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Crl.O.P.No.28803 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: **24.09.2024**

CORAM

THE HONOURABLE MR.JUSTICE **K.K.RAMAKRISHNAN**

Crl.O.P. No.28803 of 2022

and

Crl.M.P.No.17643 of 2022

1.Mohammed Jiyayuddin

2.Jahir Hussain

3.Salim@mohamed Haleem

... Petitioners

Vs

1.The State rep. by
The Inspector of Police,
Chidambaram Town Police Station,
Cuddalore District.

2.Shahul Hameed

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, pleased to call for the records in Crime No.579/2022 on the file of the respondent and quash the same.

For Petitioners : Mr.P.G.Santhosh Kumar

For Respondents : Mr.A.Gopinath,
Government Advocate (Crl.side) for R1

Mr.C.Saifullah for R2



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ORDER

The Criminal Original Petition has been filed to quash the FIR registered in Crime No.579 of 2022 for the offences punishable under Sections 420, 467, 468, 406, 506(1) r/w 471 of IPC on the file of the first respondent police.

2. The petitioners are arrayed as accused No.1 to 3 in Crime No.579 of 2022. The petitioners are alleged to have misappropriated funds belonging to the mosque, which were intended to be used for the purchase of land through the WAKF Board. There is specific allegation that they are said to have collected amount from the public under the forged receipt and also they have not deposited the money in the proper account. Thereby, the first respondent police registered the case for the above said offences.

3. The learned counsel for the petitioners would submit that on perusal of the entire F.I.R., it is evident that no offence was made out against the petitioners. The whole transactions have taken place through the bank and hence, there was no offence to register the case. Hence, he seeks to quash the F.I.R.

4. Mr.A.Gopinath, learned Government Advocate (Crl.side) would



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submit that the complaint discloses cognizable offence and the defence of the accused has to be investigated by the Investigating Agency and considering the nature of the allegation that the petitioners and other accused are said to have misappropriated more than Rs.40 Lakhs, there is prima facie case, this is not a fit case for quashing the FIR at this stage.

5. The counsel appearing for the defacto complainant also reiterated the said submission.

6. Heard both sides and perused material available on record.

7. In this case, there is specific allegation against the petitioners that they are said to have misappropriated the amount of Rs.40 Lakhs by issuing the forged receipts and also the said collected amount was not deposited in the bank. But, the case of the petitioners that they have collected the amount, by issuing the receipts and deposited the same in the bank has to be investigated by the investigating agency. It is well settled principle at the stage of the FIR, the defence of the accused cannot be looked into. More over, the defence is a factual one and the same is to be investigated by the investigating agency. On the basis of the allegation, investigation is in progress. At this stage, quashing of the proceeding would amount to stifling



the prosecution at the budding and incipient stage. Apart from that when the allegation makes out a prima facie case and the same requires investigation, this Court has no power to quash the F.I.R.

8. The Hon'ble Supreme Court in the case of ***State of Haryana and others Vs. Bhajan Lal and others*** reported in ***1992 SCC (Cri) 426*** has enumerated 7 categories of cases, where the power can be exercised under Section 482 of Code of Criminal Procedure and the same are extracted hereunder:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) 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;



(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) 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;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) 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 just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding 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.”

9. Petitioner's case is not come under any of the above categories and



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it is pertinent to note that if the petition under Section 482 Cr.P.C. was filed at the stage of FIR, the allegations in the FIR/complaint only are required to be considered as to whether a cognizable offence is made out or not.

10. In the case on hand, as rightly contended by the learned Government Advocate (Criminal Side), a cursory perusal of the FIR makes out a *prima facie* case against the accused and it is a matter for investigation and as such, the question of quashing the FIR at this stage does not arise at all. Hence, this Court concludes that this is not a fit case to invoke Section 482 Cr.P.C., for quashing the FIR at this stage and the same is liable to be dismissed.

11. In the result, the Criminal Original Petition is dismissed. The first respondent is directed to complete the investigation and file the final report before the jurisdictional Magistrate within a period of three months from the date of receipt of copy of this order. After filing of the final report, the petitioners are at liberty to file a fresh quash petition, if so advised. Consequently, connected Miscellaneous Petition is closed.

24.09.2024

Index : Yes / No

Internet: Yes

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Speaking/non speaking order
shk/sbn

K.K.RAMAKRISHNAN, J.
shk/sbn

To

- 1.The Inspector of Police,
Chidambaram Town Police Station,
Cuddalore District.
- 2.The Public Prosecutor
High Court, Madras.

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and
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