



WEB COPY



CRL.OP.(MD)Nos.18951 & 16899 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 16.11.2022

DELIVERED ON : 11.08.2023

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.OP.(MD)Nos.18951 & 16899 of 2022

and

CRL.MP(MD).Nos.11331 & 12777 of 2022

Libinjacco : Petitioner/Accused-5 in
Crl.O.P.(MD).No.18951/2022

T.Jayaprabhu : Petitioner/Accused-3 in
Crl.O.P.(MD)No.16899/2022

Vs.

1. State Rep. By
The Inspector of Police,
District Crime Branch,
Dindigul District.
(Crime No.3/2022) : 1st Respondent/Complainant in
both Crl.O.Ps

2. P.Ramesh : 2nd Respondent/De-facto Complainant
in both Crl.O.Ps

PRAYER: Criminal Original Petitions filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the impugned FIR in Crime No.03/2022 on the file of the Respondent Police and quash the same.

For Petitioners
in both Petitions : Mr.S.Ramsundar Vijayaraj
For Respondents : Mr.T.Selvakumaran in
Crl.O.P.(MD).No.18951/2022



WEB COPY



CRL.OP.(MD)Nos.18951 & 16899 of 2022

: Mr.P.C.Geethammal
in Crl.O.P.(MD).No.16899/2022

ORDER

These Criminal Original Petitions have been filed to quash the FIR in Crime No.03 of 2022 on the file of the first Respondent Police.

2. The learned Counsel for the Petitioners in Criminal Original Petition Nos.18951 and 16899 of 2022 had already submitted his arguments. As per his submission, the basis for the complaint is a non enforceable contract under the Indian Contract Act. Further, in the contents of the First Information Report, it is found that various amounts had been transferred to the account of the accused from the account of the so called owner of the second Respondent. The Petitioner in Criminal Original Petition No.16899 of 2022 had furnished his Bank Statement, in which, nothing is found. The Petitioners in Criminal Original Petition Nos.18951 and 16899 of 2022 are aware that if the second Respondent/Defacto Complainant approaches the Civil Court, they are unable to get a decree based on the averments of the First Information Report. Only to cause harassment to the Petitioners in Criminal Original Petition Nos.18951 and 16899 of 2022 with ulterior motive, the second Respondent has claimed to be a Manager. The complaint



CRL.OP.(MD)Nos.18951 & 16899 of 2022

had been lodged, based on which, the First Information Report had been registered.

3. It is the contention of the learned Counsel for the Petitioners in Criminal Original Petition Nos.18951 and 16899 of 2022, that the occurrence had been taken place six months prior to the registration of the First Information Report. Usually, the case of this nature would attract the ingredients of offences under Sections 120(b) and 420 of IPC. Therefore, as per the averments in the First Information Report, this is a fit case that will not stand on its own leg. Hence, he seeks to quash the First Information Report.

4. In support of his contention, the learned Counsel for the Petitioner relied on the ruling reported in **MANU/SC/0591/2010** in the case of **Kishan Singh (D) through Lrs Vs. Gurupal Singh and Ors.** The relevant portion is extracted hereunder:

“21. Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of its version. In case, there is some delay in filing the FIR, the Complainant must give explanation for the same. Undoubtedly, delay in lodging the FIR does not make the Complainant's case improbable



CRL.OP.(MD)Nos.18951 & 16899 of 2022

when such delay is properly explained. However, deliberate delay in lodging the Complaint is always fatal. Vide: Sahib Singh Vs. State of Haryana MANU/SC/0821/1997: AIR 1997 SC 3247.

22.....Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction on the Criminal Court. The Court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the Court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case.....”

5. The learned Additional Public Prosecutor submitted that the First Information Report is not an encyclopedia. He would also submit that on earlier occasion, the Defacto Complainant/Second Respondent had approached this Court by filing CrI.O.P(MD).No.13920 of 2022, in which, the learned Single Judge (Honourable Mr.Justice V.Sivagnanam) had passed the orders dated 02.08.2022 and directed the first Respondent to complete the investigation and file a final report within a reasonable period of two months.

6. The learned Additional Public Prosecutor invited the attention of this Court to the ingredients of Section 415 of IPC and the complaint registered under Section 415 of IPC squarely attracts to the facts of the



CRL.OP.(MD)Nos.18951 & 16899 of 2022

pending case before this Court. Further, he would submit that the learned Single Judge of this Court had directed the Investigation Officer to complete the investigation. Subsequently, two cases were filed by the Petitioner/Accused in Crl.O.P.No.16899 of 2022, in which, the present Single Judge had directed the Investigation Officer not to file the charge sheet till the disposal of the Criminal Original Petition in Crl.O.P(MD). No. 16899 of 2022 dated 21.09.2022. The investigation had been completed and Final Report is to be laid. He also placed reliance on the statement under Section 161 Cr.P.C., recorded from one Amsamani who claimed that Jeyaprabhu is a colleague of her husband and on instruction from Jeyaprabhu, some amount was transferred to the account of her husband and son. Therefore, it is the contention of the learned Additional Public Prosecutor that as per the facts of this case, the First Information Report cannot be quashed and what are all submitted by the learned Counsel is to be considered as valuable defence only by the Trial Court during trial. The contents of the statement made by the learned Counsel for the Petitioners in Criminal Original Petition Nos.18951 and 16899 of 2022 can be put to test. This is not a fit case for quashing the First Information Report.

7. Point for Consideration:



CRL.OP.(MD)Nos.18951 & 16899 of 2022

Whether the FIR in Cr.No.03/2022 on the file of the

District Crime Branch, Dindigul is to be quashed?

WEB COPY

8. The learned Counsel for the Respondent/Complainant invited the attention of this Court to the contents of the FIR.

9. On perusal of the FIR, the ingredients of Section 415 of IPC is attracted. Based on the Complaint, investigation was proceeded. This is a peculiar case where the Accused mentioned in the FIR by the Complainant colluded and conspired with the owner of the Complainant/Ananda Naidu, who was a businessman in Chennai. By making representation to the said Ananda Naidu, the Accused 1 to 6 mentioned in the FIR in Cr.No.3 of 2022 on the file of the District Crime Branch, Dindigul had parted with the amount from the businessman, Chennai, in his Bank account through RTGS. Also, they have received money in cash through the Complainant, who is the Manager of the Businessman at Chennai by name Ananda Naidu. On the pretext of inducing the businessman at Chennai to enter into a business in rare metal through which he can earn Crores of Rupees. The learned Counsel for the Petitioner had furnished the Bank statement of Jayaprabhu/third Accused. The FIR is not an Encyclopedia. Only in course of investigation, further materials will be made available to the Prosecution.



CRL.OP.(MD)Nos.18951 & 16899 of 2022

Further, he submitted that the said Jayaprabhu had received the amount only through the account of Amsumani, a family friend of Jayaprabhu.

10. The learned Additional Public Prosecutor had furnished the statement of accounts of Amsumani wherein the amount stated in the Complaint and the statement of the Manager regarding transfer of money from the businessman at Chennai by name Ananda Naidu to the account of Amsumani, a family friend of Jayaprabhu, were transferred through RTGS had been proved through the statement of account of Amsumani, who is a businessman at Dindigul.

11. Also, the learned Counsel for the Complainant/third Respondent had relied on the guidelines issued to the High Court from the Hon'ble Supreme Court reported in *AIR 1992 SC 604* in the case of *State of Haryana Vs. Ch. Bhajan Lal*. The relevant portion is extracted hereunder:

“LEGAL ISSUES:

(i) Where the allegations made in the First Information Report or the Complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the Accused;

(ii) Where the uncontroverted allegations made in the FIR or Complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the Accused;



WEB COPY

(iii) *Where the allegations made in the FIR or Complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the Accused;*

(iv) *Where the criminal proceedings is manifestly attended with mala fide and/or where the proceedings is maliciously instituted with an ulterior motive for wreaking vengeance on the Accused and with a view to spite him due to private and personal grudge.”*

12. Here in this case, *prima facie*, on perusal of the FIR, the ingredients of Section 415 of IPC is attracted regarding cheating. The contention of the learned Counsel for the Petitioner that the Ananda Naidu/businessman at Chennai, the owner of the defacto Complainant, have sufficient means to part with Rs.50,00,000/- is to be proved cannot be accepted at this stage. Only when the investigation proceeds, the Investigation Officer has the authority and discretion to satisfy those details.

13. On consideration of the rival submissions and the reliance placed by the learned Counsel for the Petitioner in the reported ruling of the Hon'ble Supreme Court in ***AIR 1992 SC 604*** in the case of ***State of Haryana Vs. Ch. Bhajan Lal***, the contention of the learned Counsel for the Petitioner that when the Respondent/Complainant approaches the Civil Court and he does



CRL.OP.(MD)Nos.18951 & 16899 of 2022

not have the good case, he filed a Complaint with an ulterior motive. That

cannot be accepted in the light of the facts available in this case. *Prima facie*,

it is found that the fact is stranger than fiction. The Accused in Cr.No.3/2022

on the file of the District Crime Branch had represented to the

businessman/Ananda Naidu in Chennai that they intended to take the

business along with the businessman with rare metal which has huge demand

outside the country and made him to believe. For that business, the initial

payment he had taken through RTGS through his Manager/defacto

Complainant. As rightly pointed out by the learned Additional Public

Prosecutor, FIR cannot be treated as an Encyclopedia and only in course of

the investigation, further materials will be collected by the Investigation

Officer. The fact that the FIR was registered based on the Complaint of the

Manager and not by the businessman. It is not a ground to quash the FIR. It

is an accepted principle in Criminal Law that any person can set the law in

motion regarding cognizable offence. Here, the Manager of the businessman

had taken cash to Dindigul and stayed with the Accused, interacted with

them, passed information regarding the developments to the businessman at

Chennai, on whose instructions he had gone to Dindigul, is the person who

had instituted the Complaint and set the law in motion. Nothing wrong in

such action. The contention of the learned Counsel for the Petitioner that if



CRL.OP.(MD)Nos.18951 & 16899 of 2022

the Complainant approaches the Civil Court with the Suit for recovery of money and he is not getting the decree in his favour, therefore, he had instituted the Complaint with an ulterior motive to cause harassment to the Petitioner in both Petitions, cannot at all be accepted.

14. As rightly pointed out by the learned Additional Public Prosecutor and the learned Counsel for the Complainant, the FIR is not an Encyclopedia. Further materials will be collected by the Investigation Officer, in course of the investigation. As pointed out by the learned Additional Public Prosecutor, the Investigation Officer had proceeded with the investigation, collected sufficient materials wherein he had found out that on the basis of the statement of Bank accounts provided by Jayaprabhu/A3 in this case to the Complainant and the businessman at Chennai/Ananda Naidu, the amounts were transferred to the Bank account of a family friend of Jayaprabhu, by name Amsumani, w/o. Ganesan/businessman at Dindigul which was collected by the Investigation Officer wherein it was found that the transactions taken place between the accounts of businessman at Chennai/Ananda Naidu and Amsumani w/o. Ganesan, a businessman at Dindigul, who is a family friend of Jayaprabhu/A3 and the statement of the businessman and wife disclosed the fact that the Jayaprabhu had collected



CRL.OP.(MD)Nos.18951 & 16899 of 2022

the funds from Amsumani.

WEB COPY

15. As rightly pointed out by the learned Additional Public Prosecutor and the learned Counsel for the Respondent/Complainant that the submission of the learned Counsel for the Petitioner/Accused in this case are to be treated as a valuable defence before the trial Court during trial and not at this stage while exercising extraordinary powers under Section 482 of Cr.P.C., to quash the FIR, Charge sheet or Complaint.

16. The learned Additional Public Prosecutor also stated that the investigation had been completed and the final report had not been filed as per the Order of this Court dated 21.09.2022 as the Investigation Officer was directed not to file a final report till the case is disposed of. He further submitted that the investigation had already been completed and there are sufficient materials available to the Investigation Officer. In course of the investigation, incriminating materials had been collected and final report is ready.

17. The alleged date of occurrence is 25.06.2021 and the FIR is registered on 24.01.2022. The delay is not found to be undue delay. Within



CRL.OP.(MD)Nos.18951 & 16899 of 2022

the specified time of the compromise by the Accused, the Accused acted in favour of the businessman, immediately businessman was forced to register a case. Therefore, the delay of six months cannot be considered as fatal because as rightly pointed out by the learned Additional Public Prosecutor, the offence was committed continuously over a period of time. When the Accused had given an information that the chemical purchased by them had expired, it could not react with that metal. Therefore, the same could not be used to purify the metal, which made the businessman/his Manager/Complainant suspect about the activities of the Accused, forcing them to prefer this Complaint. The ruling cited by the learned Counsel for the Petitioner that ***MANU/SC/0213/2019 in the case of R.K.Vijayasarathy and Ors Vs. Sudha Seetharam and Ors*** is not helpful to the facts of this case. In the reported ruling, the Suit for recovery of money was instituted against the Accused. Subsequently, they have preferred a criminal complaint on the same set of facts which had resulted in quashing the Complaint. Here, it is not a Civil Case. It is the contention of the learned Counsel for the Petitioner that the Respondent/Complainant is aware that if they file Suit for recovery of money, they will not succeed. Therefore, they have preferred a criminal complaint. It can be treated only as a defence of the Accused and not at this stage to invoke the powers of the Court under Section 482 of



CRL.OP.(MD)Nos.18951 & 16899 of 2022

Cr.P.C., to quash the FIR. Therefore, the ruling cited by the learned Counsel for the Petitioner reported in *MANU/SC/0591/2010* in the case of ***Kishan Singh (D) through Lrs Vs. Gurupal Singh and Ors*** is not helpful to the facts of this case.

18. As rightly pointed out by the learned Additional Public Prosecutor, it was a continuous offence where the Petitioner in both Petitions had obtained money over a period of time. Only when the Manager/Complainant came to know about the Accused and lost belief, he had lodged the Complaint. After purchase of some chemicals stating that it had expired and the said chemical did not react with the metal. Therefore, they were unable to purify the metal. Therefore, they sought further time to part with the metal that they assured the businessman at Chennai. Whether the businessman at Chennai was an Income Tax assessee, Whether he had lost huge amount to part with the Accused are the subject matter only to be considered at the stage of the trial and not at the initial stage of investigation. Therefore, the rulings cited by the learned Counsel for the Petitioner in both cases are rejected.

19. The ruling cited by the learned Additional Public Prosecutor in ***Rajeev Kourav Vs. Baisahab and Ors in Crl.A.No.232/2020*** wherein the



CRL.OP.(MD)Nos.18951 & 16899 of 2022

Hon'ble Supreme Court had observed that the evidence produced by the Accused in his defence cannot be looked into by the Hon'ble High Court while exercising extraordinary powers under Section 482 of Cr.P.C. Here in this case, the contents of the FIR attracts the ingredients of Section 415 of IPC. Therefore, the submission of the learned Counsel for the Petitioner is rejected.

20. In the light of the above discussion, the Point for consideration is answered in favour of the Respondent and against the Petitioner.

In the result, this **Criminal Original Petition is dismissed.**
Consequently, connected Miscellaneous Petitions are closed.

11.08.2023

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-speaking Order
dh

To

1. The Inspector of Police,
District Crime Branch,
Dindigul District.
2. The Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



CRL.OP.(MD)Nos.18951 & 16899 of 2022

SATHI KUMAR SUKUMARA KURUP, J.

dh

Order made in

CRL.OP.(MD)Nos. 18951 & 16899 of 2022

11.08.2023