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Crl.O.P.No.25888 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2023

CORAM:

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

CRL.O.P.No.25888 of 2019 and
Crl.MP.No.13789 of 2019

1.M.Vinothkumar
2.Mohan

... Petitioners

Vs.

1.The Inspector of Police,
Gudimangalam Police Station,
Tirupur District
2.G.Ramkumar

... Respondents

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to FIR in crime No.74 of 2019 on the file of Gudimangalam Police Station, Tirupur District and to quash the same.

For Petitioners : Mr.S.Diwakar

For Respondents
For R1 : Mr.A.Gopinath,
Government Advocate(Crl.side)

ORDER

This criminal original petition has been filed to quash the FIR in Crime No.74 of 2019 on the file of the first respondent registered for the



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offences punishable under Section 468 of IPC, as against the petitioners.

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2. The case of the prosecution is that that the first petitioner colluding with the second petitioner, has mis-appropriated funds to the tune of Rs.2.38 crores, during the course of business by manipulating false entries in various books of accounts.

3. The learned counsel for the petitioners submitted that initially the first petitioner was called upon for enquiry by one, Palanisamy, the Senior HR of M/s. Suguna Foods (P) Ltd., on 16.06.2018 at Coimbatore and was ill treated by the enquiry officials on the guise of enquiry. Initially, the loss was alleged to have been calculated only at Rs.15 lakhs and asked to pay only Rs.3 Lakhs. However, they refused, since they are not liable to pay. Hence, the allegation of Rs.2.38 crores being escalated is a cock and bull story narrated only to harass the petitioners. He further submitted that the defacto complainant after expiry of 3 months, lodged a complaint on 06.09.2018, which was issued with CSR.No.339/2018 by the first Respondent Police. The first petitioner herein was issued with summon under Section 91 Cr.P.C. by the first respondent police on 23.09.2018 which was suitably replied by the petitioners to the allegations in written and also issued Lawyer's Notice. It is



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pertinent to note that upon considering the allegations, the first respondent closed the CSR.No.339/2018 as "further action dropped".

4. Heard, the learned counsel appearing on either side.

5. It is seen that thereafter, the second respondent filed C.M.P.No.193/2019 before the Learned Judicial Magistrate, II, Udumalpet to register FIR against the petitioners, which was allowed and thereafter, FIR in Cr.No.74 of 2019 has been registered under Section 468 of IPC on 08.03.2019.

6. On reading of FIR, there are specific allegations as against the petitioners to attract the offences under Section 468 of IPC. That apart, FIR is not an encyclopedia and it has to be investigated in depth to unearth the truth. Therefore, FIR cannot be quashed on its threshold.

7. 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:-



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"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."*

8. The above judgment is squarely applicable to the case on hand. Therefore, this Court cannot conduct a mini trial to go into all the charges levelled against the petitioners. At the stage of FIR, while exercising the powers under Section 482 Cr.P.C., this Court is not required to conduct investigation or trial. This is not the stage where the prosecution / investigation agency is/are required to prove the charges. The allegations are required to be investigated



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during the investigation and on the basis of the evidence, the investigation agency could file charge sheet. Therefore, this Court has got very limited jurisdiction and is required to consider whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not. Further, whether FIR is malicious or not is not required to be considered at this stage.

9. In view of the above discussion, this Court is not inclined to quash the First Information Report. Accordingly, this Criminal Original Petition stands dismissed. However, considering the crime is of the year 2019, the first respondent / police is directed to complete the investigation in Crime No.74 of 2019 and file final report within a period of four weeks from the date of receipt of copy of this Order, before the jurisdiction Magistrate, if not already filed. Consequently, connected miscellaneous petition is closed.

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Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order

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- To
- 1.The Inspector of Police,
Gudimangalam Police Station,
Tirupur District
 - 2.The Public Prosecutor,
High Court of Madras

G.K.ILANTHIRAIYAN, J.



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