



Crl.O.P.No.3787 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

Crl.O.P.No.3787 of 2022

and

Crl.M.P.No.1823 of 2022

1. Sathyanarayana
2. Rahuram

... Petitioners

Versus

1. State rep. by
The Inspector of Police,
City Crime Branch (CCB),
Tiruppur City.
(Crime No.3 of 2022)

2. Kiran S.Pamidi

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records culminating in F.I.R. in Crime No.3 of 2022 on the file of the 1st respondent police and quash the same.



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For Petitioners : Mr.R.Srinivas,
Senior Advocate for
Mr.M.Santhanaraman

For Respondents : Mr.S.Vinoth Kumar,
Govt. Advocate (Crl. Side) for R1

Mr.V.Ramamoorthy for R2

ORDER

This Criminal Original Petition has been filed seeking to quash the F.I.R. in Crime No.3 of 2022 on the file of 1st respondent police.

2. Heard both sides.

3. The petitioners are ranked as accused 1 and 2 in the F.I.R. in Crime No.3 of 2022 registered for an offence under Sec.420, 409, 506(ii) of I.P.C. based on the complaint given by the 2nd respondent/defacto complainant.



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4. Brief facts of the case is that the 2nd respondent/defacto complainant used to supply gold jewels to the petitioners on 90 days credit basis, for which the petitioners have to supply equal weight of the said jewels in 24 carat gold bars with their profit margin. Accordingly, in the first week of August 2007, the 1st petitioner ordered jewellery weighing about 23 kgms., which was supplied by the 2nd respondent/defacto complainant at his father-in-law's house in Tirppur on 19.08.2007 and the 1st petitioner assured to give gold bars weighing 23 kgs. within 3 months, but he failed to supply the gold bars. On many occasions, 2nd respondent/defacto complainant requested them to give gold bars, but they have not complied. On 16.11.2021 around 11.00 a.m. near RK Residency, Avinasi Road, Tiruppur, the 2nd respondent/defacto complainant met the petitioners and demanded for gold bars, but they refused to pay the amount for the jewels and threatened him with dire consequences. Based on that, the F.I.R. was registered for an offence under Sec.420, 409, 506(i) of I.P.C. Now, the petitioners have filed this petition to quash the F.I.R. lodged against them.



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5. The learned counsel for petitioners would submit that they have not received any such gold bars as alleged by 2nd respondent/defacto complainant nor the 1st petitioner was partner of M/s.Navaratna Maaligai as stated in the complaint. In the complaint itself, it is stated that nearly about 17 years later from the date of handing over of gold bars weighing 23 kgs. Therefore, they prayed to quash the proceedings as there is no basic ingredient to attract the offence under Sec.406 as well as 420 I.P.C. nor there is no criminal intimidation on their part, since because on 16.11.2021, the 1st petitioner was not present at Trippur, on the other hand, he was at Mumbai. So, there is no basic ingredient to proceed with the F.I.R. lodged against the petitioners. In support of petitioners contentions, the learned counsel relied on the ratio laid down in the authority reported in **2014 SCC Online Mad 124** in the case of **Jayaprakah vs. The State, rep. by Inspector of Police, Central Crime Branch, Egmore, Chennai**, wherein the Apex Court in para 9 held as follows :-



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9. From the allegations made in the FIR, I find no material to invoke Section 406 IPC at all. Section 406 IPC and 420 IPC cannot go together, because, Section 406 IPC essentially requires mutual trust, whereas, Section 420 IPC requires an element of deception. It is for these reasons, I have to say that these two provisions cannot be simultaneously invoked in this case. In order to invoke Section 406 IPC, absolutely there is no material to show that the shares were entrusted by way of trust by the second respondent to the petitioner. Thus, I do not find even a prima facie allegation to invoke Section 406 IPC.”

The learned counsel also relied on the ratio laid down in the authority reported in **(2011) 13 SCC 412 : (2012) 2 SCC (Cri) 650 : 2011 SCC Online SC 1321** in the case of **Thermax Limited and others vs. K.M.Johny and others**, wherein the Apex Court in para 49 held as follows :-

“49. The entire analysis of the complaints with reference to the principles enunciated above and the ingredients of Sections 405, 406, 420 read with [Section 34](#) IPC clearly show that there



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was inordinate delay and laches, the complaint itself is inherently improbable contains the flavour of civil nature and taking note of the closure of earlier three complaints that too after thorough investigation by the police, we are of the view that the Magistrate committed a grave error in calling for a report under Section 156(3) of the Code from the Crime Branch, Pune. In view of those infirmities and in the light of Section 482 of the Code, the High Court ought to have quashed those proceedings to safeguard the rights of the appellants. For these reasons, the order passed by the Judicial Magistrate First Class, Pimpri in CC No. 12 of 2002 on 20.08.2007 and the judgment of the High Court dated 11.01.2008 in Criminal Writ Petition No. 1622 of 2007 are set aside. The complaint filed by Respondent No.1 herein is quashed.”

The learned counsel further relied on the ratio laid down in the authority reported in **2021 SCC Online 976** in the case of **Mitesh Kumar J.Sha vs. State of Karnataka and others**, wherein the Apex Court in para 49 held as follows :-

“37. Although, there is perhaps not even an iota of doubt that a singular factual premise can give rise to a dispute which is



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both, of a civil as well as criminal nature, each of which could be pursued regardless of the other. In the instant case, the actual question which requires consideration is not whether a criminal case could be pursued in the presence of a civil suit, but whether the relevant ingredients for a criminal case are even prima facie made out. Relying on the facts as discussed in previous paragraphs, clearly no cogent case regarding a criminal breach of trust or cheating is made out.”

By relying the above propositions, the learned counsel agues that there is no material ingredients to attract Sec.406 and 420 I.P.C. and the same cannot be tried simultaneously, besides, the inordinate delay on the part of 2nd respondent/defacto complainant also fatal to the proceedings. To that effect, he relied the ratio laid down in the authority reported in **(2014) 2 SCC 1** in the case of **Lalita Kumari vs. Government of Uttar Pradesh and others**, wherein in para 120.6, the Apex Court held as follows:-

“120.6 As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:



- a) *Matrimonial disputes/ family disputes*
- b) *Commercial offences*
- c) *Medical negligence cases*
- d) *Corruption cases*
- e) *Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.*

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.”

On relying the above authorities, he prayed to quash the proceedings initiated against the petitioners.

6. By way of reply, the learned Government Advocate (Criminal side) appearing for 1st respondent would submit that this case is a matter for investigation and it is only at the stage of F.I.R. Hence, he raised strong objections and prayed to dismiss this petition.

7. On seeing entire facts, it reveals that the defence of the petitioners is that the 1st petitioner has not received any gold bar from the 2nd



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respondent complainant nor he was partner of M/s.Navaratna Maaligai in the year of 2007. To that effect, he has produced registration certificate of partnership firm dated 01.07.2011, which would indicate that there was a partnership firm in the name of M/s.Navaratna Maaligai, wherein they are partners. So, on seeing the certificate of Navaratna Maaligai dated 01.01.2007, it stands in the name of Sathyanarayana as a proprietor. Therefore, on the date of alleged occurrence, as claimed by the 2nd respondent/defacto complainant, the 1st petitioner was a proprietor of M/s.Navaratna Maaligai. Now, he contend that he is not a partner. Whether he is a Proprietor or Partner at the time of handing over of gold bars, it is a matter for trial. Furthermore, there was an income tax raid conducted in the firm and to that effect, the 1st respondent called for information under Sec.138 of Income Tax Act, wherein they have stated that for the relevant period of the year 2007, it could not be traced immediately and it will be provided if found in due course and as far as information relevant to the year of 2012 is concerned, the data that were available in assessee's computer was copied in electronic device during the course of survey action and the same shall be provided in Pen drive.



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Therefore, now the 1st respondent collected information from the Commissioner of Income Tax and as rightly pointed out by the Government Advocate that it is a matter for investigation and the case is only at the F.I.R. stage. If at all, any defence available for the petitioners, they have to work out their remedy before the trial court. Moreover, the authorities relied on by the learned counsel for petitioners reported in (1) **2014 SCC Online Mad 124** in the case of **Jayaprakah vs. The State, rep. by Inspector of Police, Central Crime Branch, Egmore, Chennai**, (2) **(2011) 13 SCC 412 : (2012) 2 SCC (Cri) 650 : 2011 SCC Online SC 1321** in the case of **Thermax Limited and others vs. K.M.Johny and others**, (3) **2021 SCC Online 976** in the case of **Mitesh Kumar J.Sha vs. State of Karnataka and others** and (4) **(2014) 2 SCC 1** in the case of **Lalita Kumari vs. Government of Uttar Pradesh and others**, are not applicable to the facts of instant case. Furthermore, the statements relied on by the 2nd respondent/defacto complainant as well as reply of Income Tax would establish the fact that he is having prima facie materials to prove the case, but now the case is only at the stage of F.I.R. Therefore, at this stage, I am not inclined to quash the proceedings



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initiated by the 1st respondent police against the petitioners. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Criminal Miscellaneous Petitions are closed.

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Index: Yes/No

Internet: Yes/No

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To

1. The Inspector of Police,
City Crime Branch (CCB),
Tiruppur City.
2. The Public Prosecutor,
High Court, Madras.



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T.V.THAMILSELVI, J.

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