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Crl.O.P.No.30315 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2023

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THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P. No.30315 of 2019

and

Crl.M.P. Nos. 16384 & 16385 of 2019

A.C.Chandrasekaran

... Petitioner

Vs.

1.Sri Raja Rajeswari Tex,
ACS Illam,
320, Chinnasamy Nagar,
Seelanaichenpatti,
Salem – 636201.

2.P.Vasudevan

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records with respect of the complaint filed by the respondent herein in C.C.No.559 of 2019 on the file of the Judicial Magistrate IV, Salem, and quash the same as far as the petitioner is concerned.



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For Petitioner : Mr. R.Nalliyappan
For Respondents : Mr. John Sathyan
Senior Advocate
for Mr. N.Anand.

ORDER

The petition is to quash the private complaint in C.C.No. 559 of 2019 for the alleged offences under Section 294 (b), 323, 324, 120(b), 406, 420, 506(ii), 447, 448 and 379 IPC.

2. It is alleged in the complaint that A1 was working as a Manager in the company belonging to the defacto complainant and has misappropriated money and transferred it to the company run by his wife, namely, A2. It is further alleged that A1 had misappropriated the said money at instance of A3.

3. The learned counsel for the petitioner would submit that the allegations even if accepted to be true do not constitute any offences



against the petitioner. The petitioner is sought to be roped in unnecessarily only to arm-twist the 1st accused. The petitioner has nothing to do with the affairs of the company run by his daughter or his son in law, i.e., A1 and A2, respectively. The learned counsel would further submit that the learned Judicial Magistrate IV, Salem, had not applied his mind while taking cognizance and had passed very cryptic order. There is no indication in the said cognizance order as to whether there is sufficient ground for proceeding with the case.

4. Mr. John Sathyan, learned Senior Counsel appearing for the respondents would submit that there are allegations in the impugned complaint and hence it is for the petitioner to raise all his defence before the Trial Court and prayed for the dismissal of the quash petition.

5. This Court finds that the only allegation against the petitioner is that the 1st accused had misappropriated money in connivance with the petitioner. Apart from that, there is no material in the impugned



complaint to connect the petitioner with the alleged crime. The petitioner cannot be prosecuted on the basis of such vague allegations.

Even with regard to allegations of threat and using abusive language there are no specific details to implicate the petitioner. Further, this Court finds that the order of cognizance is liable to be set aside as the order does not reflect application of the mind of the learned Judicial Magistrate IV, Salem. This Court and the Hon'ble Supreme Court have time and again stated that the order taking cognizance is not an empty formality. The Hon'ble Supreme Court in **2022 LiveLaw (SC) 833 – Lalankumar Singh and others Vs. State of Maharashtra**, had held as follows:

“28. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case



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against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of Sunil Bharti Mittal vs. Central Bureau of Investigation⁹, which reads thus:

“51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.



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52. *A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.*

53. *However, the words “sufficient ground for proceeding” appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the*



reason given turns out to be ex facie incorrect.”

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6. It is also found that earlier the Inspector of Police, DCB, Salem was directed to investigate the matter and file a report. Accordingly, the Crime Branch found that the allegations are civil in nature and filed a report to that effect. However, the learned Judicial Magistrate IV, Salem, had rejected the said report and taken the impugned complaint on file.

7. Since the order taking cognizance is erroneous, the same is set aside and the matter is remanded to the learned Judicial Magistrate IV, Salem, for fresh consideration. However, as stated earlier as against the petitioner there are absolutely no allegations attracting the alleged offences. Therefore, for the above reasons, this Court finds that the impugned complaint against the petitioner is liable to be quashed. Since the order being cognizance has been set aside, the learned Judicial Magistrate IV, Salem may consider the case afresh and take cognizance of the offences against the other accused by following the



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dictum of the Hon'ble Supreme Court in *Lalankumar Singh and others Vs. State of Maharashtra* supra.

8. The petition is allowed with the above observation. Consequently, the connected Miscellaneous Petitions are closed. No costs.

10.04.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation :Yes/No

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To

The Judicial Magistrate IV,
Salem.



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SUNDER MOHAN. J,

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CrI.O.P.No. 30315 of 2019

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