



IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Dated : 09.08.2023

Coram:

The Hon'ble Mr.Justice V.SIVAGNANAM

**Crl.O.P.Nos.17461 & 28795 of 2017
and Crl.M.P.Nos.10676 & 10677 of 2017 in Crl.O.P.No.17461 of 2017
and Crl.M.P.Nos.16266 & 16267 of 2017 in Crl.O.P.No.28795 of 2017**

Crl.O.P.No.17461 of 2017:

- 1.Kaliyamurthy
- 2.Thirumurugan
- 3.Rajmohan

...Petitioners

Versus

- 1.The Inspector of Police,
Vriddhachalam Police Station,
Vriddhachalam Taluk,
Cuddalore District.

- 2.K.Krishnakathiravan

...Respondents

This Criminal Original Petition is filed under Section 482 of Cr.P.C praying to call for the records relating to Final Report in C.C.No.231 of 2017 on the file of Judicial Magistrate No.I, Virudhachalam and quash the same.



For Petitioner – 2 : Mr.T.L.Thirumalaisamy
For Petitioner – 3 : Mr.R.Venkatesh
For Respondent – 1 : Mr.L.Baskaran,
Government Advocate (Crl.Side)
For Respondent – 2 : Mr.G.Karthikeyan

Crl.O.P.No.28795 of 2017:

Rajendran

...Petitioner

Versus

1.State Represented by
Inspector of Police,
Virudhachalam Police Station,
Virudhachalam Taluk,
Cuddalore District.

2.K.Krishnakathiravan

...Respondents

This Criminal Original Petition is filed under Section 482 of Cr.P.C praying to quash the proceedings against the petitioner in C.C.No.231 of 2017 on the file of Judicial Magistrate I, Virudhachalam pending the above Crl.O.P.

For Petitioner : Mr.R.Venkatesh
For Respondent – 1 : Mr.L.Baskaran,
Government Advocate (Crl.Side)
For Respondent – 2 : Mr.G.Karthikeyan



WEB COPY



COMMON ORDER

These Criminal Original Petitions have been filed by the petitioners seeking to quash the Final Report against them in C.C.No.231 of 2017 on the file of learned Judicial Magistrate No.I, Virudhachalam.

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

The second respondent/de-facto complainant and the petitioners herein are Joint Patta Holders of a properties measuring to an extent of 3 ³/₄ Acres situated at Ilamangalam Village, Cuddalore. While so, as one of the Joint Patta Holders, the 1st petitioner in CrI.O.P.No.17461 of 2017 settled the said properties in favour of the petitioners 2 & 3 in CrI.O.P.No.17461 of 2017 by way of executing a Settlement Deed dated 02.02.2007 in their favour. The said Settlement Deed was registered as Document No.313 of 2007 on the file of Sub Registrar Office, Virudhachalam. The petitioner in CrI.O.P.No.28795 of 2017 and three other persons viz., Mani, Subramanian & Madhiazhagan stood as attesting witnesses to the said Settlement Deed. Hence, the second respondent/de-facto complainant lodged a complaint to



the first respondent police stating that the 1st petitioner in CrI.O.P.No.17461 of 2017 had fabricated the documents in respect of the subject properties and settled the said properties to his two sons (petitioners 2 & 3 in CrI.O.P.No.17461 of 2017) and further, the petitioner in CrI.O.P.No.28795 of 2017 and three persons viz., Mani, Subramanian & Madhiazhagan had colluded with the petitioners in CrI.O.P.No.17461 of 2017 and signed the fabricated documents as attesting witnesses. Based on the complaint given by the second respondent/de-facto complainant, the first respondent police registered the FIR in Crime No.266 of 2015 against the petitioners herein and three attesting witnesses viz., Mani, Subramanian & Madhiazhagan. After the completion of investigation, the first respondent police filed a Final Report against the petitioners herein and those three persons, for the offence under Sections 406, 420, 468 & 471 of I.P.C which was taken on file in C.C.No.231 of 2017 by the learned Judicial Magistrate No.I, Virudhachalam. Hence, these criminal original petitions.

3. Heard Mr.R.Venkatesh, learned counsel for 3rd petitioner in CrI.O.P.No.17461 of 2017 & petitioner in CrI.O.P.No.28795 of 2017;



Mr.L.Baskaran, learned Government Advocate (Crl.Side) appearing for the first respondent police and Mr.G.Karthikeyan, learned counsel appearing for the second respondent/de-facto complainant.

4. The learned counsel for 3rd petitioner in Crl.O.P.No.17461 of 2017 & petitioner in Crl.O.P.No.28795 of 2017 submitted that the petitioners herein are accused in C.C.No.231 of 2017 on the file of learned Judicial Magistrate No.I, Virudhachalam. He further submitted that A1 (1st petitioner in Crl.O.P.No.17461 of 2017) had settled his properties in favour of his two sons/A2 & A3 (petitioners 2 & 3 in Crl.O.P.No.17461 of 2017) by virtue of Registered Settlement Deed dated 02.02.2007. However, the petitioners in Crl.O.P.No.17461 of 2017 had not fabricated any documents as alleged by the second respondent/de-facto complainant. He also brought to the knowledge of this Court that during the pendency of Crl.O.P.No.17461 of 2017, A1 (1st petitioner in Crl.O.P.No.17461 of 2017) had passed away. The learned counsel also submitted that A4 (petitioner in Crl.O.P.No.28795 of 2017) and the said Mani (A5), Subramanian (A6) & Madhiazhagan (A7) are only attesting witnesses and they are no way



connected to the subject properties. The ingredients required for the offence punishable under Sections 406, 420, 468 & 471 of I.P.C are not made out against the petitioners herein. Therefore, the learned counsel prayed this Court to quash the criminal proceedings pending against the petitioners in C.C.No.231 of 2017 on the file of learned Judicial Magistrate No.I, Virudhachalam.

5. The learned Government Advocate (Crl.Side) appearing for first respondent police and the learned counsel appearing for second respondent/de-facto complainant submitted in unison that the second respondent/de-facto complainant is a Joint Patta Holder of the subject properties along with the A1 to A3 (petitioners in Crl.O.P.No.17461 of 2017). While so, A1 (1st petitioner in Crl.O.P.No.17461 of 2017) had fabricated the documents and settled the subject properties in favour of A2 & A3 (petitioners 2 & 3 in Crl.O.P.No.17461 of 2017). Further, A4 (petitioner in Crl.O.P.No.28795 of 2017) and three others viz., Mani (A5), Subramanian (A6) & Madhiazhagan (A7) had colluded with the A1 to A3 (petitioners in Crl.O.P.No.17461 of 2017) in executing the Settlement Deed.



Hence, the aggrieved second respondent/de-facto complainant has lodged a police complaint against the petitioners herein/A1 to A4 and three other accused viz., Mani (A5), Subramanian (A6) & Madhiazhagan (A7). They further submitted that now the case in C.C.No.231 of 2017 is pending for trial.

6. From a perusal of the materials available on record, it is seen that pursuant to a complaint given by the second respondent/de-facto complainant, the first respondent police registered the FIR in Crime No.266 of 2015 against the petitioners herein/A1 to A4 and three other accused viz., Mani (A5), Subramanian (A6) & Madhiazhagan (A7) and filed a final report before the learned Judicial Magistrate No.I, Virudhachalam which was taken on file in C.C.No.231 of 2017 and now, the case is pending for trial.

7. It is an admitted fact that A1 (petitioner in Crl.O.P.No.17461 of 2017) had settled his properties in favour of A2 & A3 (petitioners 2 & 3 in Crl.O.P.No.17461 of 2017) by way of Registered Settlement Deed dated 02.02.2007 and there is no dispute in it.



WEB COPY

8. As far as this case is concerned, the A1 to A3 (petitioners in Crl.O.P.No.17461 of 2017) and the second respondent/de-facto complainant are relatives and they are all Joint Patta Holders of their family properties. As one of the Joint Patta Holders, A1 (1st petitioner in Crl.O.P.No.17461 of 2017) had settled his properties in favour of his two sons/A2 & A3 (petitioners 2 & 3 in Crl.O.P.No.17461 of 2017) by way of Settlement Deed. Hence, the same is not an offence as alleged by the second respondent/de-facto complainant. Similarly, A4 (petitioner in Crl.O.P.No.28795 of 2017) and A5 to A7 (Mani, Subramaniyan & Madhiazhagan) have not committed any offence. A4 to A7 are only attesting witnesses to the Settlement Deed and they are not parties to the Settlement Deed.

9. The case of the prosecution is that A1 (petitioner in Crl.O.P.No.17461 of 2017) had fabricated the documents and settled his properties in favour of A2 & A3 (petitioners 2 & 3 in Crl.O.P.No.17461 of 2017) by way of Settlement Deed dated 02.02.2007 and A4 to A7 had colluded with the A1 to A3 in executing the Settlement Deed, but, the



prosecution fails to establish that which document has been fabricated by

WEB COPY A1 to A3 (petitioners in CrI.O.P.No.17461 of 2017).

10. In the present case, the first respondent police had filed a final report against the petitioners and other accused for the offence under Sections 406, 420, 468 & 471 of I.P.C. It is relevant to extract Sections 406, 420, 468 & 471 of I.P.C hereunder:

“406. Punishment for criminal breach of trust.—Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

468. Forgery for purpose of cheating.—Whoever commits forgery, intending that the 3 [document or electronic record forged] shall be used for the purpose of cheating, shall be punished with



WEB COPY



imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

471. Using as genuine a forged document or electronic record.—*Whoever fraudulently or dishonestly uses as genuine any 5 [document or electronic record] which he knows or has reason to believe to be a forged 5 [document or electronic record], shall be punished in the same manner as if he had forged such 5 [document or electronic record].”*

A reading of the above provisions makes it clear that the second respondent/de-facto complainant has not made out a *prima facie* case to proceed against the petitioners and other accused under Sections 406, 420, 468 & 471 of I.P.C. That apart, as stated above, there is no evidence on the side of the prosecution to prove that which document has been fabricated by A1 to A3.

11. 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:



WEB COPY

(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*

11.1. 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



WEB COPY



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.”

11.2. 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.”



11.3. 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;



WEB COPY



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*



WEB COPY



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



WEB COPY

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.”

11.4. 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. For the foregoing reasons, these criminal original petitions are allowed and the criminal proceeding pending against the petitioners herein in C.C.No.231 of 2017 on the file of learned Judicial Magistrate No.I, Virudhachalam is quashed. Consequently, connected miscellaneous petitions are closed.

09.08.2023

mrr

Index: Yes/No

Speaking Order (or) Non-Speaking Order



WEB COPY



V.SIVAGNANAM, J.

mrr

To

- 1.The Judicial Magistrate No.I,
Virudhachalam.
- 2.The Inspector of Police,
Vriddhachalam Police Station,
Vriddhachalam Taluk,
Cuddalore District.
- 3.The Public Prosecutor,
High Court, Madras.

Crl.O.P.Nos.17461 & 28795 of 2017

09.08.2023