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Crl.R.C.Nos.22883, 22872 & 22879/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2023

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THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

Crl.O.P.Nos.22872, 22879 & 22883 of 2021

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Crl.M.P.Nos.12488, 12486 and 12482 of 2021

N.G. Thangavel	..	Petitioner in Crl.O.P.No.22872/2021
Ramesh	..	Petitioner in Crl.O.P.No.22879/ 2021
Subha @ Subhashine	..	Petitioner in Crl.O.P.No.22883/2021

-VS-

Sree Vengateswara Fabrics,
represented by its Prop.
P.Seethappan

.. Respondent in all Crl.O.Ps.

Prayer: Criminal Original Petitions filed under section 482 Cr.P.C.,to call for the records in STR.No.432 of 2017 on the file of Judicial Magistrate (Fast Track) Court No.II, Erode and to quash the same against the petitioners herein/accused Nos.3, 2 and 4 respectively in STR.No.432 of 2017.

For Petitioners in all OPs. : Mr. E.V. Chandru

For Respondent in all OPs : Notice served, none appeared



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COMMON ORDER

These Criminal Original Petitions are filed by the petitioners/A3, A2 and A4 respectively in STR.No.432 of 2017 on the file of the Judicial Magistrate (Fast Track) Court No.II, Erode and quash the same against them.

2. The petitioners in Crl.O.P.No.22879, 22883 & 22872 of 2021 are respectively A2, A4 and A3 in STR.No.432 of 2017 .

3. The learned counsel appearing for the petitioners submitted that the respondent/complainant filed a complaint against these petitioners along with A1 for the offence under section 138 of Negotiable Instruments for dishonour of three cheques for a sum of Rs.20,00,000/-, Rs.3,10,000/- and Rs.6,90,000/-. The cheques were issued by A2 on behalf of A1-company with the consent, presence and knowledge of A3 and A4.

4. He further submitted that the petitioner/A4 in Crl.O.P.No.22883 of 2021 is wife of one Ramesh, who is the Partner of the firm M/s.Nishok Impex



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She is neither the partner of the firm M/s.Nishok Impex, nor participated in the alleged transaction and she is nothing to do with the partnership firm. The complainant has not produced any documentary evidence to substantiate the fact that this petitioner is a partner of A1 firm. Even otherwise, the petitioner is not responsible for running the business involved in the day-to-day affairs of the business of A1 and hence the ingredients of section 141 of Negotiable Instruments Act has not been satisfied in the complaint. Under such circumstances, she is impleaded in the case as she is the wife of Ramesh/A2. Therefore, the prosecution case against this petitioner/A4 for the offence under section 138 of Negotiable Instruments Act is unsustainable. Therefore, the same has to be quashed.

5. It is his further submission that the petitioner in Crl.O.P.No.22872 of 2021 is A3 in STR.No.432 of 2017. The learned counsel appearing for petitioner in Crl.O.P.No.22872 of 2021 has contended that the petitioner Thangavelu joined in the partnership firm on 24.06.1999. He was relieved from the partnership firm as early as on 31.03.2009 and he has nothing to do with the partnership firm during the alleged transaction. The disputed cheques



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were issued on 05.05.2017 and at the time of issuing cheques, the petitioner was not a partner of A1-Partnership firm and not participated in the transaction of the Nishok Impex. Therefore, there is no cause of action against this petitioner. Hence, the criminal complaint against this petitioner under section 138 of Negotiable Instruments Act is unsustainable and the same is liable to be quashed.

6. As far as the petitioner in Crl.O.P.No.22879 of 2021, the learned counsel submitted that the petitioner herein is Ramesh, who is arrayed as A2. The transactions alleged against this petitioner are only the transactions concerned with the partnership firm and hence, this petitioner could not be accused of any personal liability. The complaint lodged by the respondent is liable to be dismissed on the ground of lack of cause of action. The complainant has not produced even a scrap of evidence with regard to his business transactions with this petitioner to substantiate his claim. Therefore, the offence under section 138 of Negotiable Instruments Act is not maintainable against this petitioner. Hence, he seeks to allow all the three Criminal Original Petitions.



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7. Heard the the submissions of the learned counsel appearing for the petitioners in all the Criminal Original Petitions and perused the materials available on record. Though notice served on the respondent, there is no representation for the respondent.

8. On perusal of records and the impugned complaint, the fact reveals that the complainant is doing textile business in the name and style of Sree Vengateswara Fabrics. A1-Nishok Impex, represented by its partner K.Ramesh /A2 is doing business in textile clothes, used to purchase grey clothes from the complainant. A2 to A4 are partners of A1 firm. There is a transaction between the complainant and the accused persons from 19.03.2011 to 09.07.2011 for purchasing cloth from the complainant. They have done credit basis business. In this regard, the complainant raised invoices for a sum of Rs.1,08,02,882/-, for which, the accused have paid only Rs.50,000/- to the complainant and for the balance amount, they issued three post dated cheques in favour of the complainant, bearing Cheque No.700 976 for Rs.20,00,000, Cheque No.218 111 for Rs.3,10,000/- and Cheque No.218 112 for Rs.6,90,000/-. All the cheques were dated 05.05.2017. When the said cheques were presented for encashment,



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the cheque No.700 976 was dishonoured as 'Funds Insufficient' and the other two cheques bearing Nos.218 111 and 218 112 were dishonoured as 'account closed'. After issuing statutory notice, criminal complaint has been filed.

9. I have considered the contention of the learned counsel for the petitioners. With regard to the petitioner/accused, A3 in Crl.O.P.No.22872, on perusal of records and the A-Form filed by the petitioner/A3, it is noticed that this petitioner joined in the partnership firm Nishok Impex on 24.06.1999 and ceased from the partnership on 31.03.2009. Admittedly, the disputed cheques were issued on 05.05.2017, i.e., subsequent to petitioner/A3 ceasing from the partnership of A1 company. In the circumstances, there is no cause of action against this petitioner and he had not any business transaction with the complainant subsequent to his ceasing from the partnership of A1 company and after a long period of ceasing from the partnership of A1 company, the cheque has been issued on 05.05.2017. Since there is no cause of action against this petitioner and the cheque also not signed by this petitioner, the criminal complaint against this petitioner is unsustainable and the same liable to be quashed. Hence, so far as this petitioner is concerned, Crl.O.P.No.22872 of



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2021 is allowed by quashing the the criminal case pending in STR. No.432 of 2017 on the file of learned Judicial Magistrate (Fast Track) Court No.II, Erode.

10. In respect of Crl.O.P.No.22883 of 2021, the petitioner/A4 is wife of A2, partner of A1 partnership company. Admittedly, she had not signed in the disputed cheque, besides, she is neither partner, nor participated in the business transactions of the firm. Under the circumstances, except, she is wife of one of the partners of Ramesh, she is nothing to do with the transaction and issuing of cheque and hence, there is no cause of action against this petitioner also. Therefore, the complaint against this petitioner for the offence under section 138 of Negotiable Instruments Act is not maintainable. Hence, the same is liable to be quashed. Accordingly, the case against this petitioner/A4 in STC.No.432 of 2017 on the file of the learned Judicial Magistrate (Fast Track) Court No.II, Erode is quashed. Crl.O.P.No. 22883 of 2021 is allowed.

11. In Crl.O.P.No.22879 of 2021, this petitioner is A2. It is not disputed that he is a partner at the time of issuing of cheque i.e., on 05.05.2017. It is also not disputed that the disputed cheques were issued in connection with the



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business transactions between the complainant and the accused firm. In the circumstances, denial of fact of transaction cannot be adjudicated while exercising power under section 482 Cr.P.C. The factual disputes has to be adjudicated by the trial court after letting in evidence.

12. 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*

12.1. 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



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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."

12.2. 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.”

12.3. 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.”

13. It is to be noted that the present case does not meet the parameters laid down by the Hon'ble Supreme Court in the decisions cited *supra*. Further, I do not find any merit in the present case.

14. In the above circumstances, this Court is of the opinion that it is inappropriate to quash the criminal proceedings against the petitioner/A2 in STR.No.432 of 2017 on the file of Judicial Magistrate (Fast Track) Court No.II, Erode. Hence, this Criminal Original Petition is dismissed.



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15. In the result,

- Crl.O.P.No.22883 of 2021 is allowed and the criminal proceedings pending in STR.No.432 of 2017 on the file of Judicial Magistrate (Fast Track) Court No.II, Erode against the petitioner/A4 is hereby quashed.
- Crl.O.P.No.22872 of 2021 is allowed and the criminal proceedings pending in STR.No.432 of 2017 on the file of Judicial Magistrate (Fast Track) Court No.II, Erode against the petitioner/A3 is hereby quashed.
- Crl.O.P.No.22879 of 2021 in respect of petitioner/A2 is dismissed.
- Consequently, the connected miscellaneous petitions are closed.

08.08.2023

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To

The Judicial Magistrate (Fast Track) Court No.II, Erode



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V.SIVAGNANAM, J.

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