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Crl.O.P.No.4734 of 2024

In the High Court of Judicature at Madras

Dated : 26.3.2024

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Criminal Original Petition No.4734 of 2024
& Crl.M.P.No.3464 of 2024

Lulu Deva Jambala

...Petitioner

Vs

1.The State of Tamil Nadu, rep.
by the Inspector of Police,
W19, All Women Police Station,
Adyar, Chennai-20.

2.Saradha.K.

...Respondents

PETITION under Section 482 of the Criminal Procedure Code praying to call for the records in C.C.No.192 of 2023 on the file of the 9th Metropolitan Magistrate Court, Saidapet, Chennai-15 and quash the same.

For Petitioner	:	Mr.R.Harikrishnan
For R1	:	Mr.A.Gopinath, GA (Crl.Side)
For R2	:	Mr.P.Ayyaswamy

ORDER

This is a petition filed by the petitioner challenging the proceedings in C.C.No.192 of 2023 on the file of the 9th Metropolitan Magistrate Court, Saidapet, Chennai-15 (for short, the Court below).



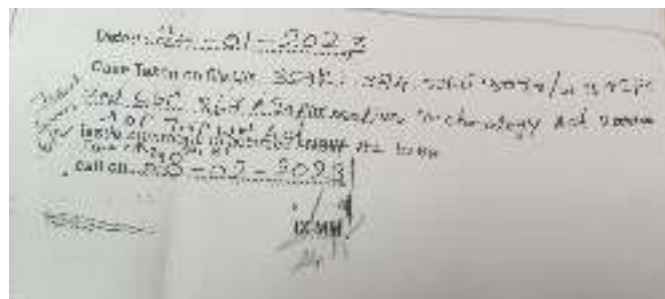
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2. Heard the learned counsel for the petitioner, the learned Government Advocate (Crl.Side) appearing for the first respondent and the learned counsel appearing for the second respondent.

3. The second respondent gave a complaint against the petitioner and four others to the first respondent - police, which resulted in the registration of the first information report in Crime No.2 of 2022 on 18.3.2022 for offences under Sections 354A, 354C, 506(i), and 509 read with Section 34 of the Indian Penal Code and Sections 66E and 67E of the Information Technology Act, 2000. The first respondent proceeded further with the investigation and a final report was filed before the Court below and it was taken on file as C.C.No.192 of 2023.

4. The cognizance order passed by the Court below is captured as follows :





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5. When the matter came up for hearing on 29.2.2024, this Court passed the following order :

"Mr.A.Gopinath, learned Government Advocate (Crl.Side) takes notice on behalf of the 1st respondent. Notice to the 2nd respondent returnable by 25.3.2024. Private notice is also permitted.

2. Apart from other grounds on merits, the primary ground that was urged before this Court was that the Court below had taken rubber stamp cognizance without application of mind in this case. The same is evident from the order dated 24.1.2023. In view of the same, this Court is inclined to set aside the cognizance order and remand the matter back to the Court below. However, before passing such an order, the 2nd respondent must be put on notice and after hearing the 2nd respondent the said order will be passed. In the meantime, there shall be an order of stay of proceedings in C.C.No.192 of 2023, on the file of IX Metropolitan Magistrates Court, Saidapet, Chennai-15.

3. Post this case under the caption 'for orders' on 25.3.2024."



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6. When the matter is taken up for hearing today, the learned counsel appearing for the second respondent has sought for some time to file a counter in this case. He has further submitted that there are lots of facts, which have not been brought to the notice of this Court and hence, the second respondent wants to bring all those facts to the notice of this Court in order to enable this Court to pass final orders in this petition.

7. The learned counsel for the petitioner also wanted to make his submissions touching upon the merits of the case apart from raising the ground of non application of mind on the part of the Court below by taking rubber stamp cognizance on 24.1.2023.

8. In the considered view of this Court, the rubber stamp cognizance taken by the Court below, by itself, is a ground to interfere with the order dated 24.1.2023.

9. This Court had an occasion to deal with this issue in a recent order dated 20.3.2024 in Crl.O.P.No.6737 of 2024, which is extracted as hereunder :



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"It is seen from the cognizance order taken by the Court below dated 26.07.2019 that a rubber stamp cognizance has been taken. This Court has been watching this trend of taking rubber stamp cognizance in many cases. In view of the same, this Court is forced to set aside the cognizance order and send it back to the trial Court for passing fresh cognizance order by applying the mind. This trend has to be stopped. This is in view of the fact that such rubber stamp cognizance has been deprecated by the Apex Court and this judgment was also followed by this Court in Shanmugam and others Vs. Inspector of Police, Ariyalur Police Station, Ariyalur and others reported in (2019) 3 MLJ (Crl.) 339. In spite of the same, the practise of taking rubber stamp cognizance continues in the subordinate Courts.

2. It is made clear that going forward, if cognizance is taken through a rubber stamp cognizance order, this Court will be forced to call for explanation. This is in view of the fact that such rubber stamp cognizance order is in violation of the order passed by the Apex Court and followed by this Court.

3. This order shall be circulated to all the Principal District Judges across the State of Tamil Nadu. Instruction shall be given to the entire District Judiciary that cognizance should be taken



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after proper application of mind and the practise of rubber stamp cognizance must be stopped forthwith.

4. Mr.A.Gopinath, learned Government Advocate (Crl. Side) takes notice on behalf of the first respondent. Notice to the second respondent returnable by 28.03.2024. Private notice is also permitted.

5.Post this case under the same caption on 28.03.2024."

10. This Court, in the said order dated 20.3.2024, held that the rubber stamp cognizance order is, on the face of it, illegal and that such a practice should never be followed by the Magistrates. The act of taking cognizance is a judicial act, which requires application of mind and such a rubber stamp cognizance is prima facie material to hold that the Court below never applied its mind to the materials placed by the prosecution.

11. It is not necessary for this Court to go into the merits of the case since this Court is inclined to interfere with the cognizance order passed by the Court below dated 24.1.2023.



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12. Accordingly, the cognizance order dated 24.1.2023 passed by the learned 9th Metropolitan Magistrate, Saidapet, Chennai-15 is hereby set aside. The matter is remanded back to the file of the learned 9th Metropolitan Magistrate, Saidapet, Chennai-15 and he is directed to apply his mind on the materials that have been placed by the prosecution namely the final report and the statements recorded during the course of investigation and pass a fresh cognizance order within a period of four weeks from the date of receipt of a copy of this order. Based on the fresh cognizance order that would be passed, the learned 9th Metropolitan Magistrate, Saidapet, Chennai-15 shall proceed further in accordance with law.

13. The above criminal original petition is allowed with the above directions. Consequently, the connected Crl.M.P. is closed.

26.3.2024

RS



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N.ANAND VENKATESH,J

RS

To

- 1.The 9th Metropolitan Magistrate
Court, Saidapet, Chennai-15.
- 2.The Inspector of Police, W19
All Women Police Station,
Adyar, Chennai-20.
- 3.The Public Prosecutor,
High Court, Madras.

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