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Crl.O.P.No.21834 of 2023 & W.P.No.9221 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.21834 of 2023 and Crl.M.P.No.15110 of 2023
and W.P.No.9221 of 2023 & WMP Nos.9335 to 9337 of 2023

Crl.O.P.No.21834 of 2023

1.Priyanka
2.Vijayakumar
3.Sivakumar
4.Thanraj

... Petitioners

Vs.

1.The State represented by
The Inspector of Police,
Sankarapuram Police Station,
Kallakurichi District.
(Crime No.135 of 2023)

2.James Philip, Male, S/o Philip Antony,
The Vice President(Fraud, Risk & Litigation),
M/s Hitachi Payment Services Private Limited,
having office at MPL Silicon Towers,
2nd Floor, 23/1, Velacherry Tambaram Main Road,
Pallikaranai, Chennai-100.

... Respondents

PRAYER : Criminal Original Petition is filed under Section 482 Cr.P.C.,
to call for the records and quash the First Information Report in Crime
No.135 of 2023 on the file of the Inspector of Police, Sankarapuram Police
Station, Kallakurichi District.



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For Petitioner : Mr.S.Sheik Ismail

For Respondent : Mr.C.E.Pratap
Government Advocate (Crl.Side)

W.P.No.9221 of 2023

Om Ganapathy Traders,
Rep., by its Proprietor K.Vijayakumar
Pottai Main Road, Sankarapuram Taluk,
Kallakurichi District-606 401.

... Petitioner

Vs.

1.The State represented by
The Inspector of Police,
Sankarapuram Police Station,
Kallakurichi District.

2.The Branch Manager,
ICICI Bank, Sankarapuram,
Kallakurichi District.

3.James Philip
The Vice President(Fraud, Risk & Litigation),
M/s Hitachi Payment Services Private Limited,
Level-2, Silicon Towers,
23/1-B, Velacherry Tambaram Main Road,
Pallikaranai, Chennai-100.
(R3 impleaded vide order dt.20.04.2023
made in WMP.11639 of 2023 in
WP.9221 of 2023 by MDIJ)

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the impugned letter dated 14.03.2023 issued by the second respondent and quash the same and consequently direct the second respondent to defreeze the petitioner's account bearing No.365305500047 thereby enabling the petitioner to operate the Bank Account forthwith.



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For Petitioner : Mr.S.Sheik Ismail

For Respondents : Mr.C.E.Pratap
Govt. Advocate (Crl.Side) for R1

Ms.S.R.Subashini, for
Mr.K.Moorthy for R2

Mr.A.Ashwin Kumar for R3

ORDER

The Criminal Original Petition has been filed seeking to call for the records and quash the First Information Report in Crime No.135 of 2023 on the file of the Inspector of Police, Sankarapuram Police Station, Kallakurichi District.

2. The writ petition is filed to call for the records of the impugned letter dated 14.03.2023 issued by the second respondent, to quash the same and consequently, to direct the second respondent to defreeze the petitioner's account bearing No.365305500047 thereby enabling the petitioner to operate the Bank Account forthwith.

3. The crux of the defacto complainant's case is that, James Philip is the Vice President (Fraud, Risk & Litigation) of M/s Hitachi Payment



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Services Private Limited, Chennai, and the company had obtained licence from the Reserve Bank of India to operate ATM/CRM services for various banks. The defacto complainant had appointed many master franchisees to operate and maintain ATM/CRM services of their company and the first petitioner/A1 was also one such franchisee. Further, the allegation against the A1 is that during the business transactions, A1 along with other accused had conspired and by playing fraud had misappropriated the amounts to the tune of Rs.1,15,54,500/- and cheated the defacto complainant. Hence the complaint.

4. Based on the complaint, the first respondent police had registered a case in Crime No.135 of 2023 against the petitioners/accused for the offences under Sections 120B, 294(b), 420, 409 and 506(i) IPC. During the course of investigation, the first respondent police had arrested the first petitioner in Crl.O.P.No.21834 of 2023, viz.,Priyanka, who is A1 and remanded her to judicial custody on 07.03.2023. Subsequently, A1 had filed a bail application in Crl.M.P.No.2271 of 2023 before the learned District and Sessions Judge, Villupuram. While granting bail to A1, the learned District Judge had imposed a condition directing A1 to deposit a



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sum of Rs.69,32,700/- to the credit of Crime No.135 of 2023. In compliance

of which, she had directly paid the amount to the defacto complainant.

Thereafter, the second petitioner in Crl.O.P.No.21834 of 2023, the husband of A1 viz., Vijayakumar, who is A2, had filed Crl.O.P.No.6073 of 2023 and the employees of A1 viz.,A3 and A4, had filed Crl.O.P.No.6264 of 2023 before this Court seeking anticipatory bail. This Court, by an order dated 13.06.2023, had granted anticipatory bail to A2, A3 and A4 and while granting anticipatory bail to A2, this Court imposed condition 7(b) on the petitioner to deposit the original title deeds in Doc.No.8246 of 2008 dated 24.06.2008 and Doc.No.2863 of 2008 dated 24.06.2008 registered at SRO, Sankarapuram to the credit of Crime No.135 of 2023.

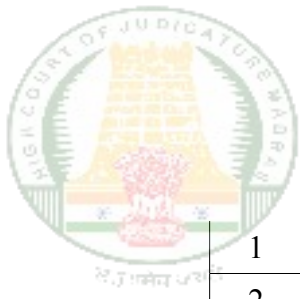
5. Further, during the course of investigation, the Investigating Officer finding that several accounts were maintained in various banks by the accused and their family members at Sankarapuram and the alleged cheated amounts were transferred to those accounts, had frozen the following 19 accounts.



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S.No	Name of account holder / firm	Account Number	Account type	Name of the bank
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Crl.O.P.No.21834 of 2023 & W.P.No.9221 of 2023

1	K.Vijayakumar	6451101000400	Savings	Canara Bank
2	K.Vijayakumar	180131689634	Gold Loan	Canara Bank
3	K.Krishnamurthi	6451101000392	Savings	Canara Bank
4	K.Krishnamurthi	6451201000015	Current	Canara Bank
5	K.Krishnamurthi	180039963610	Gold Loan	Canara Bank
6	K.Krishnamurthi	6451740000001	Vehicle loan	Canara Bank
7	S.Priyanka	6451101000401	Savings	Canara Bank
8	S.Priyanka	6451201000040	Current	Canara Bank
9	Village Bazaar	665351000003040	-	DBS
10	K.Vijayakumar	665301000022094	-	DBS
11	S.Priyanka	665301000047269	-	DBS
12	Om Ganapathi traders	665611000000211	-	DBS
13	Krishnamurthi	665301000000401	-	DBS
14	Ganapathi business promoters	665360000000620	-	DBS
15	Village Bazaar	365305007849	Current	ICICI
16	Vijayakumar	365301501525	Savings	ICICI
17	Om Ganapathi Traders	365305500047	Current	ICICI
18	Village Bazar	186949000000032	Current	KVB
19	Village Bazar	1869135000000548	Current	KVB

6. As the respondent police had frozen all the bank accounts of the petitioners 1 and 2 and their family members, a Writ petition in W.P.No.9221 of 2023 has been filed by A2 seeking direction to the second respondent to defreeze his account bearing No.365305500047 thereby, enabling him to operate the Bank Account forthwith.

7. The second petitioner/A2 has also filed Crl.M.P.No.9940 of



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2023 in Crl.O.P.No.6073 of 2023 seeking to modify the condition No.7(b) imposed upon the petitioner in Crl.O.P.No.6073 of 2023 dated 13.06.2023 in respect of depositing the original title deeds in Doc.No.8246 of 2008 dated 24.06.2008 and Doc.No.2863 of 2008 dated 24.06.2008 registered at SRO, Sankarapuram to the credit of Crime No.135 of 2023.

8. While so, the parties have also arrived at a settlement, pursuant to which, they have entered into a Joint Memo of compromise. Furthermore, the petitioners/A1 to A4 have now filed the present Criminal Original Petition in Crl.O.P.No.21834 of 2023 seeking to quash the First Information Report in Crime No.135 of 2023 on the file of the Inspector of Police, Sankarapuram Police Station, Kallakurichi District based on the compromise entered.

9. When the above mentioned Crl.O.P.No.21834 of 2023 was listed before the Hon'ble Mr.Justice N.Anand Venkatesh on 25.09.2023, the following order was passed:

"Post this Criminal Original Petition along with



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Crl.O.P.No.6037 of 2023 and W.P.No.9221 of 2023 on 27.09.2023 and the matter may be listed before the Hon'ble Mr.Justice A.D.Jagadish Chandra after getting necessary orders from the Hon'ble Chief Justice."

9.1. Based on the order dated 25.09.2023, the Registry had put up a note before the Honourable Chief Justice for obtaining necessary order, to tag the matters in Crl.O.P.No.21834 of 2023 along with Crl.M.P.No.9940 of 2023 in Crl.O.P.No.6037 of 2023 and W.P.No.9221 of 2023, for posting before this Court.

9.2. As the Honourable Chief Justice has ordered to tag the matters together and post the matters before this Court, today, all the matters have been listed before this Court.

10. It is the case of the second petitioner/A2 that due to some technical glitch there were discrepancies in the statement of accounts and in order to purchase peace, the second petitioner/A2 and other accused/A1, A3 and A4 had decided to compromise the matter and settled the issue with the defacto complainant and that the second petitioner/A2, finding that some of



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the offences alleged are compoundable in nature, had intended to compromise the matter with the defacto complainant and accordingly, filed the compromise memo dated 05.08.2023. Further, today based on the Joint Memo of compromise, A1 is ready to settle the balance amount of Rs.40,00,000/- by way of Demand Draft. The relevant paragraphs of the compromise memo filed by the petitioners/A1 to A4 in Crl.O.P.No.21834 of 2023 are extracted hereunder:-

"1. The 2nd respondent/de facto complainant is a private company which had appointed the petitioners as their franchisee in handling the ATM Services in their shopping complex. It is alleged that during the course of business, the petitioner/2nd accused(husband/2nd accused), 1st accused (Proprietor), 3rd & 4th (accused are staff of 1st accused), had made false claim and usurped a sum of Rs.1,15,54,500/-. In this regard the complaint came to be preferred and First Information Report was registered.

2. During the course of investigation, 1st accused was arrested by the 1st respondent and enlarged on bail by the Principal District & Sessions Court, Kallakkurichi vide order in Crl.M.P.No.2271 of 2023 dated 27.03.2023. In the said order, the 1st petitioner was directed to deposit a sum of Rs.69,32,700/- (60% of the alleged disputed amount



mentioned in the complaint). In compliance with the said order, the 1st accused had deposited the said amount to and in favour of the de facto complainant. The money has been received by the 2nd respondent and he has acknowledged the same.

3. The bank accounts of the petitioner and his family members have been frozen by the 1st respondent in this case. As a result, the petitioner approached this Hon'ble Court through writ of Certiorarified Mandamus to quash the freezing order passed by the 1st respondent in W.P.No.9221 of 2023, and as a result of the settlement, the De facto complainant has no objection to allow the said writ petition and also gives their consent to de-freeze other bank accounts related to the petitioner and his family members.

4. Thereafter, the petitioner approached this Hon'ble Court seeking the relief pre-arrest bail. This Hon'ble Court in Crl.O.P.No.6073/2023 vide order dated 13.06.2023 granted the relief with certain conditions. Further, a petition to modify the condition imposed has been filed. In such scenario, the petitioner, accused 1, 3 & 4 and de facto complainant has agreed to settle the entire issue by paying a full and final settlement of Rs.40,00,000/- vide Demand Draft No.001571 drawn on HDFC Bank, Kallakurichi Branch dated 14.08.2023 to and in favour of the defacto



complainant. The aforesaid instrument has been handed over to the defacto complainant today(i.e., 07.09.2023) and he acknowledges the same.

5. While the matter stood thus, the 2nd respondent has agreed to give quietus to the issue and a quash petition in Crl.O.P.SR.No.40693/2023 is filed by the accused 1-4 to terminate the entire proceedings. The said petition is pending to be numbered and listed for admission.

6. The petitioner and 1st accused hereby agree and permit the de facto complainant to remove the ATM machines which are lying in the premises of the petitioners.

7.The 2nd respondent does hereby declare that they unconditionally withdraw the allegations made against the accused 1-4.

8. The petitioner/accused-2, accused 3 & 4 and the 2nd respondent agree that neither of them shall take any civil or criminal action against the other in connection with alleged transaction and consequent proceedings.

9. The petitioner/accused-2, accused 3 & 4 and the second Respondent state that the above compromise has been reached and entered in out of their free will and knowledge and without any undue influence, coercion or misrepresentation either by themselves or by anybody.

10. The petitioner/accused-2, accused 3 & 4 and the 2nd



respondent therefore pray that this Hon'ble Court may be pleased to record this compromise and pass suitable order and treating this compromise as part of the order."

11. The first respondent police has also filed a Status Report dated 07.09.2023, the relevant paragraphs are extracted hereunder:

"9. Based on the complaint a case in Sankarapuram P.S.Cr.No.135/2023 U/s 120(b), 294(b), 420, 490 and 506(i) IPC was registered on 07.03.2023 against above mentioned 4 accused.

10. During the course of investigation A-1-Priyanka W/o Vijayakumar was arrested on 07.03.2023 and remanded to Judicial Court and interned in Women Sub-Jail, Capper Hills, Cuddalore.

11. The investigation was transferred to District Crime Branch by the Superintendent of Police, Kallakurichi vide Proceedings in C.No. D4/2030-10/84/2023 dated on 17.03.2023. Based on the order I took up investigation in this case.

12. A-1-filed bail petition before the District Sessions Judge Court, Viluppuram on 27.03.2023 which was taken on file vide CMP No.2271/2023 dated 27.03.2023. The District Sessions Judge Court, Villupuram issued order directing the petitioner to pay caution deposit to the extent of 60% of the amount misappropriated in the name of Hitachi Money Spot besides the suriety amount. Accordingly on 28.03.2023 she paid Rs.60% of the misappropriated amount i.e. Rs.69,32,700/- out of the total misappropriated amount Rs.1,15,54,500/-. Based on this remittance the Judicial Magistrate,



Sankarapuram vide D.No.782/2023 dated on 30.03.2023 issued order for release and directing the accused to appear before the respondent police. She adhered to the direction of the court.

13. A-2-Vijayakumar S/o Krishnamurthi filed anticipatory bail petition in the court of Hon'ble High Court, Madras which was taken on file vide Crl.M.P.No.4472/2023 dated on 28.03.2023. The management of Hitachi Money spot filed intervention petition in this matter requesting the court to admit them as a party and the management party was ready to effect compromise if the amount is settled. Hence, the Honourable High Court, Madras directed both parties to approach the Mediation Centre, annexed in the High Court premises on 05.04.2023 and to settle the issue within 6 weeks time from the date of order followed by compliance report from the mediation centre. During the 6 weeks time the coercive steps/action shall be taken against the petitioner by respondent.

14. On 13.06.2023 anticipatory bail was granted to A-2 vide Crl.OP.No.6073 and 6264/2023 with certain conditions. However, the A-2-had not obey to the conditions of Hon'ble Court of Judicature at Madras. On 21.07.2023 he filed condition modification petition in the High court in Crl.O.P.No.6073. The High Court directed to furnish copy of documents which he proposes to deposit, along with valuation report to the learned counsel for the defacto complainant for verification and the case was adjourned sine die.

15. Both parties attended to the mediation centre and effected compromise in order to settle the issue. Then both parties filed compromise petition before the Honourable High Court. The Honourable High Court directed the I.O. to identify the A-2- in person



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and file due documents for identification of the A-2. Further, the High Court directed the I.O. to furnish list of bank accounts of accused and their relatives which were frozen by the I.O.

16. Accordingly I.O. Summoned A-2- and made personal verification and collected necessary identification documents viz. Aadhar (978149684141), PAN card (ANWPV3655R), and Voter ID card (ILU0261149) and ascertained him to be A-2- in this case. In addition A-3-Sivakumar s/o Muthukumar residing at 31/3 Bungalow street, Sankarapuram Town and Taluk, Kallakurichi District was summoned by the IO and made personal verification and collected necessary identification documents viz. Aadhar (705419204095), A-4- Danraj s/o Sengodan, residing at 1/114 Mettupalayam, Kumaramangalam PO, Thiruchengode Taluk, Namakkal District was also summoned by the IO and made personal verification and collected necessary identification documents viz. Aadhar (915965817322). All these identification documents were self attested by the accused.

17. The following accounts maintained at Sankarapuram were frozen by the Investigation officer during the course of investigation:

S.No	Name of account holder / firm	Account Number	Account type	Name of the bank
1	K.Vijayakumar	6451101000400	Savings	Canara Bank
2	K.Vijayakumar	180131689634	Gold Loan	Canara Bank
3	K.Krishnamurthi	6451101000392	Savings	Canara Bank
4	K.Krishnamurthi	6451201000015	Current	Canara Bank
5	K.Krishnamurthi	180039963610	Gold Loan	Canara Bank
6	K.Krishnamurthi	6451740000001	Vehicle loan	Canara Bank
7	S.Priyanka	6451101000401	Savings	Canara Bank



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8	S.Priyanka	6451201000040	Current	Canara Bank
9	Village Bazaar	665351000003040	-	DBS
10	K.Vijayakumar	665301000022094	-	DBS
11	S.Priyanka	665301000047269	-	DBS
12	Om Ganapathi traders	665611000000211	-	DBS
13	Krishnamurthi	665301000000401	-	DBS
14	Ganapathi business promoters	665360000000620	-	DBS
15	Village Bazaar	365305007849	Current	ICICI
16	Vijayakumar	365301501525	Savings	ICICI
17	Om Ganapathi Traders	365305500047	Current	ICICI
18	Village Bazar	186949000000032	Current	KVB
19	Village Bazar	1869135000000548	Current	KVB

13. Heard Mr.S.Sheik Ismail, learned counsel appearing for the petitioners in W.P.No.9221 of 2023 and Crl.O.P.No.21834 of 2023, Mr.C.E.Pratap, learned Government Advocate for the first respondent in Crl.O.P.No.21834 of 2023 and W.P.No.9221 of 2023, Ms.S.R.Subashini, learned counsel for Mr.K.Moorthy for the second respondent-Bank in W.P.No.9221 of 2023 and Mr.A.Ashwin Kumar, learned counsel for the second respondent in Crl.O.P.No.21834 of 2023 and the third respondent in W.P.No.9221 of 2023 and perused the materials available on record.

14. The parties are present before this Court and they are identified



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by the respective counsels and the Investigating Officer who are present before this Court has also identified the parties.

15. Mr.S.Sheik Ismail, learned counsel for the petitioners/A1 to A4 would submit that the defacto complainant is a private company and had appointed the petitioners as their franchisee in handling the ATM Services in their shopping complex and during the course of business, due to some technical glitch there was a shortage of Rs.1,15,54,500/- and therefore, a complaint has been filed and FIR has been registered in Crime No.135 of 2023 on the file of the first respondent. He would further submit that during the course of investigation, the first petitioner/A1 was arrested and enlarged on bail in Crl.M.P.No.2271 of 2023 dated 27.03.2023 with a condition to deposit a sum of Rs.69,32,700/- and the said amount has also been deposited by her. Pending investigation, the petitioners have come forward to settle all dues and in pursuant to which, they had agreed to pay Rs.1,10,00,000/- in full quit and a compromise was effected between the petitioners and the defacto complainant and a Joint Memo of compromise has also been filed and thereby, would seek to quash the pending proceedings and de-freeze the accounts of the petitioners and their family



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members. The learned counsel for the petitioners would submit that the dispute between the petitioners and defacto complainant is a private dispute and the petitioners/A1 to A4 do not have any previous case against them and no societal interest is involved in this case and it will not have any serious impact on the society, thereby, prays for allowing the present petition filed for quashing the FIR based on the compromise.

16. Mr.A.Ashwin Kumar, learned counsel appearing for the defacto complainant, would submit that the matter has been compromised between the parties and that today(18.10.2023) the defacto complainant has received the balance amount of Rs.40,00,000/- by way of Demand Draft bearing No.001571 dated 14.08.2023 drawn on HDFC Bank in favour of defacto complainant. He would also submit that the defacto complainant has no claim whatsoever as against the petitioners/accused either civil or criminal and has no objection for quashing the FIR filed in Crime No.135 of 2023 and defreezing the accounts which have been frozen by the Investigating Officer in connection with the Crime No.135 of 2023.

17. Mr.C.E.Pratap, learned Government Advocate appearing for



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the first respondent, would submit that a case has been registered in Crime No.135 of 2023 for the offences under Section 120(b), 294(b), 420, 409 and 506(i) IPC against the petitioners/accused and during the course of investigation, the Investigating Officer, finding that amounts have been transferred to some other accounts of the petitioners as well as their relatives, has frozen the accounts. He would further submit that the petitioners have no previous cases against them and that the dispute is of private in nature and no societal interest is involved in this case. He would further submit that, in the event of the case being allowed by quashing of the FIR, the first respondent is ready to instruct the respective Banks to defreeze the accounts. He would also submit that, pursuant to the bail order passed by the learned District and Sessions Judge, Villupuram, in Crl.M.P.No.2271 of 2023 to the first petitioner/A1, she had paid Rs.69,32,700/- to the defacto complainant and the balance amount of Rs.40,000,000/- is also paid today by way of Demand Draft to the defacto complainant.

18. Ms.S.R.Subashini, learned counsel appearing for the second



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respondent- ICICI Bank in W.P.No.9221 of 2023, would submit that the accounts of the petitioners have been frozen on the directions of the first respondent/police and if the first respondent police directs for defreezing the account, they will defreeze the account.

19. In Parbatbhai Aahir v. State of Gujarat [AIR 2017 SC 4843], the Supreme Court held thus"

"(1) Section 482 CrPC preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inherent in the High Court.

(2) The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 Cr.P.C. The power to quash under Section 482 is attracted even if the offence is non compoundable.

(3) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its



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jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

(4) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any Court.

(5) the decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulate.

(6) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.

(7) As distinguished from serious offences, there may be



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criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned.

(8) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

(9) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(10) There is yet an exception to the principle set out in Propositions (8) and (9) above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."



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20. Subsequently, a three Judges Bench of the Hon'ble Apex Court

in State of Madhya Pradesh v. Laxmi Narayan reported in (2019) 5 SCC 688

the Hon'ble Supreme Court, considering all the above judgments, has held as follows:

- (i) that the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;
- (ii) such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;
- (iii) similarly, such power is not to be exercised for the offences under the special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;
- (iv) offences under Section 307 IPC and the Arms Act etc.



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would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder



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Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated herein above;

(v) while exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc."

21. Keeping the above principles in mind, let us now consider the instant case as to whether it is a fit case to quash the criminal proceedings based on the compromise entered between the parties.

22. In the case at hand, the petitioners/accused are alleged to have charged for the offences punishable under Sections 120-B, 294-B, 420, 409 and 506(i) of IPC. The parties have decided to compromise the dispute between them and they have also filed a Joint Memo of Compromise. Now, the petitioners and the defacto complainant have amicably settled the



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disputes between themselves. The compromise was entered into by the petitioners and defacto complainant and thereafter, the same has also been ratified by them. The defacto complainant has stated no objection for quashing the proceedings in FIR in Cr.No.135 of 2023 pending on the file of the first respondent. Though the offence under Section 409 IPC is non compoundable, the dispute between the parties is private in nature and the petitioners/accused have no previous case against them and no societal interest is involved in this case. No useful purpose will be served in keeping the First Information Report pending, even though, some of the offences involved are not compoundable in nature. In the light of the guidelines given by the Hon'ble Apex Court cited supra, this Court in exercise of its jurisdiction under Section 482 Cr.P.C. can quash the FIR in Crime No.135 of 2023.

23. This Court enquired the 2nd respondent/defacto complainant and the petitioners, both the parties have stated that they have amicably settled the matter between themselves and entered into a compromise. The second respondent/defacto complainant has also stated no objection to the proceedings being quashed and is not interested in proceeding with the



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criminal proceedings. Further, the defacto complainant submits that, if the accounts are being defreezed, he would only seek to take back the ATM Machines installed in the premises of the petitioners. In reply, Mr.S.Sheik Ismail, learned counsel for the petitioners, would submit that the petitioners have no objection for the defacto complainant taking back the ATM Machines and that the petitioners also undertake to co-operate with the defacto complainant in taking back the ATM Machines.

24. In view of the compromise entered into between the parties, the possibility of conviction is also remote and bleak. In the above circumstances, the continuity of the criminal proceedings would only cause oppression, frustration and prejudice to the parties, hence, in order to secure the ends of justice, this Court is inclined to quash the proceedings as against the petitioners.

25. The criminal proceedings initiated against the petitioners in Crime No.135 of 2023 on the file of the Inspector of Police, Sankarapuram Police Station, Kallakurichi District, is quashed and this Criminal Original Petition in Crl.O.P.No.21834 of 2023 is allowed. The Memo of Compromise



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signed by both the parties, shall form part of Court records. The respondent police is directed to defreeze the accounts of the petitioners and their family members within a period of three days from today i.e.,(18.10.2023). The de facto complainant is permitted to take possession of the ATM machines, which are lying in the premises of the petitioners. Consequently, W.P.No.9221 of 2023 and Crl.M.P.No.9940 of 2023 in Crl.O.P.No.6073 of 2023 are disposed of and connected miscellaneous petitions are closed.

18.10.2023

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

raa

To

1. The Inspector of Police,
Sankarapuram Police Station,
Kallakurichi District.

2. The Public Prosecutor,
High Court of Madras.



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A.D.JAGADISH CHANDIRA, J.

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and W.P.No.9221 of 2023

18.10.2023