



Crl.O.P.(MD)No.14008 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.07.2023

CORAM

THE HON'BLE MR.JUSTICE P.DHANABAL

Crl.O.P.(MD)No.14008 of 2019
and
Crl.M.P.(MD)No.8533 of 2019

A.M.Moorthy

... Petitioner

Vs.

1.The State Rep.by
The Inspector of Police,
City Crime Branch,
Tirunelveli City.
(Crime No.11 of 2019)k

2.Suresh Kumar

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the case in Crime No.11 of 2019 on the file of the Inspector of Police, City Crime Branch, Tirunelveli City and quash the same as against the petitioner.

For Petitioner : Mr.R.Anand

For R1 : Mr.R.M.Anbunithi,
Additional Public Prosecutor



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For R2

: Mr.Ramsundarvijayraj

ORDER

This Criminal Original Petition has been filed to quash the First Information Report in Cr.No.11 of 2019 on the file of the Inspector of Police, City Crime Branch, Tirunelveli City.

2.According to the petitioner, the first respondent registered a false case in Cr.No.11 of 2019 for the offence under Sections 417, 418, 420, 465 and 468 IPC. The case of the prosecution is that upon information received through sources the defacto complainant came to know about A3 that he used to arrange loan for lower rate of interest and he met the petitioner and he said to have assured that he will arrange loan of Rs.50 Crores with 6% interest with a tenure of 10 years. It was further assured by the defacto complainant that he will pay 1% of the loan as registration fee and another 1% as commission for the loan arrangement. On 24.01.2018, the defacto complainant met A1 in his office at Tirunelveli and he informed that the loan amount of Rs.50 Crores is ready as demand



draft, for which the defacto complainant asked to execute three promissory note for Rs.25 Crores, Rs.24.9 Crores and Rs.10 Lakhs respectively. Accordingly, the defacto complainant went to Sub Registrar Office along with A1 and A2 and signed the relevant papers. After registration work had over, A1 and A2 insisted for the commission amount for which, the defacto complainant is said to have paid Rs.50 Lakhs through cash to A1 and Rs.50 Lakhs through bank to A3. After receiving the said amount, all the accused persons had not turned up and the defacto complainant came to know that only promissory note for Rs.10 Lakhs was registered. Thereafter, he came to know that he had been cheated and hence, he filed complaint. According to the petitioner, the allegations referred to in FIR cannot give cause of action for registering FIR, as the ingredients for making out the penal offences are found missing and as such, FIR in this case is liable to be quashed.

3.The learned counsel appearing for the petitioner would contend that the offence under Section 420 IPC will not attract and no ingredients in the complaint to attract Section 420 IPC. Mere inclusion of the name of the petitioner in the body of the complaint would not sufficient to



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make him as an accused. In fact, the petitioner already deposited Rs.50,00,000/- to show his bonofide, during hearing of bail petition and he has no intention to cheat the defacto complainant.

4.The learned counsel appearing for the second respondent would contend that the petitioner and others have cheated the second respondent and thereby, he gave complaint and FIR was also registered. The case is at initial stage and thereby, this Court need not interfere with the investigation of the police. After elaborate investigation only, truth will come to light and hence, this petition is liable to be dismissed.

5.The learned Additional Public Prosecutor appearing for the first respondent would contend that based on the complaint given by the second respondent, the first respondent police registered FIR and thereafter, due to stay granted by this Court, the first respondent police is unable to conduct investigation and case is at initial stage of investigation. Since so many documents involved in this case, elaborate investigation is required. More over, the petitioner is having so many previous cases and hence, this petition is not maintainable.



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WEB COPY 6. Heard both sides and perused the materials available in the records.

7. On perusal of records revealed that in this case huge amount was involved. Though the petitioner has deposited Rs.50,00,000/- in favour of the defacto complainant, the investigation in this case is in initial stage. The first respondent only registered FIR and not even conducted any investigation in this case. Therefore, this case needs elaborate investigation, then only, the true facts will come out. Further, this Court relied upon the decision of the Hon'ble Supreme Court of India reported in 2021 SCC online SC 315 in a case of M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others wherein, Hon'ble Supreme Court held as follows:-

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 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



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*be too vague and/or broad which can be misunderstood
and/or misapplied.*

8.In view of the above said proposition laid down by the Hon'ble Supreme Court, this Court is not inclined to quash FIR in Cr.No.11 of 2019 at this stage. Since the case is pending from the year 2019, the first respondent police is directed to expedite the investigation in Cr.No.11 of 2019 and file final report as mandated in the Code of Criminal Procedure. Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petition is closed.

18.07.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To
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- 1.The The Inspector of Police,
City Crime Branch,
Tirunelveli City.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

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