



*Crl.O.P(MD)No.13880 of 2022*

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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|---------------|------------|
| Reserved on   | 19.07.2023 |
| Pronounced on | 19.10.2023 |

**CORAM**

**THE HONOURABLE MR JUSTICE K.K.RAMAKRISHNAN**

**Crl.O.P(MD)No.13880 of 2022**

**and**

**Crl.M.P(MD)No.8897 of 2022**

1.Jamuna

2.Ravi

.. Petitioners/Accused 12 & 13

**Vs.**

The State of Tamil Nadu,  
Represented by the Inspector of Police,  
Directorate of Vigilance and Anti Corruption Wing,  
Theni.

(Crime No.6 of 2022)

.. Respondent/Complainant

**PRAYER:** Appeal filed under Section 96 of the Code of Civil Procedure, to call for the records in Crime No. 6 of 2022 on the file of the Inspector of Police, Directorate of Vigilance and Anti Corruption Wing, Theni and quash the same insofar as the petitioners are concerned.

For Appellant : Mr.K.P.S.Palanivel Rajan

Senior Counsel for Mr.K.Prabakaran



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For Respondent : Mr.T.Senthil Kumar  
Additional Public Prosecutor

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### **ORDER**

The petitioners are the accused Nos.12 and 13 in Crime No.6 of 2022 on the file of the respondent police. They are said to have committed the offence under Sections 7 and 12 of the Prevention of Corruption Act, 1988 and Sections 409, 465, 467, 468, 471, 477A r/w 109 IPC. The petitioners filed this quash petition to quash the FIR registered in Crime No.6 of 2022.

2. The case of the prosecution is that the petitioners are the contractors and they are husband and wife. The accused officers A1 to A11 are the Executive Officers of various Panchayats. They conspired together and floated the bogus tender application to supply the LED bulbs, approximately 1300 number of 36 watts LED bulbs at the rate of Rs.9,987/- per bulb. In the FIR, it is stated that the market value of the said LED bulbs are roughly around Rs.1,2000/- to Rs.2,500/- per bulb as per the PWD norms which has to be followed by the accused officers. But the disbursed amount was Rs.9,987/-. Hence the difference of amount to the tune of Rs.97,33,000/- was misappropriated and thereby causing loss to the Government and the undue advantage has obtained by the accused persons. Hence the respondent police



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registered the case for the offence under Sections 7 and 12 of the Prevention of Corruption Act, 1988 and Sections 409, 465, 467, 468, 471, 477A r/w 109 IPC.

3. The learned Senior counsel appearing for the petitioners submitted that as per the FIR averments, without following the tender process as stated in the Tamil Nadu Transparency in Tenders Act, 1998, the accused officers 1 to 11 were floated the tender in favour of the accused Nos.12 and 13. Admittedly, the said allegation is not maintainable on the ground that as per the Tamil Nadu Transparency in Tenders Act, 1998, only above the value of Rs.10,00,000/-, the Act is applicable and hence, the tender process conducted by the accused Nos.1 to 11 is in accordance with law. So, he seeks the indulgence of this Court to quash the proceedings.

4. The learned Senior counsel submitted that the actual value of the supplied LED bulb is Rs.7,100/-. In previous years and subsequent years also they supplied the LED bulbs at the same cost and hence, the FIR is liable to be quashed. The learned Senior counsel further submitted that from reading the FIR, it is clear that Section 468 IPC offence is not made out. Admittedly, it is not the case in the FIR that the petitioners forged the invoices. It is admitted



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case of the petitioners that all the bulbs were supplied at the rate of Rs.7,100/-

each. For that A1 to A11 sanctioned the bill and hence, there is no forgery.

Therefore, the impugned FIR is without any ingredients to satisfy the offence prescribed under Sections 7 and 12 of the Prevention of Corruption Act, 1988 and Sections 409, 465, 467, 468, 471, 477A r/w 109 IPC. To substantiate his submission, the learned Senior counsel relied upon the following judgements.

1. 2019 (2) SCC (Cri) 826 (Sasikala Pushpa v. State of Tamilnadu)
2. 2018(7)SCC581(Sheila Sebastian v. R.Jawaharaj and another)
3. 1997 (0) SCC (Cri) 274 (Guru Bipin Singh v. Sh.Chongtham Manihar Singh and another)
4. 1996 (10) SCC193 (C.Chenga Reddy and Others v. State of Andhra Pradesh)
5. 2005(1)CTC 581 (State of Orissa vs. Debendra Nath Padhi)

5. The learned Senior counsel also placed some of the documents and argued that the said documents are undisputed one and the same can be relied upon to quash the proceedings.

6. Per contra, the learned Additional Public Prosecutor, on instructions, submitted that the investigation is going on and as on date, the investigation



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agency collected 20 witnesses and collected 34 documents. The evaluation was conducted in 10 Panchayats and the remaining 7 Panchayats are yet to be evaluated.

7. It is the specific case of the investigation agency that all the accused 1 to 11 are the Executive Officers of various Panchayats. All the Executive Officers conspired together with the petitioners/A12 and A13 and floated the tender with the participation of A12 and A13 and another bogus company which, according to the learned Additional Public Prosecutor, is created by the accused Nos.12 and 13 for the purpose of obtaining tender and accordingly, they obtained tender for more cost, ie., as per the norms of the PWD, the rate is only around Rs.2,692/-, but they quoted Rs.7,100/- and thereby all the accused jointly swindled the amount to the tune of Rs.97,33,000/-. He further submitted that it is in the FIR stage. Still the investigation is going on and the investigation officer is going to collect number of materials.

8. The learned Additional Public Prosecutor further submitted that the accused Nos.1 to 11, without obtaining the scheduled rate from the PWD Department to purchase the LED bulbs floated the tender in favour of A12 and A13. Therefore, from this angle, it is clear that all the accused are conspired



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together and committed the misappropriation of the Government fund to the tune of Rs.97,33,000/- and hence, he seeks for dismissal of the quash petition and to substantiate the same, he also placed strong reliance on the following Judgements of the Hon'ble Supreme Court.

1. 2021(19) SCC 401
2. 2023 (2) MLJ (Cri) 105

9. This Court has considered the submissions made by the learned Senior counsel for the petitioner and the learned Additional Public Prosecutor for the State and perused the records and the precedents relied upon by both parties.

10. Crux of the prosecution case is that the accused Nos.1 to 11 are the Executive Officers of various Panchayats. Accused Nos.12 and 13 are the contractors. Accused Nos.1 to 11 conspired together with the accused Nos.12 and 13 and floated the tender for procurement of LED bulb in contravention of the procedure and fixed the rate for the LED bulb, more than the rate fixed by the Public Works Department have to be followed by the accused Nos.1 to 11. In sum and substance, the tender was issued for the purchase of the LED bulb for the value of Rs.7,100/- whereas the allowed rate to purchase the LED bulb



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is around Rs.2,692/-. Hence, the excess amount was quoted with the conspiracy of accused Nos.1 to 11 by the accused Nos.12 and 13 and hence the Government suffered huge loss to the tune of Rs.97,33,000/-.

11. The submission of the learned Senior counsel that the tender process never floated the provisions of the Tender Transparency Act is to be investigated by the investigation officer. The present case in the stage of FIR and yet in the stage of still born baby. The investigating agency yet to be collected the materials into the allegation made in the FIR and come into conclusion either way. In the said circumstances, the defence of the accused even if it is plausible, the same cannot be ground to quash the FIR. In all circumstances, the petitioner's case is not come under the guidelines issued by the Hon'ble Supreme Court in the following cases:

**11.1. 2021 SCC OnLine SC 315 [Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Others]**

*“80. In view of the above and for the reasons stated above, 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*



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*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;*
- 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*



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*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 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 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.

**81.** In view of the above and for the reasons stated above, the present appeal succeeds. The impugned interim order/direction contained in clause (d) of the impugned interim order dated 28.09.2020 by which the High Court has directed that “no coercive measures to be adopted” against the petitioners (respondent nos. 2 to 4 herein) in respect of FIR No. 367/2019 dated 19.09.2019, registered at Worli Police Station, Mumbai, Maharashtra (subsequently transferred to Economic Offence Wing, Unit IX, Mumbai, renumbered as C.R. No. 82/2019) is hereby quashed and set aside. However, it is made clear that we have not expressed anything on the merits of the case, more particularly the allegations in the FIR and the High Court to consider the quashing petition in accordance with law and on its own merits and considering the afore-stated observations made by this Court in the present judgment.

**82.** Having regard to the fact that despite the law laid down by this Court in the case of Habib Abdullah Jeelani (supra) and other decisions, referred to hereinabove, some High Courts have continued to pass such interim orders, we direct the Registry to forward a copy of this judgment to all the High Courts to be placed before Hon'ble the Chief Justice to circulate to all the Judges of the High Courts”.

**11.2. State of Chhattisgarh v. Aman Kumar Singh** reported in 2023(6)SCC559.

*“65. Thus, it being the settled principle of law that when an investigation is yet to start, there should be no scrutiny to what extent the allegations in a first information report are probable, reliable or genuine and also that a first information report can be registered merely on suspicion, the High Court ought to have realised that the FIR which, according to it, was based on “probabilities” ought not to have been interdicted. Viewed through the prism of gravity of allegations, a first information report based on “probability” of a crime having been committed would obviously be of a higher degree as compared to a first information report lodged on a “mere suspicion” that a crime has been committed. The High Court failed to bear in mind these principles and precisely did what it was not supposed to do at this stage. We are, thus, unhesitatingly of the view that the High Court was not justified in its*



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*interference on the ground it did.”*

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**11.3. *Suryalakshmi Cotton Mills Ltd. v. Rajvir Industries Ltd., (2008)***

**13 SCC 678:**

*“22. Ordinarily, a defence of an accused although appears to be plausible should not be taken into consideration for exercise of the said jurisdiction”.*

**12.** According to the learned Senior Counsel, if we taken the entire averment of the FIR, it does not disclose the offence. In this case, the learned Senior counsel pained to justify the innocence on the part of the Accused Nos. 12 and 13 on the ground that both were supplied the LED bulbs at the cost of Rs.7,100/- as successful bidder in the tender process and also produced the document to show the rate fixed by the concerned supplier. Therefore, according to the petitioner, the alleged accusation of misappropriation of such huge amount does not arise. According to accused Nos.12 and 13, they supplied the goods as per the correct valuation. For that, they produced the number of documents and this Court, at this stage cannot accept the relied documents to prove the innocent of the accused. As per the Hon'ble Supreme Court judgement as stated supra, this Court has no jurisdiction to appreciate the defence of the accused in the petition filed to quash the FIR for the reason that the same amounts to be stifling on the legitimate investigation in



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the allegation made in the FIR in the bud stage.

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13. The learned Senior counsel submitted that there was no fraud or forgery committed by the accused Nos.12 and 13, cannot be accepted for the reason that the same to be investigated and proved by the prosecution. If the petitioners want to rely on any of the documents, they may file as the defence document and proceed the case. Hence, at this stage, this Court is not inclined to quash the matter. Further, it is clear that the Hon'ble Supreme Court in number of cases held that at the stage of quashing the FIR, Courts cannot delve into the factual aspects and defence of the accused. In the recent judgment, Hon'ble Supreme Court issued direction to maintain a hand -off approach and not quash the FIR pertaining to corruption cases, specially at the stage of investigation. The relevant paragraph is as follows:

***State of Chhattisgarh v. Aman Kumar Singh, (2023) 6 SCC:***

*“80. Having regard to what we have observed above in paras 47 to 50 (supra) and to maintain probity in the system of governance as well as to ensure that societal pollutants are weeded out at the earliest, it would be eminently desirable if the High Courts maintain a hands-off approach and not quash a first information report pertaining to “corruption” cases, specially at the stage of investigation, even though certain elements of strong-arm tactics of the ruling dispensation might be discernible. The considerations that could apply to quashing of first information reports pertaining to offences punishable under general penal statutes ex proprio vigore may not be applicable to a PC Act offence. Majorly, the proper course*



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*for the High Courts to follow, in cases under the PC Act, would be to permit the investigation to be taken to its logical conclusion and leave the aggrieved party to pursue the remedy made available by law at an appropriate stage. If at all interference in any case is considered necessary, the same should rest on the very special features of the case.”*

**14.** In the result, this Criminal Original petition is dismissed.

Consequently, connected miscellaneous petition is closed.

**19.10.2023**

NCC : Yes/No  
Internet : Yes/No  
Index : Yes/No  
P JL

To

1.The Inspector of Police,  
Directorate of Vigilance and Anti Corruption Wing,  
Theni.

2.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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**K.K.RAMAKRISHNAN, J.**

PJL

**Pre-delivery order made in  
Crl.O.P(MD)No.13880 of 2022  
and  
Crl.M.P(MD)No.8897 of 2022**

**19.10.2023**