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Crl.M.P.No.8738 of 2023 in Crl.O.P.No.29073 of 2022

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in
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Reserved on 02.02.2024	Pronounced on 28.02.2024
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G.CHANDRASEKHARAN, J.

This petition has been filed to recall the order passed by this Court, in Crl.O.P.No.29073 of 2022, dated 20.12.2022.

2.FIR in Crime No.03 of 2021 under the head “Accidental Fire” was registered by the Triplicane Police Station, on the basis of the complaint given by one Betramswaris. The defacto complainant Betramswaris has been running Federick Fashion store at No.2, Sourashtra Nagar first street, Choolaimedu, for the past two years. As usual, he closed the shop at about 10 p.m. on 03.01.2021. At about 3.30 a.m., on 04.01.2021, he received a telephonic information stating that his shop was burning. Immediately, he visited the shop, but he could not open the shop. He sent information to fire service and police station suspecting that the fire had been set by the shop owner's son Nizam, for the reason that defacto complainant was not able to pay the rent during the Corona period. Nizam was harassing him through



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rowdy elements and phone for vacating the premises. When defacto complainant demanded time for vacating the shop, he did not accept that and insisted to vacate the shop immediately, else threatened that he would vacate him forcefully. Therefore, he suspects that Nizam was responsible for setting fire to the shop.

3. FIR in this case was registered on 04.01.2021. When investigation was pending, Crl.O.P.No.29073 of 2022 was filed by Nizam @ Nizamuddin for quashing the FIR. In the quash petition, Nizam @ Nizamuddin and the defacto complainant Betram Swaris @ Betram Frederick Swaris filed a joint compromise memo, dated 20.10.2022, stating that “the landlord Nizamuddin denies the contentions and allegations made in the complaint, however, he agrees to give Rs.30,00,000/- towards compensation to the tenant Betram Frederick Swaris. The tenant was ready and willing to deliver and vacate the vacant possession of the shop”. On the basis of the joint compromise memo, this Court permitted the parties to compromise the issue between them to maintain good relationship and peace in future and allowed the petition in Crl.O.P.No.29073 of 2022 and quashed FIR in Crime No.3 of 2021 on 20.12.2022.



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4. Thereafter, Crl.M.P.No.8738 of 2023 has been filed by the petitioner Rocky Swaris @ Swaris Rocky to recall the order passed by this Court in Crl.O.P.No.29073 of 2022, dated 20.12.2022. The case of the petitioner is that he is the lawful tenant as per the lease agreement dated 27.11.2018. This fact is admitted by the parties in the joint compromise memo, dated 20.10.2022. The first respondent is contesting a case in R.L.T.O.P.No.489 of 2021 before the XII Small Causes Court, Chennai, seeking to evict the petitioner from the shop. Petitioner suffered huge monetary loss to the tune of Rs.1,37,00,000/- i.e, Rs.70,00,000/- for interior and Rs.67,00,000/- for stocks due to the criminal acts committed by the first respondent/landlord. The first and third respondents have secured the order dated 20.12.2022, in Crl.O.P.No.29073 of 2022 without the consent of the petitioner herein, who is the victim of the alleged offence. The order has been obtained by them by misleading the Court and suppressing the vital information and truth that petitioner is the victim. Though FIR was registered under the caption accidental fire, it was not really a case of accidental fire, but a fire set by the first respondent. To avoid criminal prosecution, the landlord influenced the third respondent, the father of the petitioner herein to enter into a joint compromise memo and ultimately got quashing of the FIR.



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5.In support of his submissions, the learned counsel for the petitioner produced the copy of the lease agreement between the first respondent's father Shahul Hameed and petitioner dated 27.11.2018. It is his further submission that petitioner filed O.S.No.6289 of 2017 against Shahul Hameed seeking the relief of injunction, not to interfere with the possession and enjoyment of the suit property i.e., the shop in question. There was a compromise reached between petitioner and Shahul Hameed. In terms of the compromise, petitioner agreed to pay the arrears of rent and agreed to pay the monthly rent without fail. In terms of the joint compromise memo, the suit was dismissed. Shahul Hameed sent a notice of termination of lease agreement dated 01.11.2019 to the petitioner which was followed by another letter dated 27.12.2019. Setting fire to the shop had happened on 03.01.2021. Since the petitioner was deeply involved in putting down the fire, he could not lodge the complaint and therefore, his father, the third respondent, gave the complaint. On that basis, FIR in Crime No.3 of 2021 was registered.

6.After the fire accident, Shahul Hameed issued a notice dated 05.03.2021, wherein, it was clearly admitted that the petitioner was the tenant and about filing a joint compromise memo dated 28.11.2018 in O.S.No.6289



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of 2017. As mentioned therein, Shahul Hameed filed a petition for eviction under Section 21 (2) (b) of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act against the petitioner. Shahul Hameed died on 23.09.2021. In the pending R.L.T.O.P. No.489 of 2021, the first respondent and other legal heirs of Shahul Hameed got impleaded. The lease agreement dated 27.11.2018, suit in O.S.No.6289 of 2017, joint compromise memo filed by the petitioner and Shahul Hameed in O.S.No.6289 of 2017, notice of termination of lease agreement dated 01.11.2019 sent to the petitioner, followed by another letter dated 27.12.2019, the notice dated 05.03.2021 and R.L.T.O.P. No.489 of 2021 filed by Shahul Hameed against the petitioner would clearly prove that the petitioner is the tenant of Shahul Hameed at No.2 Sourashtra Nagar first street, Choolaimedu.

7.The lease was for a period of three years from 27.11.2018 and expire on 26.11.2021. Petitioner had been running the shop. While that be the case, quashing the criminal proceedings in Crime No.3 of 2021 without impleading the petitioner as a party and paying Rs.30,00,000/- to the third respondent to avoid criminal prosecution, by depriving the petitioner of his investment made in the business to the tune of Rs.1,37,00,000/- is illegal and therefore,



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he prayed for recall of the order passed in Crl.O.P.No.29073 of 2022, dated 20.12.2022 and for investigation of this case to file an appropriate final report.

8.The learned counsel for the first respondent submitted that though the petitioner was originally inducted as a tenant, he was not running the business in the shop at No.2 Sourashtra Nagar first street, Choolaimedu. In the counter filed by the first respondent, filing of O.S.No.6289 of 2017 by the petitioner, joint compromise entered between them are all admitted. However, it is stated that even after the compromise entered, the petitioner was not paying the rent regularly and committed willful default in paying the monthly rent for the month of February 2020 and for the months from July 2020 till February 2021. Though he waived the rent for the months of March 2020 to June 2020 due to Covid -19, petitioner did not pay the rent from July 2020 till February 2021. First respondent noticed the damages caused by petitioner in the premises, dumping of materials and waste in the common area, motor room, staircase and in the veranda of the first floor. It caused disturbances to the other tenants and inmates. The lease agreement was terminated by the first respondent's father with effect from November 2019 on the ground of willful



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default. He failed to pay the rental arrears of Rs.14,00,000/- as per the joint compromise memo filed in O.S.No.6289 of 2017.

9.It is further submitted that without the first respondent's knowledge, the present tenant, Santhosh gave Rs.33,00,000/- to Tmt.Vijaylakshmi, the mother of the petitioner and wife of the third respondent to purchase peace in the matter. As an accused person in the FIR, the first respondent wanted to give a quietus to the matter and approached the defacto complainant. Since defacto complainant was in possession of the premises, he paid Rs.30,00,000/- to the defacto complainant and entered into a memorandum of joint compromise. The third respondent was running the business in the name and style of Fredick Fashion. Therefore, compromise was entered into with him and a new lease agreement was entered into with the third respondent on 01.12.2021. On receiving the payment of Rs.30,00,000/- on 20.12.2022, petitioner handed over the key of the premises and started vacating the premises from 24.12.2022 to 29.12.2022. Petitioner filed O.S.No.429 of 2023 against the first respondent and others and it is pending. Petitioner had handed over the possession of the shop to his father. After that, his father was alone running the business and was in possession of the shop. His father,



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third respondent, was the defacto complainant and therefore, compromise was entered into with him. First respondent was not responsible for the fire accident. As rightly noted in the FIR, it was an accidental fire. Only for purchasing peace and to give a quietus to the case, he paid Rs.30,00,000/- to the third respondent. It is submitted that if the order is recalled, he will be seriously prejudiced and thus prayed for dismissal of this petition.

10.It is the case of the third respondent that his son, namely, Rocky Swaris abandoned the shop and third respondent was running the shop in the name of Frederick fashions. He has GST registration certificate dated 26.04.2019. The garments that were burnt, were purchased by him and he has GST purchase bills for the purchase of the garments. The rental agreement dated 27.11.2018 entered between Shahul Hameed and petitioner is only a name sake document. He was alone running the business. He was only in possession of the stocks on the date of fire. He was alone paying the rent to the owner of the shop. After the expiry of the lease period with the petitioner, fresh rental agreement dated 01.12.2021 was entered into between the third respondent and the owner. Taking advantage of the rental agreement dated 27.11.2018, petitioner is trying to grab money from him. After receiving



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Rs.30,00,000/- as compensation, he handed over possession to the owner and the new tenant is in possession of the shop.

11.In support of his submission, he produced the photos showing running of Frederick Fashions, complaint dated 01.04.2019 alleging theft of garments, cash and jewelery, copy of the GST registration certificate for Frederick Fashions, rental agreement between the shop owner and the third respondent, dated 01.12.2021, copy of the plaint in O.S. No.1947 of 2019 and the judgment in that suit, rental agreement between the shop owner and new tenant Santhosh, dated 21.12.2022, copy of the plaint and written statement in O.S.No.429 of 2023, FIR given against Candies Swaris by the petitioner, dated 20.01.2023, copy of the plaint in O.S.No.4580 of 2023, filed by Santhosh against the petitioner and the third respondent and others and GST status of Candy Fashions etc.,

12.Considered the rival submissions and perused the records.

13.From the facts narrated above, it is clear without any iota of doubt that there are vexatious and seriously disputed question of facts involved in



the case in Crime No.03 of 2021. It is a well settled proposition of law that when disputed facts are involved in a criminal case, criminal case cannot be quashed. It is so held in ***Rajeshbhai Muljibhai Patel and others etc. Vs.State of Gujarat and another etc., in Criminal Appeal Nos. 251-252 of 2020.*** The relevant portion of the judgment is extracted hereunder:

20.The High Court, in our view, erred in quashing the criminal case in C.C.No.367/2016 filed by appellant No.3-Hasmukhbhai under Section 138 of N.I. Act. As pointed out earlier, Yogeshbhai has admitted the issuance of cheques. When once the issuance of cheque is admitted/established, the presumption would arise under Section 139 of the N.I. Act in favour of the holder of cheque that is the complainant-appellant No.3. The nature of presumptions under Section 139 of the N.I. Act and Section 118(a) of the Indian Evidence Act are rebuttable. Yogeshbhai has of course, raised the defence that there is no illegally enforceable debt and he issued the cheques to help appellant No.3-Hasmukhbhai for purchase of lands. The burden lies upon the accused to rebut the presumption by adducing evidence. The High Court did not keep in view that until the accused discharges his burden, the



presumption under Section 139 of N.I. Act will continue to remain. It is for Yogeshbhai to adduce evidence to rebut the statutory presumption. When disputed questions of facts are involved which need to be adjudicated after the parties adduce evidence, the complaint under Section 138 of the N.I. Act ought not to have been quashed by the High Court by taking recourse to Section 482 Cr.P.C. Though, the Court has the power to quash the criminal complaint filed under Section 138 of the N.I. Act on the legal issues like limitation, etc. Criminal complaint filed under Section 138 of the N.I. Act against Yogeshbhai ought not have been quashed merely on the ground that there are inter se dispute between appellant No.3 and respondent No.2. Without keeping in view the statutory presumption raised under Section 139 of the N.I. Act, the High Court, in our view, committed a serious error in quashing the criminal complaint in C.C.No.367/2016 filed under Section 138 of N.I. Act.

14.FIR in Crime No.03 of 2021 was quashed mainly on the basis of the joint compromise memo filed by the first and third respondents. Petitioner is not a party in Crl.O.P.No.29073 of 2022. He is also not a party to the joint compromise memo. Petitioner has produced a lease agreement dated



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27.11.2018 with Shahul Hameed and other connected records as detailed

above to establish that there was a valid agreement between him and Shahul Hameed from 27.11.2018. In fact, Shahul Hameed had initiated proceedings against him to evict him from the rented premises. It is also pertinent to note that even in the notice of termination of lease agreement by Shahul Hameed, it was referred that the shop in question was rented to petitioner Rocky Swaris. When that be the case, petitioner should have been made as a party to the joint compromise memo and in Crl.O.P.No.29073 of 2022. In the GST registration certificate produced by Frederick fashions, there is no mention about the Sowrastra Nagar. This registration certificate bearing registration No.33CGYPB3317DIZN is seriously disputed by the learned counsel for the petitioner. He pointed out that the registration number was obtained by playing fraud.

15.On the side of the third respondent, it is claimed that it is a genuine certificate and he was running the business. Petitioner produced a typed set of papers containing the details of the purchases made by him. Petitioner has also produced a sale note executed by him with Mrs.C.Arokia amutha Selvi and Mr.C.Thomas Stephen for spending Rs.63,00,000/- for the purpose of interior works.



16.From the documents produced by either side and the submissions made by the learned counsel appearing for the parties, it is apparent that there is serious dispute with regard to the possession of the shop at No.2 Sourashtra Nagar first street, Choolaimedu, ownership of the interior, garments etc., There are multiple litigations pending among the parties claiming possession of the shop bearing No.2 Sourashtra Nagar first street, Choolaimedu. While this Court allowed the petition in Crl.O.P.No.29073 of 2022, these facts have not been brought to the notice of this Court by the first and third respondents herein. The first respondent, having known about the lease agreement with the petitioner and the pendency of the eviction proceedings, should not have come forward to compound the offence with the third respondent. The lease agreement with the owner of the building and the third respondent had been entered into only on 01.12.2021, which is long after the registration of FIR.

17.These facts had been deliberately suppressed by the first and third respondents, misleading the Court to pass the order of quashing of FIR in Crime No.03 of 2021, on the file of the Triplicane Police Station. Therefore, this Court is of the considered view that the quashing of the proceedings in FIR in Crime No.03 of 2021, on the file of the Triplicane Police Station, is



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liable to be set aside and recalled. Accordingly, the order passed in Crl.O.P.No.29073 of 2022, dated 20.12.2022 is hereby set aside and recalled.

18.In the result, this petition is allowed and the order passed in Crl.O.P.No.29073 of 2022, dated 20.12.2022 is set aside and recalled. The third respondent is directed to return the sum of Rs.30,00,000/- received from the first respondent, within a period of two weeks from the date of receipt of a copy of this order. The first respondent is at liberty to initiate appropriate civil and criminal proceedings against the third respondent for the recovery of this amount, if the amount is not returned.

19.In view of setting aside and recall of the order passed in Crl.O.P.No.29073 of 2022, dated 20.12.2022, this Court directs the second respondent to reopen the investigation in Crime No.03 of 2021, investigate the case and file an appropriate final report within a period of three months from the date of receipt of a copy of this order.

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Internet: Yes
Index: Yes/No
Speaking/Non speaking order
NCC: Yes/No

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Pre-delivery Order in
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