



Crl.O.P.(MD) No.2906 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURTS

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Reserved on	12/9/2023
Pronounced on	16 /2/2024

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Crl.O.P.(MD) No.2906 of 2023
and Crl.M.P(MD).Nos.2649 and 2650 of 2023

Venu Srinivasan

... petitioner/A.1

Vs

1. The State of Tamil Nadu
rep. By the Additional Superintendent of Police
Chief Investigation Officer
Idol Wing – CID
Ashok Nagar
Chennai 600 083.

2. Rangarajan Narasimhan ... Respondents

Prayer: Petitions filed under Section 482 of the Code of Criminal Procedure to call for the entire records in C.C.No.1 of 2023 pending on the file of the learned Additional Chief Judicial Magistrate, Kumbakonam and quash the same.



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For Petitioner

...

Mr.Mahesh Jetmalani, Senior Advocate

& Mr.C.Manishankar, Senior Advocate
for Mr.R.S.Diwaagar

For respondents

...

Mr.Hasan Mohamed Jinnah,
State Public Prosecutor,
for Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

Mr.Rangarajan Narasimhan
(Party-in-person) for R.2.

- - - - -

ORDER

This Petition is filed under Section 482 of the Code of Criminal Procedure by Accused No.1 seeking quashment of C.C.No.1 of 2023, pending on the file of the learned Additional Chief Judicial Magistrate and Special Court for Idol Theft Cases, Kumbakonam.

2. Thiru.Rangarajan Narasimman of Sri Rangam, Trichy, filed a complaint on 23.07.2018 at about 10.30 a.m., before Idol Wing of CID alleging that after interacting with Archakas, devotees, after talking with the HR & CE Department officials and after doing research he came to



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know that petitioner/A.1 Thiru.Venu Srinivasan, A.2/Tmt.Thirumagal, A.3/Thiru.M.MuthiahSthapathy, Archakas and temple officials have one day prior to Kumbabhishegam in the year 2004 removed the old antique peacock idol with flower in its beak and replaced with duplicate peacock idol with snake in its beak. Basing on the said complaint, a case in Crime No.5 of 2018 was registered on 23.07.2018 under Sections 403, 406, 409, 202 r/w. 120-B of the Indian Penal Code against the petitioner/A.1 and other accused.

3. The Idol Wing of CID which was created as per G.O.MS.2098, dated 07.10.1983 to investigate the cases pertaining to idols, during the course of investigation examined 71 witnesses and recorded their statements under Section 161 (3) of the Code of Criminal Procedure. They also collected 57 documents, a CD and got recorded statements of 7 witnesses under Section 164(5) of Code of Criminal Procedure. After completion of investigation, charge sheet is filed against six persons namely A.2/Tmt.Thirumagal, A.3 / M.MuthiahSthapathy, A.4 / Thiru. Dhanapal, A.5/Thiru.T.A.Ranganathan, A.6/Thiru.Balu @ Balasubbarayalu and A.7/Thiru.Magesh for the offences under Section 403, 406, 409, 202, 120B of IPC @ Section 120B of IPC, 409, 109 read



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with Section 409, 201 and 204 of IPC.

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4. Insofar as petitioner/A.1 is concerned it is mentioned in the Charge Sheet, that there was no sufficient evidence either oral or documentary to link petitioner/A.1 with offences thereby, his name is not included in the Charge Sheet as accused and mentioned that in future if evidence emerges against the petitioner/A.1, a supplementary Charge Sheet will be filed.

The content of charge sheet in brief :-

5. A.2/Tmt.Thirumagal, was working as Deputy Commissioner/ Executive Officer of the Kapaleeshwarar temple, Mylapore during the year 2002 to 2007, A.3/Thiru.M. Muthiah Sthapathy, was Chief Sthapathy of the HR & CE Department during the year 2003-2004, A.4/Thiru.Dhanapal was Joint Commissioner of the HR & CE Department during the year 2002 to 2004 and he was specially appointed as Special Officer for the kumbhabhishegam ceremony at Kapaleeshwarar temple, Mylapore.

6. The Department of HR & CE has decided to renovate



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Kapaleeshwarar temple, Mylapore, Chennai. A.2 /Tmt.Thirumagal, the Executive Officer of the temple has engaged the services of Thiru Padmanabha Sharma of Irinjalakuda of Kerala, who performed the Ashtamangalaprashannam at Kapaleeshwarar temple from 7/10/2002 to 9/10/2002 in the presence of Sree Jayendra Saraswathi Swamigal, some of the accused and the temple priests. After completing the prashannam, Padmanabha Sharma has prepared a report listing out the faults (தேதாசம்) and suggested the remedies (பரிசீலனம்) indicating that “the dhoshams of the idol of Punnai Mara Nathar (holy peacock) should be remedied”. Whereas Thiru.Jayendra Saraswathi Swamigal suggested to conduct “Asthapandhana Maha Kumbhabhishegam”.

7. In respect of renovation of the Kapaleeshwarar Temple, Government has constituted, ThirupaniKuzhu Committee as per G.O.Ms.No.2D, No.7 dated 26/2/2003, with petitioner/A.1 Thiru.S.VenuSrinivasan as Chairman, Thiru.P.Sivandhi Adhithan, Thiru.B.A.Kothandaraman, Thiru.S.V.R.M.Ramanathan, Thiru.S.EkambaraMudhaliar, Dr.A.ThillaiVallal, Dr.P.S.Ayyappan, Thiru.S.Krishnasamy, Tmt.ParameshwariRathinavelu, Thiru.S.Kalyanasundaram and Thiru.P.ViswanathanKakkan, as members.



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8. Thiru.MuthiahStabathi/A3, the Chief Stapathy of the State has inspected the temple on 27.05.2003 and also on 20.04.2004 and suggested modifications and improvements including replacement of Raaghu and Kedhu idols at Navagraha Sannadhi, pair of Dwarabalagas at the entrance of the shrine of the main deity and the pair of Dwarabalagis at the entrance of the Ambal shrine and the damaged Chandran idol with newly made stone idols.

9. ThiruppaniKuzhu Committee accepted the recommendations of Irinjalakuda Padmanabha Sharma and Thiru Muthiah Stabathi/A.3 and decided to entrust the renovation and restoration work of the temple to Sri Venugopal Swamy Kaingariyam Trust of petitioner /A.1 Thiru.Venu Sreenivasan who under took to complete the renovation and restoration works free of cost and the same was approved by the department of HR & CE. Thiru.Venu Sreenivasan has deputed Thiru.T.A.Ranganadhan/A.5 to oversee the Thirupani works on behalf of Sri Venugopal Swamy Kaingariyam Trust, and services of A.6/ Thiru. Balu and A. 7/Thiru.Magesh were also engaged to assist A.5.



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10. Tmt.Thirumagal, being Executive Officer of the temple has prepared work estimate for purchase of new stone idols of Peacock, Raaghu, Kedhu, pair of Dwarabalagars, pair of Dwarabalagis and Chandran idols and the estimate was approved by Thiru.Dhanapal/A.3 Joint Commissioner of HR & CE Department and sent to Thiru.Ranganadhan/A.4 who carried out the entire civil contract works for Kumbhabhishegam on behalf of “Sri Venugopal Swamy Kaingariyam Trust”.

11. The cost of sculpting pair of Dwarabalagar and Dwarabalagi was donated by Sankara Madam, Kancheepuram. A.2/Tmt.Thirumagal and A.4/Thiru.Dhanapal have entrusted the work of making new stone idols of Peacock, Raaghu, Kedhu and Chandran to A.3 Thiru.MuthaiahStabathi who in turn got them sculpted at M/s.Sornam Sirpa Kalaikoodam at Kancheepuram. As per the instructions of A.2 to A.5 newly made stone idols of one pair of Dwarabalagar, one pair of Dwarabalagi, Peacock, Raaghu, Kedhu and Chandran were brought to Kabaleeshwarar Temple, Mylapore on 28.08.2004.



12. The priests of Kapaleeshwarar Temple have refused to perform the purification rites of the newly made idols, thereby; the purification ceremonies of these newly made stone idols were conducted by Rathina Sabhabathi Gurukkal, Amirdha Kadesa Gurukkal and Jaya Gurukkal on 29/8/2004 morning on the directions of A.2/Thirumagal. The newly made stone idols of one pair of Dwarabalagar and one pair of Dwarabalagi were installed at the entrance of the main deity and Ambalsannadhi.

13. On 29.08.2004, after temple priests have left the temple, at the behest and in the presence and under the directions of A.2, A.3, A.4, old stone idols of Peacock, Raaghu, Kedhu were removed from original place by A.5 to A.7. Further A.6 and A.7 have carried three old stone idols namely peacock idol with flower in its beak, Raagu, Kedhu and loaded them into the boot of private car of A.2 during night time. Then A.2 and A.4 have transported the old idols in the said private car and concealed them in a secret location, which is in the exclusive knowledge of A.2 and A.4. On 30th August, 2004, newly made stone idol of peacock with snake in its beak was installed at Punnaivananathar by A.5, A.6, on the specific instructions of A.2, A.3 and A.4.



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14. The silver armour (vellikavasam) of the antique stone idol of peacock donated by Thiru.Lakshmanan of TVS Group and the silver kavasams of Raaghu and Kedhu which were earlier donated by some unknown person were found to be totally unfit and unsuitable to the newly made idols of Peacock, Raaghu and Kedhu, as the size and shapes of peacock idol with snake in its beak is different from peacock idol with flower in its beak.

15. On conclusion of the investigation, the respondent No.1 police have filed final report/Charge Sheet alleging that A.2/ Tmt.Thirumagal, A.3/ Thiru.M. Muthiah Sthapathy and A.4/ Thiru.Dhanapal, A.5/ Thiru.T.A.Ranganathan, A.6/Thiru.Balu @ Balasubbarayalu and A.7/Thiru.Magesh have committed offences punishable under Section 403, 406, 409, 202, 120B, 109 read with Section 409, 201 and 204 of IPC on the file of the Additional Chief Judicial Magistrate, Kumbakonam.

16. Aggrieved by not taking the case on file against the petitioner/ Thiru.Venu Srinivasan, the second respondent/defacto complainant



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Thiru.Rangarajan Narasimhan, filed Protest Petition in Crl.M.P.No.224 of 2022 with a prayer to take cognizance offences against Thiru.Venu Srinivasan, and the same was allowed with the following order on 27/1/2023.

“In the result, this Court held that there is sufficient material available to take cognizance as against Venu Srinivasan along with other accused under Sections 403, 406, 409 r/w. 109 of the Indian Penal Code and directed to issue summons to the said Venu Srinivasan along with other and mentioned in the final report filed by the Investigation Officer as per Section 204 IPC, if the documents and other material in the final report is in order.”

17. Subsequently, on 30/1/2023, cognizance order was passed by learned Magistrate and on the final report, runs as under:-

“The Final Report is taken on file as against one Venu Srinivasan and other accused cited in the final report since sufficient recital is available to take cognizance under Sections 403, 406, 409, 202, 120 (B) read with Section 120(b), 409 read with Section 109, 409, 201,



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204 of IPC and issue summons to the accused by

28.02.2023 as per Section 204 of IPC.”

18. The status of the accused after taking the case on file against Thiru.Venu Srinivasan is as under:

A.1/ Thiru. Venu Srinivasan, A.2/ Tmt. Thirumagal, A.3/ Thiru. M.MuthiahSthapathy, A.4/ Thiru.Dhanapal, A.5/ Thiru.T.A.Ranganathan, A.6/ Thiru.Balu @ Bala Subbrayalu and A.7/ Thiru.Magesh.

19. Aggrieved by taking cognizance, the petitioner A.1 has filed this petition under Section 482 of Cr.P.C., seeking to quash the cognizance order. Respondent No.1/police and respondent No. 2/defactocomplainanthave filed separate counter affidavit.

20. Respondent No.1 Police and respondent No.2 defacto complainant have filed their counter affidavits.

21. Heard, the submissions of Mr.MaheshJetmalani, the learned Senior Counsel and other Senior Counsel appearing for the petitioners/A.



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1, Mr.E.Antony Sahaya Prabhar, the learned Additional Public Prosecutor appearing for the state and the defacto complainant/ Thiru.RangarajanNarashimhan, party in person and perused the entire material placed on record in detail.

22. The point for determination is whether cognizance order against petitioner/A.1 in C.C.No.1 of 2020 on the file of the learned Additional Chief Judicial Magistrate, Kumbakonam can be quashed.

23. Mr.MaheshJetmalani, the learned Senior Counsel appearing for the petitioners/A.1 has submitted vehemently that no incriminating material filed against the petitioner/A.1 along with the FIR and that even after elaborate investigations spanning for a period of four years also nothing incriminating was emerged against the petitioner/A.1, connecting to the offences alleged thereby Charge Sheet is filed omitting the name of petitioner/A1 and that along with Protest Petition also no material is filed connecting the petitioner/A.1 to the alleged offences, thereby orders of taking cognizance against the petitioner/A.1 are erroneous.

24. It is further submitted by the learned counsel for the petitioner



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that the FIR is vitiated by malafides as there is a history replete with abusive statements in the public domain by the complainant against petitioner/A.1. The malafides are compounded on account of inordinate delay of 14 years in the filing of the FIR with no personal knowledge on the part of the First Informant, and filed the complaint on the basis of alleged narrations by others.

25. It is further submitted that the offence of 409 IPC is not attracted to the facts of the instant case, even assuming the averments of facts to be true. According to him, the idols were never entrusted to any of the accused including the public servants i.e., Accused 2, 3 and 4. The Mylapore Temple is governed by the provisions of the The Tamil Nadu Hindu Religious And Charitable Endowments Act, 1959 and rules made there under, as per the said Act and Rules, the administration of all properties belonging to a religious institution, vests in the Trustees, thereby, the entrustment of dominion over temple property vests in the Trustees and that none of the accused in the instant case is a trustee. He has further submitted that assuming the averments in the FIR and police report to be true, the present is a simple case of theft and neither criminal breach of trust (S.406) nor aggravated criminal breach of trust that by a



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public servant (S.409). It is also submitted that the invocation of S.409 is a malafide exercise of power by the Idol Wing designed to overcome a bar of limitation under S.468 CrPC. There is no limitation for taking cognizance of an offence under S.409 since it is punishable with life imprisonment. However, other offences would be barred by limitation under S.468 (2)(c) CrPC.

26. It is further submitted that the witnesses claim to have knowledge of the alleged breach of trust that took place on 29.08.2004, however none of them complied with their statutory duty under Section 39 (viii) Cr.P.C to give information to the nearest Magistrate or police officer of the commission of such offence. Failure to perform this legal duty is an offence punishable u/s 202 IPC thereby this evidence deserves to be ignored and reliance on the same by the Idol Wing is a manifest abuse of power.

27. The learned counsel for the petitioner has further submitted that Idol Wing was duty bound to observe the imperative mandate Supreme Court of India in Lalitha Kumari that when there was a delay of 3 months of lodging of first information, police agency ought to have



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conducted a preliminary enquiry prior to registration of the FIR. But this was not done in a case where the delay was of 14 years. The police investigation has violated the right to a fair investigation of the case under Article 21. The total delay of 19 years from the date of occurrence of the alleged offence till the present is attributable entirely to the complainant, and the Idol Wing. Not only has this delay undermined the statutory and constitutional rights of accused persons and thereby, malicious prosecution against the petitioner/A.1 ought to be quashed.

28. It is submitted that a protest petition filed by the First Informant on 18.11.2022, was based purely on conjectures and surmises and did not specify either oral or documentary evidence connecting the petitioner/A.1 to the alleged offences. Though the Idol Wing of CID has filed final report deleting A.1 learned Magistrate accepted the protest petition, ignoring the conclusions of the Charge Sheet, took cognizance of offences u/s 403, 406, 409 r/w 109 and 120b IPC against petitioner/A.1 and issued process against all accused, including petitioner/A.1.

29. Learned Additional Public Prosecutor submitted that Archakas like Suresh Gurukal, SomeshekarGurukals and others have



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stated to the police that A.2, A.3, A.5 to A.7 were present when Astapandhanam of idols including newly made peacock, Raghu and Kedthu. He also submitted that four Archakas namely Balaji Gurukul, Kabali Gurukul, Venkata Subramaniya, Sivachariaya and Rathinasabapthy and two others have stated to the police that A.2 to A.7 have conspired and replaced peacock, Raghu, and Kedthu stone idols and when some of the Archakas have protested A.2 / Thirumagal, A.4/ Dhanapal have threatened them. He has further submitted that Driver of A.2 by name Sekar has stated to the Police that in his presence, the old peacock idol with flower in its beak was kept in the car boot of A.2 by A.2 and A.4.

30. Learned Additional Public Prosecutor appearing for the state has submitted that during the course of investigation of respondent No.1 police no evidence was found connecting to the alleged offences thereby his name was excluded in the Charge Sheet, however, since cognisance was also taken against the petitioner/A.1, let the trial be proceeded with.

31. The defacto complainant/ Thiru. Rangarajan Narashimhan has submitted that with the active connivance of Petitioner/A.1, the other



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accused persons have replaced the peacock idol with flower in its beak with peacock with snake in its beak. It is further submitted by the defacto complainant that the statements of the witnesses recorded by Police and other evidence placed before the Court are sufficient to conclude that A.1 to A.4 have conspired and replaced old antique idols of Peacock, Raghu, Kedhu with newly made idols with active connivance of A.5 to A.7 and concealed old antique idols at a secret place and misappropriated them to sell them for exorbitant amount for their personal illegal gain, during the course of evidence the respondent No.1 Police did not bother to record the statements of members of Thirupani Committee in order to help the petitioner/A.1 and other accused.

32. It is submitted by the defacto complainant that FIR is not an encyclopedia to give all the intricate and minute details of offence. For the said preposition, he has cited the judgment of the Hon'ble Supreme Court reported in **2020 SCC online SC 994 and also 2003 SCC online SC 518**. It is further submitted by the defacto complainant that even though incriminating material evidence is available against petitioner/A.1, prosecution made an attempt to protect him and exonerated him.



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33. Defacto complainant/R.2 has further submitted that the petitioner /A.1 is well educated powerful person and used his might and interfered with investigation, thereby managed to see that he is excluded as accused in the Charge Sheet. He has submitted that when priests have refused to accept the change of the idols, said issue must have known by the members of the ThirupaniKuzhu Committee including the petitioner. He has further submitted that this Court while considering Crl.O.P.Nos. 15492 and 24544 of 2019 and others have observed that as per the photographs found, in a book written by Mr.T.M.BhaskaraTonadiman, established that peacock idol with flower in its beak was available, the statement of Mr.Sekar shows that he has witnessed removal of peacock idol with flower in its beak and placing in the boot of the car of the accused No.2 with Registration No.TN-7-G-997, Silver Kavacham of the old idol does not fit to the new idol etc.

34. He has finally submitted that material available on record is enough to conclude that the petitioner/A.1 is master mind and has committed the offences alleged, hence urged this Court not to quash the Charge Sheet against the petitioner/A.1.



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35. Considering the rival submissions, it is to be examined whether basing on the material there is prima facie case to hold that the petitioner/A.1 has abated change of peacock idol with flower in its beak with peacock idol with snake in its beak, and its concealment and misappropriation by A.2 to A.7.

36. Respondent No.1 Police have filed the statements of 71 witnesses and analysing the said statements of witnesses the defacto complainant Thiru.Rangarajan Narasimhan, is not an eye witness to the alleged offence and that according to his statement and contents of complainthe came to know about change in the peacock through others.Thiru SubramaniyaSivachariyar who was working as full time Priest in Kapaleeswarar Temple at the relevant time, Kabali Vaidyanathanwho was working as a priest in the said temple, Duraisamywho was worked as Chief Priest in the said temple, Ganapathy who was working as Chief Priest in the said temple and Ganesan, Ramasamy, D.S.Velayudham have stated to the police in their statements recorded under Section 161(3) of Cr.P.C., that in their presence peacock idol with flower in its beak was replaced with peacock idol with snake in its beak by A.2, A.4 to A.7. They did not speak anything incriminating



about the petitioner/A.1.

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37. Similarly, Prabhakaran, Swaminathan, Kaveri who was working as Executive Officer, Balasubbirayulu, Magesh, Kalyana Sundaram and A.Arjunan stated to the police in their statement that they came to know that peacock idol with flower within its beak was replaced with peacock idol with snake in its beak. Thiru.Manikandan who was working as Housing Keeping Supervisor, has stated to the Police that he came to know about the alleged offence through new papers. They are not the eye witness to say that accused have committed the offence. These witnesses also did not speak anything connecting the petitioner/A.1 to the alleged offence.

38. One Amirthagadeswarar has stated to police that as per the directions of the A2, he along with Thiru.Natarajan and Thiru.Subramaniyan have performed Astabandhanam to the newly made idols of Peacock, Dwarabalagar and Dwarabalagi, Raaghu, Kedhu in presence of A.2, A.3, A.5 to A.7. These witnesses did not speak about involvement of petitioner/A.1, in any manner.



39. Therefore, considering the oral and documentary evidence placed along with the Charge Sheet there is nothing incriminating against the petitioner/A.1.

40. The defacto complainant/R.2 has relied upon the decision of the Hon'ble Supreme Court in ***Superintendent of Police, CBI and Ors vs. Tapan Kumar Singh***, reported in (2003) 6 SCC 175 for the proposition that FIR need not disclose all the facts and the details relating to offence and the relevant portions of the judgment runs as under:

“20. It is well settled that a First Information Report is not an encyclopedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eyewitness so as to be able to disclose in great detail all aspects of the offence committed. What is significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage, it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect, on the basis



of information received, that a cognizable offence may.”

41. It is true, that minute details are not required to be mentioned in an FIR. FIR will be issued, in case, if the contents of complaint show prima facie commission of a cognizable offence. However in the case on hand, in the complaint the petitioner himself is not clear as to the commission of offence. What is clear in the complaint is peacock with flower in its beak was replaced with peacock idol with snake in its beak in the year 2004, there are no details at all as to how it was done, on what date it was done, in whose presence it was done and no material to mention the name of petitioner A.1 connecting him to the alleged offence. When such incomplete complaint without details of commission of offence by the petitioner/A.1 and other accused, the police should not have ventured to register FIR straight away without resorting of preliminary enquiry as mandated in ***Lalitha kumari vs. Government of Uttar Pradesh and others*** reported in (2014) 2 SCC 1, at para No.120.6 relevant portion is extracted as under:

“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 categories of cases in which preliminary inquiry may



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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."*

42. According to the statement of Vishwanathan, who took video and photographs at the time of consecration ceremony initially peacock idol with flower in its beak was in the north eastern side of the temple. Thereafter, before consecration, poojas were performed to the peacock idol outside, at that time, there were no flowers in the beak of the peacock, instead a dragon was placed, he took photos and videos during the said pooja, in which Executive Officer Mr.Thirumagal/A.2 also participated.Thiru.Vishwanathan further stated in his statement that during the consecration, photographs and videograph of the kumbabishekam were taken by him and he took the CD containing the videographs and photographs and gave them to A.2.Thirumagal and she has kept them in the cupboard of the office. However, present Executive Officer – Kauvery asked him for copy of CD and photographs but he



could not give the copies as they were not available.

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43. It is submitted by the learned counsel for the petitioner that the CD filed by the police along with the charge sheet is not admissible in evidence as there is no certification as mandated under Section 65 (B) of the Evidence Act. Above all, admittedly petitioner/A.1 was not present when consecration ceremony was performed and the evidence of CD and photographs will not thereby connect the petitioner/A.1 to the offences alleged against him.

44. It is submitted by learned Senior Counsel for the petitioner that the cognizance order passed against the petitioner/A.1 is erroneous as there was no application of mind as the material placed before the Court by the Police and defacto complainant do not speak anything against the petitioner/A.1.

45. The learned counsel appearing for the petitioner/A.1 has cited following judgments in respect of cognizance order.

(i). The relevant portion of judgment of Hon'ble Apex Court in ***Vishnu Kumar Tiwari vs. State of Uttar Pradesh***, reported in



MANU/SC/0916/2019 reads as under:

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"26) It is undoubtedly true that before a Magistrate proceeds to accept a final report under Section 173 and exonerate the accused, it is incumbent upon the Magistrate to apply his mind to the contents of the protest petition and arrive at a conclusion thereafter. While the Investigating Officer may rest content by producing the final report, which, according to him, is the culmination of his efforts, the duty of the Magistrate is not one limited to readily accepting the final report. It is incumbent upon him to go through the materials, and after hearing the complainant and considering the contents of the protest petition, finally decide the future course of action to be, whether to continue with the matter or to bring the curtains down."

(ii). The Hon'ble Supreme Court of India in a case reported in 2023 Livelaw (SC) 730, ***Zunaid Vs State of Uttar Pradesh and Others***, it is held as thus:

"8. The High Court while passing the impugned order, observed as under: - "20. When the findings recorded by concerned Magistrate as noted above, are examined in the light of the observations contained in paragraph 28 of the judgement in Hari Ram (supra) do not fulfill



the mandate of law which the Magistrate is required to comply while exercising jurisdiction under Section 190

(1) (b) Cr.P.C. No finding has been recorded by concerned Magistrate with regard to the papers accompanying the police report. Without recording any finding that there is no evidence against applicants in the papers accompanying police report, the conclusion drawn by Magistrate to treat the protest petition as a complaint is not only illegal, but also arbitrary. Once the Magistrate came to prima facie conclusion that investigation of concerned case crime number is unsatisfactory or is the outcome of lackadaisical approach of investigating Officer, then in that eventuality, concerned Magistrate ought to have directed further investigation in the matter. The findings recorded by concerned Magistrate in support of his conclusion to treat the protest petition as a complaint are by themselves insufficient to proceed with the protest petition as a complaint.”

9. In our opinion, the above observations recorded by the High Court are absolutely erroneous in view of the catena of decisions of this Court.

10. In Rakesh & Another Vs. State of Uttar Pradesh & Another 1 , it is observed as under: - “6. If we are to go back to trace the genesis of the views expressed by this



Court in Gopal Vijay Verma v. Bhuneshwar Prasad Sinha, (1982) 3 SCC 510, notice must be had of the decision of this Court in H.S. Bains v. State (UT of Chandigarh) (1980) 4 SCC 631 wherein it was held that after receipt of the police report under Section 173, the Magistrate has three options: (H.S. Bains case (supra) “6. (1) he may decide that there is no sufficient ground for proceeding further and drop action; (2) he may take cognizance of the offence under Section 190(1)(b) on the basis of the police report and issue process; this he may do without being bound in any manner by the conclusion arrived at by the police in their report; (3) he may take cognizance of the offence under Section 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Section 200. If he adopts the third alternative, he may hold or direct an inquiry under Section 202 if he thinks fit. Thereafter he may dismiss the complaint or issue process, as the case may be.” The second and third options available to the Magistrate as laid down in H.S. Bains (supra) has been referred to and relied upon in subsequent decisions of this Court to approve the action of the Magistrate in accepting the final report and at the same time in proceeding to treat either the police report or the initial complaint as the basis for further action/enquiry in the matter of the allegations levelled therein. Reference in



this regard may be made to the decision of this Court in Gangadhar Janardan Mhatre v. State of Maharashtra (2004) 7 SCC 768. The following view may be specifically noted: “9.The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his powers under Section 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(a) though it is open to him to act under Section 200 or Section 202 also. [See India Carat (P) Ltd. v. State of Karnataka, (1989) 2 SCC 132]” (SCC P. 140, Para 16).”

11. In view of the above, there remains no shadow of doubt that on the receipt of the police report under Section 173 Cr.P.C., the Magistrate can exercise three options. Firstly, he may decide that there is no sufficient ground for proceeding further and drop action. Secondly, he may take cognizance of the offence under Section 190(1)(b) on the basis of the police report and issue process; and thirdly, he may take cognizance of the offence under Section 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Section 200. It



may be noted that even in a case where the final report of the police under Section 173 is accepted and the accused persons are discharged, the Magistrate has the power to take cognizance of the offence on a complaint or a Protest Petition on the same or similar allegations even after the acceptance of the final report. As held by this Court in Gopal Vijay Verma Vs. Bhuneshwar Prasad Sinha and Others 2 , as followed in B. Chandrika Vs. Santhosh and Another 3 , a Magistrate is not debarred from taking cognizance of a complaint merely on the ground that earlier he had declined to take cognizance of the police report. No doubt a Magistrate while exercising his judicial discretion has to apply his mind to the contents of the Protest Petition or the complaint as the case may be.”

46. The judgment of Hon'ble Apex Court in ***Vishnu Kumar Tiwari vs. State of Uttar Pradesh through Secretary Home, Civil Secretariat Lucknow and Another***, reported in MANU/SC/0916/2019 and the relevant portion reads as under:

"26) It is undoubtedly true that before a Magistrate proceeds to accept a final report under Section 173 and exonerate the accused, it is incumbent upon the Magistrate to apply his mind to the contents of the



protest petition and arrive at a conclusion thereafter. While the Investigating Officer may rest content by producing the final report, which, according to him, is the culmination of his efforts, the duty of the Magistrate is not one limited to readily accepting the final report. It is incumbent upon him to go through the materials, and after hearing the complainant and considering the contents of the protest petition, finally decide the future course of action to be, whether to continue with the matter or to bring the curtains down.”

47. In the case on hand, the learned Additional Chief Judicial Magistrate, while accepting the final report submitted by the respondent No.1 Police has also entertained the Protest Petition and has passed orders in the Protest Petition taking cognizances of the offences, against the petitioner/A.1 without following the procedure contemplated under Section 200 of Cr.P.C.

48. It is submitted by learned Senior Counsel for the petitioner that even if all the contents of Charge Sheet and other material placed by the Police as well as defacto complainant are accepted to be true still no offence is made out against the petitioner/A.1 and false case has been



filed against him with malafide intention in order to tarnish image of petitioner/A.1 in the society, and that cognizance orders are passed without any merits thereby continuation of proceedings against the petitioner/A.1 is abuse of process of law.

49. In a celebrated judgment of Hon'ble Apex Court, in ***State of Haryana v. Bhajan Lal***, reported in 1992 (1) SCC 335, it is held as under:

“102.(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 FIR 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 specific provisions 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 malafied and/or where the proceeding is maliciously instituted with an view to spite him due to private and personal grudge.”*

50. Hon'ble Apex Court in ***Chandran Ratnaswami and others vs. K.C.Palanisamy and others***, reported in (2013) 6 Supreme Court Cases observed as under:

“33. The doctrine of abuse of process of court and the remedy of refusal to allow the trial to proceed is well-established and recognised doctrine both by the English courts and courts in India. There are some established principles of law which bar the trial when there appears to be abuse of process of court.

34. Lord Morris in Connelly v. Director of Public Prosecutions, observed: (AC pp. 1301-02)

"There can be no doubt that a court which is endowed



with a particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction. A court must enjoy such powers in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of its process. The power (which is inherent in a court's jurisdiction) to prevent abuses of its process and to control its own procedure must in a criminal court include a power to safeguard an accused person from oppression or prejudice." In his separate pronouncement, Lord Delvin in the same case observed that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial.

35. In Hui Chi-ming v. R.¹⁰, the Privy Council defined the word "abuse of process" as something so unfair and wrong with the prosecution that the court should not allow a prosecutor to proceed with what is, in all other respects, a perfectly supportable case.

39. This Court in State of Karnataka v. L. Muniswamy⁴, observed that the wholesome power under Section 482 CrPC entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and



criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. The Court observed in this case that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. It was held in this case: (SCC p. 703, para 7)”

51. The judgment of Hon'ble Apex Court in ***Rajiv Thapar and Others vs. Madan Lal Kapoor***, reported in (2013) 3 Supreme Court Cases 330 and the relevant portion reads as under:

“30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:

30.1. Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and



condemn the factual basis of the accusations as false?

30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious”

52. The judgment of Hon'ble Apex Court in ***Prof.R.K.Vijayasarathy& another vs. Sudha Seetharam & another***, reported in ***(2019) 16 Supreme Court Cases 739*** and the relevant portion reads as under:

“9. Section 482 of the Code of Criminal Procedure saves the inherent power of the High Court to make orders necessary to secure the ends of justice. In Indian Oil Corpn. v. NEPC (In-dia) Ltd.^o, a two-Judge Bench of this Court reviewed the precedents on the exercise of



jurisdiction under Section 482 of the Code of Criminal Procedure 1973 and formulated guiding principles in the following terms: (SCC p. 748, para 12)

"12.(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused. For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(ill) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been



stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the b which are absolutely necessary for making out the offence."

10. The High Court, in the exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, is required to examine whether the averments in the complaint constitute the ingredients necessary for an offence alleged under the Penal Code. If the averments taken on their face do not constitute the ingredients necessary for the offence, the criminal proceedings may be quashed under Section 482. A criminal proceeding can be quashed where the allegations made in the complaint do not disclose the commission of an offence under the Penal Code. The complaint must be examined as a whole, without evaluating the merits of the allegations. Though the law does not require that the complaint reproduce the legal ingredients of the offence verbatim, the complaint must contain the basic facts necessary for making out an offence under the Penal Code."

53. The judgment of Hon'ble Apex Court in ***Chandran Ratnaswami vs. K.C.Palanisamy and others***, reported in (2013) 6 Supreme Court Cases 740 and the relevant portion reads as under:

"33. The doctrine of abuse of process of court and the



remedy of refusal to allow the trial to proceed is well-established and recognised doctrine both by the English courts and courts in India. There are some established principles of law which bar the trial when there appears to be abuse of process of court.

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"There can be no doubt that a court which is endowed with a particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction. A court must enjoy such powers in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of its process. The power (which is inherent in a court's jurisdiction) to prevent abuses of its process and to control its own procedure must in a criminal court include a power to safeguard an accused person from oppression or prejudice." In his separate pronouncement, Lord Delvin in the same case observed that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial.

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39. *This Court in State of Karnataka v. L. Muniswamy*⁴, observed that the wholesome power under Section 482 CrPC entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. The Court observed in this case that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. It was held in this case: (SCC p. 703, para 7)”

54. In the complaint, the defacto complainant has mentioned that basing on his research he was sure that original idol of Parvathy in the fore peacock with flower in her beak was replaced with duplicate idol with peacock with snake in its beak in the year 2004, in the Kapaleeshwar Temple, Mylapore, Chennai, which is of more than 1400 years old, Insofar as, allegations leveled against the accused including the petitioner/A.1 is concerned, it is mentioned in the complaint that his discussions with Archakas, visitors of temple and officials of HR & CE



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employees, he came to know that the petitioner/A.1, M/s.Thirumagal/A.2, Thiru.MuthiahStapathy/A.3 and Archakas and temple officials are directly involved in the theft by way dishonest misappropriation after committing criminal breach of trust.

55. Therefore, the only source of information to the complainant that the petitioner/A.1 and others have committed offences, is Archkas, regular visitors of temple and employees of HR& CE Department. The petitioner has not mentioned the names of Archakas, name of visitors and employees of Department who have told him about the involvement of petitioner.A.1 and other accused.

56. The learned Additional Chief Judicial Magistrate, in the orders of Protest Petition dated 27.01.2023 in Crl.M.P.No.224 of 2022 has observed that the Court has considered the material filed by the Investigating Officer along with final report wherein it is concluded by the police that on day of Kumbabisegam in the year 2004 antique stone idol of peacock with flower in its beak was replaced with snake in its beak. While mentioning that petitioner/A.1 as Chairman of Venugopal Swamy Kainagryam Trust, has undertaken to complete the renovation and restoration work and deputed Ranganathan, Balu and Mahesh, it is



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observed in the order that no renovation and removal of idol can be done without knowledge of the petitioner as he has deployed his own people to the work. Similarly it is also observed in the order that since petitioner/A.1 was the Chairman of the ThirupaniKuzhu Committee without his knowledge, idol could not have been removed. It is also observed the fact that priests have opposed of the replacement of stone idol could have been informed to the petitioner being the Chairman of Thirupanikuzhu Committee. On the basis of such observations, learned Magistrate in his order held that, sufficient material is available to show that the without knowledge and abetment of petitioner/A.1, the peacock idol could not have been removed from the temple and replaced with new one.

57. On analyzing the cognizance order referred above with the material placed by the respondent No,1 Police in the Charge Sheet it is clear that none of the witnesses have spoken that the petitioner/A.1 has knowledge about change of peacock idol. There is no dispute that the petitioner was the Chairman of ThirupaniKuzhu Committee, there is also no dispute that he has deputed three of his persons to attend renovation work of the temple, it is also true that he has under taken to renovate the temple work as a Chairman of Venugopal Swamy Kainagryam Trust.



However, how can these aspects make him responsible for change of idol allegedly by other accused. The learned Magistrate has invented his own imagination without any material that the petitioner/A.1 could have known about change of idol. The learned Magistrate is expected to find out and scrutinize the material of the Charge Sheet to know whether is any evidence which can be accepted before the Court connecting the petitioner to the offences alleged against him. Learned Magistrate failed to spell out as to what is the source for his imagination and conclusion. Unfortunately, the learned Magistrate has not done that exercise. Cognizance cannot be taken against any person for any offence, without there being any evidence only basing on surmises, conjectures, imaginations.

58. Merely making allegation that A.1 is having knowledge being the Chairman of the Thirupani Committee is not sufficient. There shall be a material *prima facie* to show that he was having knowledge and he was in connivance with the other accused have replaced the old peacock idol. None of the 71 witnesses whose statements were recorded by the respondent police have stated that with the knowledge or connivance or abetment of the petitioner/A.1, the peacock idol was changed by other



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accused. There is also no record that A.5, A.6 and A.7 have been informing, the petitioner/A.1 about every development of the renovation including the plan to change the peacock idol.

59. If at all A.1 as a Chairman of ThirupaniCommitte is aware of the developments including removal of the idol in advance, all other members of the Thirupani Committee were expected to have knowledge thereby they should also be made as accused. Strangely, the statements of Thirupani Committee have not been recorded by the police to show that whether they have any knowledge about connivance, abetment or knowledge of A.1 in replacing the old idol with new one. Further no material is placed as to which of the accused has informed the petitioner/A.1 about change of peacock idol. No witness has stated that petitioner/A.1 has knowledge about alleged change of idol.

60. According to the cognizance orders, the petitioner/A.1 has abated the other accused to commit the offences punishable under Sections 403, 406, 409 of IPC.

61. Section 403 of I.P.C runs as under:

*“403. Dishonest misappropriation of property.—
whoever dishonestly misappropriates or converts*



to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

62. Section 405 of I.P.C runs as under:

“405. Criminal breach of trust.—

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.

63. Section 406 is the punishment of Criminal breach of trust

which runs as under:

“406. Punishment for criminal breach of trust.—
Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both”

64. Section 409 of IPC runs as under:

“409. Criminal breach of trust by public servant, or by banker, merchant or agent.— Whoever, being in



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any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with 410[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

65. According to the prosecution, the accused A.2 to A.7 have committed the offences punishable under Sections 403, 406 and 409 of IPC. Even if there is a material to hold that other accused have committed the offences for the offences under Sections 403, 406, 409 of IPC, the question to be considered whether the petitioner/A.1 has abated any one of the other accused to commit the offences under Section 403, 406 and 409 of IPC. The definition for abatement can be gathered from Section 107 of IPC which runs as under:

“107. Abetment of a thing.—A person abets the doing of a thing, who— First.—Instigates any person to do that thing; or Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.



Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

66. Section 109 of IPC deals with punishment for abetment which runs as under:

“109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.—Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.”

67. In order to prove the offences of abatement of misappropriation and criminal breach of trust by the petitioner, the prosecution must place evidence before the Court to show that the petitioner/A.1 has either instigated or conspired or aided the other accused in committing the offences punishable under Sections 403, 406, 409 of IPC. The evidence



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gathered by the prosecution in the form of Charge Sheet by the Police and any other material that the defacto complainant has produced, will not speak that the petitioner A.1 has abated or instigated or conspired or aided to commit the offences punishable under Sections 403, 406, 409 of IPC.

68. As already observed the material placed along with Charge Sheet even if accepted on the face of it, there is nothing which shows that petitioner/A.1 has abated the other accused to commit the offences under Section 403, 406 and 409 of IPC. Even if the cognizance order is taken into consideration the petitioner has only knowledge about change of idol having knowledge is not sufficient to say that he has abated the other accused to commit offences under Section 403, 406 and 409 of IPC.

69. The learned Senior Counsel appearing for the petitioner/A.1 has submitted that there is no material connecting the petitioner/A.1 to the alleged offences however cognizance was taken basing vicarious liability which is not known to the Criminal law. There is no concept of vicarious criminal liability. In the cognizance order, the learned Magistrate has specifically mentioned that since A.4, A.6 and A.7 were



deputed by petitioner/A.1 to attend renovation work of the temple, the petitioner/A.1 could have known about the change of peacock idol, however there is no record to show that A4, A6 and A.7 have informed the petitioner/A.1 about the change of idol.

70. Hon'ble Supreme Court in ***Sham Sunder and others vs. State of Haryana***, reported in (1989) 4 SCC 630, has observed:

“9. But we are concerned with a criminal liability under penal provision and not a civil liability. The penal provision must be strictly construed in the first place. Secondly, there is no vicarious liability in criminal law unless the statute takes that also within its fold. [Section 10](#) does not provide for such liability. It does not make all the partners liable for the offence whether they do business or not.

10. It is, therefore, necessary to add an emphatic note of caution in this regard. More often it is common that some of the partners of a firm may not even be knowing of what is going on day to day in the firm. There may be partners, better known as sleeping partners who are not required to take part in the business of the firm. There may be ladies and minors who were admitted for the benefits of partnership. They may not know anything about the business of the firm. It would be a travesty of justice to prosecute all partners and ask them to prove under the proviso to sub-section (1) that the offence was committed without their knowledge. It is significant to note that the obligation for the accused to prove under the proviso that the offence took place without his knowledge or that he exercised all due diligence to prevent such offence arises only when the prosecution establishes that the requisite condition mentioned in



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sub-section (1) is established. The requisite condition is that the partner was responsible for carrying on the business and was during the relevant time in charge of the business. In the absence of any such proof, no part- ner could be convicted. We, therefore, reject the contention urged by counsel for the State.”

71. Hon’ble Supreme Court in ***S.K.Alagh vs. State of Uttar***

Pradesh and Others reported in (2008) 5 SCC 662, has observed.

“16. [Indian Penal Code](#), save and except some provisions specifically providing therefor, does not contemplate any vicarious liability on the part of a party who is not charged directly for commission of an offence.

17. A criminal breach of trust is an offence committed by a person to whom the property is entrusted.

18. Ingredients of the offence under [Section 406](#) are :

"(1) a person should have been entrusted with property, or entrusted with dominion over property;

(2) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or willfully suffer any other person to do so;

(3) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust."

19. As, admittedly, drafts were drawn in the name of the company, even if appellant was its Managing Director, he cannot be said to have committed an offence under [Section 406](#) of the Indian Penal Code. If and when a



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statute contemplates creation of such a legal fiction, it provides specifically therefor. In absence of any provision laid down under the statute, a Director of a company or an employee cannot be held to be vicariously liable for any offence committed by the company itself. {See [Sabitha Ramamurthy and Anr. v. R.B.S. Channabasavaradhya](#) [(2006) 10 SCC 581]}.

20. We may, in this regard, notice that the provisions of the Essential Commodities Act, Negotiable Instruments Act, Employees' Provident Fund (Miscellaneous Provision) Act, 1952 etc. have created such vicarious liability. It is interesting to note that Section 14A of the 1952 Act specifically creates an offence of criminal breach of trust in respect of the amount deducted from the employees by the company. In terms of the explanations appended to [Section 405](#) of the Indian Penal Code, a legal fiction has been created to the effect that the employer shall be deemed to have committed an offence of criminal breach of trust. Whereas a person in charge of the affairs of the company and in control thereof has been made vicariously liable for the offence committed by the company along with the company but even in a case falling under [Section 406](#) of the Indian Penal Code vicarious liability has been held to be not extendable to the Directors or officers of the company. {See [Maksud Saiyed v. State of Gujarat and Ors.](#) [2007 (11) SCALE 318]}.

21. The High Court, therefore, committed a manifest error in passing the impugned judgment.

22. For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly. The appeal is allowed. Respondent No.2 is liable to bear the costs of the appellant for causing harassment to him which is quantified at Rs.1,00,000/- (Rupees one lac only).”



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72. On perusal of the impugned order of the Additional Chief Judicial Magistrate, it is clear that it was based on speculative conjectures and there was no application of mind, and the order refers to neither documentary nor oral evidence filed along with the Charge Sheet or any material in the Protest Petition to support the conclusion of involvement of Petitioner/A.1. Further while differing with a police report learned Magistrate has not given any reasons for differing with the investigating agency and the Court has failed to give reasons as to how the petitioner/A.1 had knowledge of the alleged criminal acts of the other accused. Only on the basis of vicarious liability cognizance orders were passed against the petitioner/A.1 which is not know to Criminal Law.

73. On considering the submissions made the learned Senior Counsel appearing for the petitioner, the learned Additional Public Prosecutor and the defacto complainant /party in person and on perusal of the entire records including the Charge Sheet, orders, in the Protest Petition the cognizance order etc, this Court is of the firm view that there are no merits in the orders passed by the learned Chief Judicial Magistrate, Kumbakonam, taking cognizance of the offences against the



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petitioner/A.1, thereby continuation of the proceedings against the A.1 in C.C.No.1 of 2023 on the file learned Additional Chief Judicial Magistrate, Kumbakonam, amounts to abuse process of law, thereby it is a fit case where this Court by exercising the inherent powers of this Court under Section 482 of Cr.P.C., can interfere.

74. Accordingly, this Criminal Original Petition is allowed and the case against the petitioner/A.1 in C.C.No.1 of 2023 is hereby quashed. Consequently connected miscellaneous petitions are closed.

pkn/mvs/jai
Index: yes/No
Neutral Citation: Yes/No

16/2/2024
(1/3)

To

1. The Additional Superintendent of Police
State of Tamil Nadu
Chief Investigation Officer
Idol Wing – CID
Ashok Nagar
Chennai 600 083.



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Dr.D.NAGARJUN, J..

pkn/mvs/jai

Pre-delivery order made in

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16/2/2024

(1/3)