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Crl.O.P.No.25994 of 2023

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and Crl.M.P.No18457 of 2023

C.V.KARTHIKEYAN,J.

The petitioners are A1 and A2 in Crime No.1652 of 2023, originally registered by the Inspector of Police, Sooramangalam Police Station at Salem, and subsequently after investigation, the case had been transferred to the Inspector of Police, Central Crime Branch, Salem City, in Crime No.32 of 2023 for the offences punishable under Sections 468, 471 & 420 of IPC and Section 3 r/w 791) of the State Emblem of India (Prohibition of Improper Use) Act, 2005. They had been remanded to judicial custody on 30.10.2023, seek bail.

2.Even before proceeding further, it must be stated that not only the accused but also the defacto complainant appear to have an impression that the judicial process and also the Investigating Agency can be taken for a ride probably in their car in which they have unauthorizedly affixed the National Flags and National Emblems and make use of that process for their personal gains.



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3.It must be stated with some concern that even before the matter had been heard on merits, a representation was made that the daughter of the 1st accused/1st petitioner herein was to get married and therefore, an urgent plea was sought for interim bail. Interim bail was also granted on that particular ground. One of the condition which imposed was that the petitioner/accused should not tamper or influence the witnesses. But to the disgrace of the defacto complainant he had sold himself to the accused for money and cheap money at that. This, in my words, is not only disgraceful but also a fraud act against, the very provisions of the State Emblem of India (Prohibition of Improper Use) Act, 2005, since the defacto complainant has now conceded that the petitioners can roam around freely all over the place with the Flag of this Country in their car and also flash around the Emblem of this Country wherever they go impersonating a post, which they do not hold and which they are not entitled to hold and to which they are not authorised to hold. Therefore, at the very outset, I must issue a direction to the Trial Court that whenever trial takes place, the learned Trial Judge should look into the records as a whole and not be swayed by the deposition of the defacto



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complainant, who has already decided to speak adverse to the prosecution.

4.The Trial Judge must note the fact that the defacto complainant had already been purchased and he has willingly sold himself to the accused and therefore, while analysing the evidence tendered by the defacto complainant, a word of caution is put by this Court to the Trial Court to analyse that particular evidence in its proper light and the background that the defacto complainant has been bought and brought to the side of the accused persons.

5.Let me now state the facts of the case:

The 1st accused had bestowed upon himself the honoured post of founder of Micro, Small and Medium Enterprises (MSME) Promotion Council. He also claimed that he is the Chairman of that particular council across the country. He wanted to appoint a State Chairman and he found a willing partner in the defacto complainant. The defacto complainant was lured to pay money on the promise that he would be



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appointed as the State Chairman of the MSME Promotion Council.

According to the respondent, there is no authorised organisation called MSME Promotion Council and it is not authorised by the Union of India. It is certainly not authorised by the State of Tamil Nadu. The 2nd accused for a good measure, is a step lower and he is termed himself as the Trustee of the said MSME Promotion Council.

6.The words have been very carefully chosen to cheat Micro, Small and Medium Entrepreneurs and individuals who have ambition to start Micro, Small and Medium Enterprises. They believed that these two accused, who have no authority, who are not authorised, would come to their rescue by advancing loans, as if the loans were offered by the Union of India.

7.In this manner, the defacto complainant, who is today a willing partner of the 1st accused and who has now joined hands with the 1st accused and probably wants to save the 1st accused from any prosecution and from any of the allegations which have been raised



against him, had originally stated that, on the promise that he would be appointed as State Chairman, initially a sum of Rs.3 crore was fixed to be paid to the 1st accused. Later, that amount was bargained to Rs.50 lakhs.

8.It is stated that the 1st accused had been organizing meetings in hotels and in this manner, had organized a meeting in a hotel at Egmore, Chennai, where the defacto complainant had alternatively for a good measure, brought with him 25 men, who could be termed as henchmen or equal partners in the crime, to attend the meeting. They all attended the meeting. They went along with the 1st accused to attend further meetings at Bangalore and Coimbatore. As a matter of fact, it is the case of the defacto complainant that he had spent about Rs.10 lakhs for organising the meeting at Coimbatore. Sensing that the defacto complainant is willing to spend money for this nefarious purpose, the 1st accused had offered this particular post of State Chairman to the defacto complainant for a sum of Rs.50/- lakhs. This fact itself is shameful, that a post is to be granted for consideration. It speaks volumes about the character of not only the accused but also of the defacto complainant.



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This is a yet another factor which the Trial Judge should note at the time of conducting the trial and at the time of analysing the evidence of the defacto complainant.

9.It is stated that the said amount of Rs.50 lakhs was paid in two tranches. The first was made in the middle of a road when a sum of Rs.31/- lakhs was handed over to the 2nd accused, who in turn is said to have handed it over to the 1st accused. I really wonder about the conduct of the two accused who stand in the middle of a road and also the conduct of the defacto complainant who also stands there and pays a sum of Rs.31/- lakhs. If such amount is transferred in secrecy it can never be termed as an amount being white in colour.

10.At any rate, it is also stated that five separate individuals were also lured to open accounts in their names and in those accounts, as balance amount of Rs.19 lakhs had been transferred.

11.The case of the defacto complainant is that after paying



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Rs.50/- lakhs, which itself is colourable money for a tainted post, he was not offered the said post but somebody else had moved ahead of him and the 1st accused had found yet another person who had offered a higher bargain and it is stated that an individual had given Rs.4/- crore for that post and he was appointed as State Chairman of this colourable MSME Promotion Council.

12.The only object is to go around cheating gullible people and flashing the National Flag and National Emblem in the vehicle. Not only the gullible public but also Police authorities and every other Government Official were lured to believe that these are persons with some standing. They are actually imposters with zero standing.

13.It is also stated that even before the complaint had been registered, the accused persons and the defacto complainant had taken a decision to join hands. It is the contention of the learned counsel for the petitioners that a sum of Rs.9/- lakhs had been returned, even before the complaint had been lodged. Subsequently, after obtaining interim bail



from this Court, on the pretext that a daughter's marriage is to be held, there has been specific violation of the condition that the accused persons should not tamper with the witnesses, but the accused had approached the defacto complainant and they both had the temerity, even though the matter is still pending before this Court, to enter into a compromise. This compromise is not worth the paper in which it has been written. They may both stick in their face for all it is worth but no Court particularly during the course of trial or at any point of time, should give any credibility to such compromise.

14.It is a compromise, which had been entered into in defiance of directions of this Court. The object is unlawful. The consideration passed during the course of such compromise is unlawful. The compromise is unlawful.

15.There could be exchange of money between the defacto complaint and the accused but that will certainly not affect the investigating process or the right of the prosecution to press the charges



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further against the accused persons.

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16.The learned counsel for the petitioners pointed out the offences and stated that the offences under the State Emblem of India (Prohibition of Improper Use) Act, 2005, are bailable offence and therefore, the Court should not give any credence to the same and should ignore that such offences ever had been committed. I reject the said arguments advanced by the learned counsel for the petitioners.

17.It is indeed a serious offence, as an individual sitting in a car with the National Flag flashing outside and the National Emblem being exhibited, may not seem a threatening act but, in the eyes of everybody who looks at that particular car, they would be under the impression that the individual inside the car is a person of importance and should be given some respect, whereas in this case, the accused persons are neither persons of importance but are actually accused of criminal offences.

18.The learned Government Advocate (Crl. Side) on behalf of



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the respondents stated that the petitioners had also flashed the photograph of the Hon'ble Prime Minister with intention to project an image that the accused are close to higher up's. The entire episode is shameful.

19.It is also stated that further investigation will have to be done as to where the National Flags had been printed and who gave permission to the accused persons to put up the National Emblem and the manner in which the accused persons had influenced the defacto complainant to settle the issue. The offences under Sections 468 and 471 of IPC are certainly not compoundable. The learned Magistrate had rejected the affidavit filed seeking to record the compromise and I must state that the learned Magistrate had been extremely careful in discharging his official duty in rejecting any representation of compromise.

20.Since the investigation is pending and since the facts stated,



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make out further offences and deep investigation has to be done as to the places where the particular accused had moved around with the flag and the persons whom they have so cheated, I am not inclined to grant bail to the petitioners.

21. Accordingly, this Criminal Original Petitions stands dismissed. Connected Criminal Miscellaneous Petition/Intervening Petition is also closed.

23.11.2023

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C.V.KARTHIKEYAN,J.



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