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CrI.O.P.Nos.25433 of 2017, 19637 & 15504 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2023

CORAM:

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

CRL.O.P.Nos.25433 of 2017, 19637 & 15504 of 2018
CrI.MP.Nos14640 & 14641 of 2017 and 7909 & 10411 of 2018

CrI.OP.No.25433 of 2017

- 1.R.Sangeetha
- 2.Licmi Chand Singhvi
- 3.Lalith Kumar
- 4.Ramesh Kumar
- 5.Ashish Ghora

... Petitioners/A1 to 5

Vs.

- 1.State Rep. By
Inspector of Police,
C-2, Elephant Gate Police Station,
Chennai 600 079
(crime No.1405 of 2017)
- 2.Shanthilal Bafna(deceased)
- 3.Amrath Kavar
(R3 substituted as per order dated 18.10.2023
made in CrI.MP.No.16831 of 2023 in
CrI.OP.No.25433 of 2017)

... Respondents

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records and quash the proceedings as against the petitioner in CC.No.3583 of 2017 pending on the file of the learned VIII Metropolitan Magistrate, George Town, Chennai 600 001.

For Petitioners

: Mr.V.Illanchezhiyan



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Crl.O.P.Nos.25433 of 2017, 19637 & 15504 of 2018

For Respondents

For R1

: Mr.L.Baskaran,
Government Advocate(Crl.side)

For R3

: Mr.R.Parthasarathy,
Senior Counsel
for Mr.R.Palaniandavan

R2

: died (steps taken)

Crl.OP.No.19637 of 2018

1.Lickmi Chand Singhvi

2.R.Sangeetha

3.S.Ramesh Kumar

... Petitioners/A3 to 5

Vs.

1.State Rep. By

Inspector of Police,

C-2, Elephant Gate Police Station,

Chennai 600 079

(crime No.1717 of 2016)

2.Shanthilal Bafna(deceased)

3.Amrath Kavar

(R3 substituted as per order dated 18.10.2023

made in Crl.MP.No.16884 of 2023 in

Crl.OP.No.19637 of 2018)

... Respondents

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records and quash the proceedings as against the petitioners in CC.No.358 of 2018 pending on the file of the learned VIII Metropolitan Magistrate, George Town, Chennai 600 001.

For Petitioners

: Mr.V.Illanchezhiyan

For Respondents



Crl.O.P.Nos.25433 of 2017, 19637 & 15504 of 2018

For R1 : Mr.L.Baskaran,
Government Advocate(Crl.side)

For R3 : Mr.R.Parthasarathy,
Senior Counsel
for Mr.R.Palaniandavan

R2 : died (steps taken)

Crl.OP.No.15504 of 2018

1.Shantilal Bafna
2.Amrath Kavar

... Petitioners

Vs.

1.The State of Tamilnadu,
Rep. By the Inspector of Police,
CCB-I, EDF-II, Team-IX-A,
Vepery, Chennai 600 007
2.Lickmi Chand Singhvi

... Respondents

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the entire records in the FIR in crime No.231 of 2018 pending on the file of the first respondent and to quash the same.

For Petitioners : Mr.R.Parthasarathy,
Senior Counsel
for Mr.R.Palaniandavan

For Respondents

For R1 : Mr.L.Baskaran,
Government Advocate(Crl.side)

For R2 : Mr.V.Illanchezhiyan

COMMON ORDER



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The criminal original petition in Crl.OP.No.25433 of 2017 has

been to quash the proceedings in CC.No.3583 of 2017 pending on the file of the learned VIII Metropolitan Magistrate, George Town, Chennai 600 001 taken cognizance for the offence under Sections 294(b) and 506(ii) of IPC. The criminal original petition in Crl.OP.No.19637 of 2018 has been filed to quash the proceedings in CC.No.358 of 2018 pending on the file of the learned VIII Metropolitan Magistrate, George Town, Chennai taken for the offence under Sections 380 r/w 109 and 120(b) of IPC. The criminal original petition in Crl.OP.No.15504 of 2018 has been filed to quash the FIR in crime No.231 of 2018 pending on the file of the first respondent registered for the offences under Sections 406, 465, 468, 471, 506(i) and 120(B) of IPC.

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

3. The case of the prosecution in Crl.OP.No.25433 of 2017 is that the property situated at Door No.371, Mint Street, Chennai originally owned by M/s.Annam Venkata Varadaiah Chetty @ Sampath Chetty Family Trust admeasuring 8000 sq.ft. It was taken on lease by the mother of the second respondent and her family members by the registered lease deed vide document No.4626 of 1981 for the period till 2041. In pursuant to the said lease deed, the



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defacto complainant constructed a building(G+4), admeasuring 30,000 sq.ft.

Thereafter, their family members formed a trust dated 15.02.1984 registered vide document No.201 of 1984 in the name of Gajra Bai Family Trust. They also commenced boarding and lodging business in the name and style of 'Hotel Mahasakthi International' with a restaurant called 'Mangai Restaurant'. They have paid a sum of Rs.1.5 crores as advance to the lessor. The defacto complainant is also in the business of gold and diamond jewellery and their landlord had taken gold and diamond jewels and failed to return back to the tune of Rs.70 lakhs in the year 2007 and 2009. While being so, on 19.09.2010, third parties entered into the property and informed that the property was already entered upon sale agreement by the defacto complainant and the vendor had sold out. The defacto complainant also found that after entering into sale agreement with him, without his knowledge, the sole trustee suppressed the registered lease agreement and sale letter issued in favour of the defacto complainant and fraudulently obtained permission through this Court, thereby executed sale deed in favour of the accused by way of registered sale deed dated 24.08.2010.

3.1 Therefore, the defacto complainant filed suit in CS.No.912 of 2010 before this Court for declaration declaring that the sale deed is null and void. It was referred before Lok Adalat and matter was compromised by



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compromise memorandum with terms and conditions. Accordingly, on 21.04.2011, a partnership deed was also entered between them. However, for non filing of proper accounts and income tax, the accused 1 and 2 filed suit in CS.No.270 of 2013 challenging the award passed by the Lok Adalat. Once again, there was a compromise and by way of memorandum compromise dated 20.04.2011, the said suit was also decreed. However, accused 1 and 2 in order to extract money and also to buy the defacto complainant's share, they disconnected the vertical drainage lines and created all nuisances disturbing his possession and enjoyment of the said property. Therefore, the defacto complainant was constrained to file suit in CS.No.377 of 2016 before this Court and this Court ordered status quo in the injunction application. Now, the allegations are that while pending interim order passed by this Court, the accused persons damaged the sewage pipes and water pipes and also removed them. When it was questioned by the defacto complainant, they have threatened with dire consequences and also scolded them with filthy languages.

4. On perusal of the records also revealed that there are materials on record to attract offences under Sections 294(b) and 506(ii) of IPC. Though there are other allegations with regards to damaging the pipelines, sewerage lines and taken away the pipes, no charge for the said allegations. Therefore, the ground raised by the petitioners as if all the allegations are civil in nature



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cannot be considered since there are specific allegations as against the petitioners in order to attract the offences.

5. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.579 of 2019*** dated ***02.04.2019*** in the case of ***Devendra Prasad Singh Vs. State of Bihar & Anr.***, wherein it is held as follows:-

" 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13.In view of the foregoing discussion, we allow the appeal, set aside the impugned order



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and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

6. The Hon'ble Supreme Court of India dealing in respect of the very same issue in ***CrI.A.No.1572 of 2019*** dated 17.10.2019 in the case of ***Central Bureau of Investigation Vs. Arvind Khanna***, held as follows:

“19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been



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taken cognizance by the Competent Court, is completely incorrect and uncalled for.”

7. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** passed in **CrI.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged.



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The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

8. In view of the above discussion, this Court is not inclined to quash the proceedings in CC.No.3583 of 2017 pending on the file of the learned VIII Metropolitan Magistrate, George Town, Chennai. However, the petitioners are at liberty to raise all the grounds before the trial Court. Accordingly, the criminal original petition in CrI.OP.No.25433 of 2017 is dismissed.

9. Insofar as the criminal original petition in CrI.OP.No.19637 of 2018, in continuation of the above said occurrence, it is alleged that the petitioners in CrI.OP.No.19637 of 2018 had stolen important documents and materials such as computer, hard disk, bill books, cheque books, bank passbook and account books. Therefore, there are specific allegations to attract the offences as against the petitioners who are arrayed as A3, A4 & A5 and this Court is inclined to quash the impugned proceedings. Accordingly, the criminal original petition in CrI.OP.No.19637 of 2018 is also dismissed.

10. Insofar as the criminal original petition in CrI.OP.No.15504 of 2018, it is seen that in pursuant to the above said two complaints, the second



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petitioner in Crl.OP.No.25433 of 2017 lodged complaint as against the defacto complainant in respect of CC.Nos.3583 of 2017 & 358 of 2018 and his wife.

11. On perusal of FIR, there are specific allegations in order to constitute offences under Sections 406, 465, 468, 471, 506(i) and 120B 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.

12. 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.***, wherein it is held 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



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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.

.....

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."



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13. 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 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.

14. In view of the above discussion, this Court is not inclined to quash the First Information Report. At this juncture, the learned counsel for the petitioners in Crl.OP.No.15504 of 2018 submitted that the first petitioner died and as such, the FIR in crime No.231 of 2018 is abated as against the first petitioner.



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15. Accordingly, the Criminal Original Petition in Crl.OP.No.15504 of 2018 is dismissed as abated as against the first petitioner and insofar as the second petitioner, the Criminal Original Petition in Crl.OP.No.15504 of 2018 is dismissed. However, considering the crime is of the year 2018, the first respondent is directed to complete the investigation in Crime No.231 of 2018 and file final report within a period of twelve weeks from the date of receipt of copy of this Order, before the jurisdiction Magistrate, if not already filed.

Consequently, connected miscellaneous petitions are closed.

18.10.2023

Index :Yes/No

(2/2)

Internet : Yes/No

Speaking order/non-speaking order

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To

- 1.The learned VIII Metropolitan Magistrate,
George Town, Chennai 600 001
- 2.The Inspector of Police,
C-2, Elephant Gate Police Station,
Chennai 600 079
- 3.The Inspector of Police,



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CCB-I, EDF-II, Team-IX-A,
Vepery, Chennai 600 007
4.The Government Advocate,
High Court of Madras

G.K.ILANTHIRAIYAN, J.

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