IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2023

CORAM:

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

Crl.O.P.No.28493 of 2017
and Crl.M.P.Nos.16167 of 2017 & 3003 of 2018

1.V.Shankaraman
2.D.Venkataraman
3.Shyamala Venkataraman ... Petitioners

Vs.

1. The Sub-Inspector of Police,
Central Crime Branch,
Vepery, Chennai – 600 007.

2. Divya Viswanathan ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in Crime No. 426 of 2017 on the file of the first respondent and quash the same.

For Petitioners : Mr.S.Suresh

For R1 : Mr.A.Gopinath
Government Advocate (Crl. Side)

For R2 : Mr.Arun Anbumani
for Mr.P.Rajkumar Pandiyan

ORDER

The criminal original petition has been filed to quash the FIR registered in Crime No. 426 of 2017 for the offences under Sections 406, 465, 467, 468, 471 and 120(B) of IPC pending on the file of the first respondent Police.

2. The second respondent lodged a complaint alleging that she got married to the first petitioner on 04.12.2008 according to Hindu rites and the petitioners convinced her to be the sole proprietix of “M/s.K.Studios” office situated at No. 11, 1st floor, Sylan Lodge Colony, Kilpauk, Chennai – 600 010, engaged in the business of producing TV serials. The first petitioner was designated as CEO and second petitioner was designated as Chief Financial Advisor and they were taking care of the day to day operations of the said firm.

3. For the purpose of business, the petitioners obtained signature from the second respondent in blank documents and in the cheques. She also stated that, considering the relationship with her as husband and in laws, she believed them and entrusted the blank documents and the cheques. Later, she understood that the amounts pertaining to “M/s.K.Studios” were siphoned to the individual accounts of the petitioners and also to some other accounts not relevant to business. Knowing the irregularities, she refused to sign the document and left to her brother's house. Hence, the petitioners forged her

signature in cheques, documents and legal papers and thereby made her burdened with liabilities.

4. Further, the jewels obtained from the second respondent by the first and second petitioners for safe custody were sold out by them without the knowledge of the second respondent. Though the petitioners collected the service tax, they had not remitted the same to the Authorities concerned. But the second respondent had been apprehending that the prosecution would be initiated against her by the Goods and Service Tax Department. Investigation made disclosed that the first and second petitioners were in actual management of day to day affairs of the above said firm.

5. Further, certain amounts were transferred to the individual account of the petitioners without the knowledge of the second respondent. The second respondent had alleged that the petitioners had forged her signature in some cheques and documents. Hence, there are elements of criminal conspiracy, forgery, misappropriation and breach of trust by the petitioners. Based on the above complaint, a case in Central Crime Branch Cr.No. 426/2017 under Sections 406, 405, 467, 468, 471, r/w. 102(B) IPC was registered against the petitioners on 30.11.2017 at 12.30 hrs by the Sub-Inspector of Police, EDF-II, Team -IV, and investigation was taken up by her.

6. The learned counsel for the petitioners would submit that the entire allegations made in the First Information Report are not disclosing any criminal offences as against the petitioners. Since, the second respondent is none other than the wife of the first petitioner, lodged a false complaint in order to cover up the business loss in the T.V. serial production and also to avoid future financial liability to her. She lodged a complaint suppressing the various agreements, bank transaction and other documents which were executed by her as a sole proprietrix of “M/s.K.Studios”. The business of “M/s.K.Studios” was started on 14.04.2015 and continued the same as on today by the 2nd respondent. Therefore, a false complaint was foisted against the petitioners to escape from the future financial liability.

7.The learned counsel for the second respondent would submit that the first petitioner had started a business of producing T.V.Serial and upon stating sentimental reasons made the second respondent as the sole proprietrix. In fact, she is a Teacher, by profession and was working in a private school and she had no malafide intention of her husband/1st petitioner and other petitioners. She never involved in business and she was persuaded by her husband to start the business in her name. She has been designated as a proprietor of "M/s.K.Studios" and her husband is designated himself as the Chief Executive Officer and his father was designated as the Chief Financial Advisor. All were taking care of the day to day affairs and all its activities of the business. That apart, the petitioners forged the signature of the De-facto complainant/second respondent and they also executed pro-notes in the name of the second respondent by forging her signature. Therefore all the accused persons had committed very serious offences. That apart, they borrowed loan and diverted the entire funds to their personal account. Now the second respondent is facing enquiries from the third parties. In fact, her parents had sold out the properties in order to settle the amount which were borrowed by the petitioners.

8. The learned Government Advocate (Criminal side) appearing for the first respondent submits that there are specific allegations as against each of the accused persons and they are required for further investigation to come out the truth. Therefore, the First Information Report itself is in the primary stage of investigation and as such, it cannot be quashed as its threshold.

9. On perusal of the First Information Report, it revealed, that there are specific allegations as against the petitioners to attract the offences under

Sections 406, 465, 467, 468, 471 and 120(B) of IPC. During the investigation, the witnesses were examined and certified copies of the documents were collected from them. There are incriminating materials to file final report as against the petitioners/accused. Therefore, the first respondent has to investigate the allegations leveled against the petitioners to enable the truth. Hence, it cannot be quashed as its threshold.

10. In this regard, 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:-

> *"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.

....

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."

11. Therefore, the First Information Report revealed that the cognizable offences of Criminal Conspiracy, breach of trust, forgery, forgery for purpose of cheeting, forgery of valuable security, punishment for forgery are made out and the first respondent has rightly registered the First Information Report as against the petitioners. Therefore, this Court is not inclined to quash the offences framed against the petitioner which are serious in nature.

12. In view of the above discussion, this Court is not inclined to quash the First Information Report in Crime No. 426 of 2017 on the file of the first respondent Police. However, the first respondent is directed to complete the investigation and file a final report, within a period of twelve weeks from the date of receipt of a copy of this order. Accordingly, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

05.10.2023

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order

nsl/veda

G.K.ILANTHIRAIYAN, J.

nsl/veda

To

1. The Sub-Inspector of Police,
   Central Crime Branch,
   Vepery, Chennai – 600 007.

2. The Public Prosecutor,
   High Court, Madras.

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and
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