.	Type of Account	Year of Opening the Account
1	080501000574	Savings Account	2010
2	080505006785	Current Account	2013
3	080505008835	HUF Current Account	2017

So, it is crystal clear that the disputed cheque was not issued by the petitioner and the Account No.080501501078 mentioned in the disputed cheque is not operated by him. That apart, the ingredients required for the offence under Section 138 of the NI Act are not made out against the petitioner.

10. At this juncture, it is pertinent to point out that the Hon'ble Supreme Court has discussed in detail about the inherent powers of the High Courts under Section 482 Cr.P.C in the following cases:

(i) R.P.Kapur Vs. The State of Punjab reported in ***AIR 1960 SC 866***

(ii) State of Haryana & Ors. Vs. Ch.Bhajan Lal & Ors. reported in ***AIR 1992 SC 604***

(iii) M/s.Neeharika Infrastructure Pvt. Limited Vs. State of

Maharashtra & Ors. reported in ***2021 SCC Online SC 315***

10.1. In the case of ***R.P.Kapur Vs. The State of Punjab*** reported in ***AIR 1960 SC 866,*** the Hon'ble Supreme Court has held as follows:

> "*6. .... It is well-established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the Court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be*

justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent *jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained."*

10.2. Further, in the case of ***State of Haryana & Ors. Vs. Ch.Bhajan Lal & Ors.*** reported in ***AIR 1992 SC 604,*** the Hon'ble Supreme Court issued seven guidelines to be followed by the High Courts in the exercise of its inherent power vested by Section 482 Cr.P.C to quash the FIR/complaint, which are as follows:

"*(1) Where the allegations made in the first information report or the complaint, 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.*

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a

cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding 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."

10.3. Similarly, in the case of ***M/s.Neeharika Infrastructure Pvt. Limited Vs. State of Maharashtra & Ors.*** reported in ***2021 SCC Online SC 315,*** the Hon'ble Apex Court has observed as follows:

"80. ...., our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be

adopted", during the pendency of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may *file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;*

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not *require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.*

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no *coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied."*

11. It is to be noted that the present case duly meets the parameters laid down by the Hon'ble Supreme Court in the decisions cited *supra*.

12. Considering the above facts and circumstances of the case and in the light of the dictum laid down by the Hon'ble Apex Court in the decisions cited *supra*, this criminal original petition is allowed and the complaint in C.C.No.95 of 2020 on the file of the Court of Fast Track Judicial Magistrate No.II, Coimbatore is hereby quashed. However, liberty is granted to the respondent to proceed against the petitioner, in the manner known to law. Consequently, connected miscellaneous petitions are closed.

22.08.2023

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Index: Yes/No
Speaking Order (or) Non-Speaking Order

To

1.The Fast Track Judicial Magistrate No.II,
Coimbatore.

2.The Public Prosecutor,
High Court, Madras.

V.SIVAGNANAM, J.

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Crl.O.P.No.17893 of 2021

22.08.2023