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Crl.O.P.(MD)No.13629 of 2021



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.12.2023

Delivered on : 22.02.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.O.P.(MD)No.13629 of 2021

and

Crl.M.P.(MD).No.7107 of 2021, 7419 and 280 of 2022

Arumugam @ Arumugaperumal

... Petitioner

Vs.

1.The Inspector of Police,
Kottar Police Station,
Kanyakumari District.

2.S.Iyyappan

... Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records in Crime No.726 of 2021 on the file of the first respondent Police and quash the same as illegal in so far as the petitioner's concerned.

For petitioner : Mr.B.Janarth Kumar

For 1stRespondent : Mr.P.Kottaichamy

Government Advocate (Crl. Side)

For 2nd Respondent : Mr.G.Anto Prince



was taken in the name of the husband without the knowledge and disclosure of the fact either to the deceased Sindhu or to the second respondent/defacto complainant. Hence, he made a complaint before the first respondent Police with allegations that they intentionally received the said amount and cheated the second respondent/defacto complainant and thereby, they caused loss to the defacto complainant. Since no action was taken, he filed an application under Section 156(3) of Cr.P.C., before the learned Judicial Magistrate No.II, Nagercoil and the same was ordered on 11.08.2021 against the petitioner. Based on which, the first respondent Police registered a case in Crime No.726 of 2021 for the offence under Section 420 of IPC. To quash the same, the present petition has been filed.

3. The learned counsel appearing for the petitioner submitted that he is the Branch Manager and he is no way connected with the above transaction and as per the bank procedure, he took the insurance policy in the name of the vehicle, which was to be used. In the said circumstances, the insurance policy was taken in the name of the second respondent. He admitted the fact that no insurance policy was taken in the name of the wife. As per the learned counsel appearing for the petitioner, it is purely a commercial transaction. If the bank has



committed any fault for not taking insurance in the name of the wife, the defacto complainant has the remedy by way of approaching appropriate forum. But, the criminal case was registered. Through the above said transaction, the petitioner never made any wrongful gain. There is no allegation against the petitioner that he gained through the said transaction. In the said circumstances, this case squarely falls in the category of the ***Bajanlal Case*** reported in ***1993 2 Supplementary SC 356***. Further, he also placed the judgment of the Honourable Supreme Court in the case of ***Uma Shankar Gopalika Vs. State of Bihar and Another*** reported in ***(2005) 10 Supreme Court Cases 336***. On the basis of the above judgment of the Supreme Court, he argued that no offence of cheating was made out against the Petitioner. Hence, he seeks quashing of the FIR.

4. The learned counsel appearing for the defacto complainant submitted that the FIR was registered for the offence under Section 420 of IPC. After completing the investigation only, the first respondent Police has filed a case with relevant Section. At this stage, this Court is duty bound to see as to the allegations made in the FIR, has made out any *prima facie* case is made out to constitute the offence. In this case, the petitioner received the said amount with false promise that the



insurance policy would be taken in the name of the wife, namely the deceased. Further, in the case of natural or unnatural death, in order to recover the loan amount, the insurance was taken. In the said circumstances, the petitioner, without taking the loan in the name of the wife, cheated the defacto complainant and hence, the defacto complainant suffered a huge loss on account of the policy. As per the policy, if the owner of the vehicle died, the insurance company is liable to pay the loan amount. In the absence of the said policy, which was not taken in the name of the deceased, the bank would seize the vehicle and also make unjust enrichment. From the above, it is clear that there is a cheating on the part of the petitioner. Hence, he seeks for dismissal of the quash petition. He also stated that when allegations to make out the offences are made in the FIR, this Court's jurisdiction is very much limited and hence, the investigation may be allowed to continue.

5. The learned Government Advocate (CrI. Side) reiterated the submission of the learned counsel appearing for the defacto complainant and submitted that the investigation has been completed. But, due to the interim stay that was granted by this Court, the investigating officer was unable to file the final report. He further submitted that the petitioner had promised to take the insurance policy in the name of the deceased,



but he took the insurance policy in the name of the second respondent and hence, there was a wrongful loss to the deceased. In the said circumstance, he seeks for dismissal of the quash petition.

6. This Court considered the rival submission and also precedents relied upon by them and the impugned FIR.

7. In the FIR, it is stated that the petitioner, is the Branch Manager of the Equitas Small Finance Bank Limited, Ramanputtur, Nagercoil. The defacto complainant has received a sum of Rs.6,00,000/- from the petitioner's bank and the petitioner's bank promised that the insurance policy has been taken in the name of the wife, who had taken the loan from the petitioner's bank. Even though, they received the amount with a promise that insurance policy would be taken in the name of the deceased Sindhu, but the petitioner failed to take policy. Hence, there is a prima facie allegation against the petitioner to constitute the offence under Section 420 of IPC. The Hon'ble Supreme Court has issued caution notice to refrain from exercising the inherent power to quash the FIR, when the investigation is in progress. The inherent power should not be exercised to stifle the legitimate prosecution. It would not proper for this Court to analyze the case of the defacto complainant in the light of all



probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. This Court should normally refrain from giving prima facie decision when the investigations are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court.

In this aspect, it is relevant to extract the following portion of the Hon'ble Supreme Court Judgment:-

In ***R.P. Kapur v. State of Punjab***, reported in ***AIR 1960 SC 866***].

(iii) Where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is



the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained.”

10.5. In *Zandu Pharmaceutical Works Ltd. [Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque*, reported in (2005) 1 SCC 122

“11. ... the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to



cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed



and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings.”

10.6. In *Sanapareddy Maheedhar Seshagiri* [Sanapareddy Maheedhar Seshagiri v. State of A.P., reported in (2007) 13 SCC 165:

“31....The High Court should not go into the merits and demerits of the allegations simply because the petitioner alleges malus animus against the author of FIR or the complainant. The High Court must also refrain from making imaginary journey in the realm of possible harassment which may be caused to the petitioner on account of investigation of FIR or complaint. Such a course will result in miscarriage of justice and would encourage those accused of committing crimes to repeat the same.”



(Arun Gulab Gawali case [State of Maharashtra v. Arun Gulab

Gawali, reported in (2010) 9 SCC 701:

“13. The power of quashing criminal proceedings has to be exercised very sparingly and with circumspection and that too in the rarest of rare cases and the court cannot be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of allegations made in the FIR/complaint, unless the allegations are so patently absurd and inherently improbable so that no prudent person can ever reach such a conclusion. The extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice. However, the Court, under its inherent powers, can neither intervene at an uncalled for stage nor can it “soft-pedal the course of justice” at a crucial stage of investigation/proceedings. The provisions of Articles 226, 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 (hereinafter called as “CrPC”) are a device to advance justice and not to frustrate it.

By applying the above principle, this Court is inclined to accept the contention of the defacto complainant and the learned Government Advocate (Crl. Side) that *prima facie* case of the above said offence was



clearly made out. In the said circumstances, the investigation is necessary and after the out come of the final report only, the intention on the part of the petitioner is to be assessed. Hence, this Court is not inclined to quash the proceedings.

8. Accordingly, this criminal original Petition is dismissed. Consequently, the connected criminal miscellaneous petitions are closed.

22.02.2024

NCC : Yes / No
Index : Yes/No
Internet : Yes/No

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To

- 1.The Inspector of Police,
Kottar Police Station,
Kanyakumari District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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