



Crl.O.P.(MD) No.11938 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.03.2024

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.O.P.(MD) No.11938 of 2023

and

Crl.M.P.(MD) No.9419 of 2023

N.Genga Devi

... Petitioner

Vs.

1.The Inspector of Police,
District Crime Branch,
Virudhunagar District.

2.Subburaj

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to call for the entire records pertaining to the FIR in Crime No.3 of 2023 on the file of the Inspector of Police, District Crime Branch, Virudhunagar District and quash the same as against the Petitioner.

For Petitioner : Mr.R.Ramasamy

For R1 : Mr.M.Veeranthiran
Government Advocate (Crl. Side)

For R2 : Mr.R.Ganesh Babu



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ORDER

The learned Counsel for the Petitioner would submit that the Petitioner had filed this Petition under Section 482 of Cr.P.C. seeking to quash the FIR in Crime No.3 of 2023 pending on the file of the Inspector of Police, District Crime Branch, Virudhunagar District.

2. It is the submission of the learned Counsel for the Petitioner that there was a business transaction between the Petitioner's husband, R.Narayanasamy and the second Respondent/*de facto* complainant Subburaj. It is the further submission of the learned Counsel for the Petitioner that the husband of the Petitioner worked in very big companies in Dubai. After his retirement from the companies in Dubai, he had involved in businesses in Dubai. The Petitioner's husband and son are Accused Nos.1 and 3 and the Petitioner is Accused No.2 in Crime No.3 of 2023 pending on the file of the Inspector of Police, District Crime Branch, Virudhunagar District. The Petitioner's husband is a qualified Engineer. He ran a Hotel in Dubai in the name of the Petitioner. The Hotel was going well. Due to the concentration in other businesses, they intended to sell the Hotel. At that time, one Navaneethan at Aruppukottai who was



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acquittance of the Petitioner's family in Dubai, informed the Petitioner's family that a party was ready to purchase the Hotel in Dubai. The said Navaneethan introduced the purchaser. The said purchaser informed the Petitioner that they are ready to purchase the Hotel from the Petitioner. The *de facto* complainant was the said purchaser. He wanted to purchase the said Hotel for his elder son-in-law Manivannan. The younger son-in-law of the *de facto* complainant was working as a Software Engineer in Dubai.

3. It is the further submission of the learned Counsel for the Petitioner that the second Respondent/*de facto* complainant along with his elder son-in-law Manivannan went to Dubai and studied about the hotel business. They requested the Petitioner's husband to sell the Hotel at a price of Rs.70,00,000/- [Rupees Seventy Lakhs only] in Indian Money and the second Respondent/*de facto* complainant intended to run the hotel on lease due to the large amount required for its purchase. The Petitioner's husband asked a sum of Rs.36,00,000/- [Rupees Thirty-Six Lakhs only] towards the lease of the Hotel and apart from that, a sum of Rs.80,000/- [Rupees Eighty Thousand only] per month from the second Respondent/*de facto* complainant. As per the Agreement, the second



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Respondent/*de facto* complainant had to pay Rs.80,000/- [Rupees Eighty Thousand only] every month to the Petitioner and all other expenses related to the Hotel has to be borne by the second Respondent/*de facto* complainant. Agreement was also drafted. The second Respondent/*de facto* complainant initially paid Rs.17,50,000/- [Rupees Seventeen Lakhs and Fifty Thousand only] and thereafter Rs.2,50,000/- [Rupees Two Lakhs and Fifty Thousand only] and promised to pay Rs.16,00,000/- [Rupees Sixteen Lakhs only] within a short period. The schedule for payment of remaining Rs.10,00,000/- [Rupees Ten Lakhs only] in April, 2018 and Rs.6 Lakhs [Rupees Six Lakhs only] in October, 2018 was agreed. This was agreed by the Petitioner's husband since the second Respondent/*de facto* complainant are residing in the same area of Aruppukottai. In April, 2018, an Agreement was drafted between the Petitioner and the second Respondent's/*de facto* complainant's son-in-law.

4. It is further submission of the learned Counsel for the Petitioner is that the second Respondent's/*de facto* complainant's son-in-law immediately took charge of the Hotel and started to run the business. The second Respondent's/*de facto* complainant's son-in-law failed to run the Hotel properly and sincerely and also failed to observe the business



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regularly. He roamed without taking care of the business and wanted to enjoy the modern world in Dubai with all bad habits, thereby, everything went wrong and the sale was also affected. Therefore, he was even unable to pay salary to the employees. He has not paid money every month to the Petitioner as was agreed. He has also not paid the rent and not settled the amount for suppliers. He ran away from the Dubai without proper dealing with the challenges in business. The son-in-law of the second Respondent/*de facto* complainant has not paid the hotel dues regularly such as rent, grocery payment, salary of the employees etc. In August, 2018, the son-in-law of the second Respondent/*de facto* complainant ran away from Dubai without paying or repaying the debts upto Rs.60,00,000/- [Rupees Sixty Lakhs only] in the name of the Hotel.

5. It is the further submission of the learned Counsel for the Petitioner that the Petitioner's husband suffered a lot and settled all debts created by the son-in-law of the second Respondent/*de facto* complainant and the second Respondent/*de facto* complainant has not responded to clear the dues set out by his son-in-law. The Petitioner's husband paid Rs.50,00,000/- [Rupees Fifty Lakhs only] from his own money to recover the hotel from the debts that were created by the second Respondent/*de*



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facto complainant and his son-in-law. The bills and vouchers were produced by the Petitioner's husband.

6. It is further submission of the learned Counsel for the Petitioner that when the Petitioner and her family came to India, the second Respondent/*de facto* complainant threatened their with the help of a henchmen to return back the money paid by him. Under these circumstances, the second Respondent/*de facto* complainant had given a false complaint before the Aruppukottai Police Station against the Petitioner for job racketing. The Petitioner was enquired and the investigation was closed. Again, the second Respondent/*de facto* complainant had given a petition before the Superintendent of Police, Virudhunagar District and the same was forwarded to the first Respondent Police to enquire and find out whether it is a pure civil dispute. At that time, the second Respondent/*de facto* complainant approached the Judicial Magistrate Court concerned and obtained an order under Section 156(3) of Cr.P.C. in Crl.M.P.No.6598 of 2019 from the learned Judicial Magistrate No.II, Virudhunagar. The learned Counsel for the Petitioner attended the enquiry due to the fact that in December 2019, when the Petitioner was in her house, the second Respondent/*de facto* complainant



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and his son-in-law came with deadly weapons and attempted to attack her and unfortunately, the Petitioner escaped and immediately went to Dubai and filed a complaint before the Commissioner of Police, Madurai which is pending. The Petitioner approached this Court by filing a Petition not to harass her and this Court allowed the same. After two years, now, the first Respondent Police registered an FIR against the Petitioner and the FIR registered against the Petitioner is liable to be quashed. The Panchayatars were not convinced by the second Respondent/*de facto* complainant. After having failed in his attempt, he gets the complaint registered as FIR. The complaint was forwarded by the Judicial Magistrate and report were called for which resulted in registration of FIR. The learned Counsel for the Petitioner seeks to quash the FIR.

7. It is further submission of the learned Counsel for the Petitioner that the civil litigation had been converted into criminal case by clever drafting to achieve the object of pressurizing the Petitioner to the dictum of the second Respondent/*de facto* complainant. The method adopted by the first Respondent Police for registration of FIR is highly illegal. Prior to registration of FIR, the first Respondent Police had not relied on the rulings of the Hon'ble Supreme Court in the case of ***Lalitha Kumari Vs.***



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State of Uttar Pradesh, reported in **(2014) 2 SSC 1**. Merely because the learned Judicial Magistrate is alleged to have forwarded the complaint to investigate and submit a report, it does not mean that the latter can take advantage for simply ignoring the dicta made in the Judgment. On perusal of the complaint, it can be presumed that it is a vague. The FIR does not contain the necessary ingredients to attract the offences mentioned in the FIR. The second Respondent/*de facto* complainant suppressed the fact in the complaint. The sequence of events is completely not mentioned in the complaint. While cheating of the Petitioner is inherently improbable, the said FIR need to be interfered with. Therefore, the Petitioner seeks to quash the FIR in Crime No.3 of 2023 pending on the file of the District Crime Branch, Virudhunagar District.

8. The learned Counsel for the Petitioner invited the attention of this Court to the contents of the FIR. The learned Counsel for the Petitioner also furnished the Written Contract entered into between the Petitioner and the second Respondent/*de facto* complainant. The learned Counsel for the Petitioner relied on the following rulings in support of his contention:



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(i) ***Naresh Kumar and another Vs. The State of***

Karnataka and another, reported in ***2024 INSC 196***. The

Hon'ble Supreme Court in Paragraph No.7 has held as under:

“7. Essentially, the present dispute between the parties relates to a breach of contract. A mere breach of contract, by one of the parties, would not attract prosecution for criminal offence in every case, as held by this Court in ***Sarabjit Kaur v. State of Punjab and Anr. (2023) 5 SCC 360***. Similarly, dealing with the distinction between the offence of cheating and a mere breach of contractual obligations, this Court, in ***Vesa Holdings (P) Ltd. v. State of Kerala, (2015) 8 SCC 293***, has held that every breach of contract would not give rise to the offence of cheating, and it is required to be shown that the accused had fraudulent or dishonest intention at the time of making the promise.”

(ii) ***Pradeep Kumar Dhingra Vs. State of Punjab and another, dated 01.02.2022 in CRM.No.5525 of 2020 in/& CRM.M.No.47799 of 2019***. In the said Judgement, the High Court of Punjab and Haryana at Chandigarh has quoted as follows:



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“10. Before parting, it would be necessary to take note of the prevailing tendency to paint civil disputes as criminal acts. The endeavour is to somehow wriggle the other party in criminal proceedings for applying pressure to settle the issue. The alternative route adopted is considered to be a short cut to the civil litigation. Such tendencies have been deprecated by the Apex Court. The distinction between the civil dispute and criminal proceeding is no longer *res integra*, various judgments of the Apex Court have dealt with the issue. It is being noticed that in number of cases involving pure and simple money recovery, specific performance issues or such like matters, FIRs are being registered by the police authorities. In order to avoid harassment in the matters involving civil disputes, it is need of the hour that the police department at the appropriate level, looks into the process of registering FIR, especially in matters having tone of civil dispute.”

9. Per contra, the learned Counsel for the second Respondent/*de facto* complainant objected to the contention raised by the learned Counsel for the Petitioner.



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10. It is submission of the learned Counsel for the second Respondent/*de facto* complainant that the second Respondent/*de facto* complainant became the victim at the hands of the Accused persons and he lost his entire family members' hard earned money to the tune of Rs.35,00,000/- [Rupees Thirty Five Lakhs only] under the pretext of lease out of the Hotel belonging to the accused persons at Dubai. It is the further submission of the learned Counsel for the second Respondent/*de facto* complainant that one of his son-in-laws Manivannan had completed MBA and has experience in the Hotel Management. In order to provide future prosperous life to his daughter, the second Respondent/*de facto* complainant planned to set up a hotel business. At that juncture, the Accused persons who are native of Palaganatham, Madurai were introduced by a common friend namely, Ramachandran. The said Ramachandran informed the second Respondent/*de facto* complainant that the Accused persons are running a hotel in Sharjah at Dubai in the name and style of 'Nujoom Chennai Restaurant' and its monthly turnover was Rs.16,00,000/- [Rupees Sixteen Lakhs only] and they intended to lease out the hotel as they were unable to continue to run it due to a shortage of manpower. Hearing the sugar-coated words and dialogues of the Accused



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persons and the acquaintances who is known to both families, the second respondent/*de facto* complainant was mesmerized and forced to enter into the lease agreement.

11. It is the further submission of the learned Counsel for the second Respondent/*de facto* complainant that at instance of the Accused persons, the second Respondent/*de facto* complainant and his son-in-law Manivannan, in order to ascertain the factual situation, during March, 2018, visited Dubai and confirmed with the business activities. Accordingly, after mobilizing the funds from his retirement, bank savings and personal loan from his relatives, on 01.04.2018, the *de facto* complainant paid the first installment of Rs.10,00,000/- [Rupees Ten Lakhs only] to the Petitioner/A2 in person at her residence in the presence of the witness.

12. It is further submission of the learned Counsel for the second Respondent/*de facto* complainant that as per the instruction of the Accused persons, he sent his son-in-law to Dubai on 09.04.2018 to take charge of the leasehold hotel. In the meanwhile, the further sum of Rs.20,00,000/- [Rupees Twenty Lakhs only] was paid by way of RTGS



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through the second Respondent's/*de facto* complainant's account and other friends' account. Those amounts were credited to the account of the Petitioner's husband. It is further submission of the learned Counsel for the second Respondent/*de facto* complainant that after making entire payments, the second Respondent/*de facto* complainant asked his son-in-law to resign from his employment at Hosur and to go to Dubai in order to take new assignment. Accordingly, his son-in-law has resigned his employment and went to Dubai with fond hope that he will have a bright future in hotel business. However, to the shock and surprise, the Petitioner's husband/first Accused deputed one Krishnamurthy who is one of his close relatives and Manager who is looking after the hotel business to assist the son-in-law of the second Respondent/*de facto* complainant.

13. It is further submission of the learned Counsel for the second Respondent/*de facto* complainant that at the dictum of the Accused persons, none of the employees co-operated and the said Krishnamurthy not at all permitted the son-in-law of the second Respondent/*de facto* complainant to handle the cash transactions and every payments made by the customers through G-pay and other mode of payments were given credit with the bank account of the Accused. Nothing was paid. Not



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even single amount was transferred to either the bank account of the second Respondent/*de facto* complainant or bank account of his son-in-law, on the pretext that after entering into the Lease Agreement only, the said sale proceeds will be given. There were several whatsapp messages between the second Respondent/*de facto* complainant and the Accused 3 which shows the behaviour and the attitude of the Accused persons in grabbing the amount.

14. It is further submission of the learned Counsel for the second Respondent/*de facto* complainant that his son-in-law entered Dubai using Tourist Visa on the promise of the Accused persons that they will obtain work permit for his son-in-law enabling him to work without any fear of local police. As per Rule of the Dubai Government, the outsiders are not permitted to work or run any kind of business without work permit. Hence, there is a possibility of the local police taking into custody of the newly entered person. Taking advantage of the said situation, the Accused persons never permitted the son-in-law of the second Respondent/*de facto* complainant to enter into the hotel premises and always kept in a room on the false promise that they were taking steps to obtain work permit to the son-in-law of the second Respondent/*de facto* complainant. However, the



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Accused persons evaded to obtain work permit for more than 3 months.

The entire accounts were operated by the Accused 1 to 3. Hence, having failed in his attempt to continue with the hotel business, the son-in-law of the second Respondent/*de facto* complainant returned back to India during July, 2018 since the accused persons promised him that they will manage to obtain the work visa within a month. The Accused persons asked him to come back to Dubai in mid-July, 2018. Again, as per the instructions of the Accused persons, the son-in-law of the second Respondent/*de facto* complainant visited Dubai during the third week of July, 2018. However, the Accused persons had not obtained any work visa for the son-in-law of the second Respondent/*de facto* complainant and made sit him in the room at the fear of arrest by the police. He was not allowed to enter into the hotel premises. He was forced to sit in the room or roam in the Dubai as tourist for time being.

15. It is the further submission of the learned Counsel for the second Respondent/*de facto* complainant that since nothing was materialized and having smelled that the second Respondent/*de facto* complainant and his son-in-law were cheated by the Accused persons, they asked the Accused persons to return back the entire money what they



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have paid to them towards the Lease Agreement. However, the Accused persons evaded to settle the same and also threatened them with dire consequences. Therefore, the son-in-law of the second Respondent/*de facto* complainant had come back to India.

16. On enquiry about the Accused persons, the second Respondent/*de facto* complainant and his son-in-law found out that the Petitioner and other Accused are offenders and they have cheated many persons like the second Respondent/*de facto* complainant. The second Respondent/*de facto* complainant on an earlier occasion lodged a criminal complaint with the District Crime Branch which was not taken on file and therefore, he attempted to meet higher police official. Finally, having no other option, the second Respondent/*de facto* complainant approached the Judicial Magistrate Court No.II, Virudhunagar by way of filing the private complaint under Section 200 of Cr.P.C. After detailed enquiry, the learned Judicial Magistrate No.II, Virudhunagar forwarded the said complaint under Section 156(3) of Cr.P.C. for enquiry and detailed report. However, the first Respondent Police did not take any steps to proceed further.



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17. It is the further submission of the learned Counsel for the second Respondent/*de facto* complainant that since the first Respondent Police had not taken any effective steps even after lodging the complaint, the contempt proceedings were initiated. Sensing seriousness of the lethargic attitude, the first Respondent Police in order to aid the Accused persons belatedly registered the FIR in Crime No.3 of 2023 for the offences punishable under Sections 406 & 420 of IPC. So far, the investigate is not proceeded in a fair manner.

18. It is the further submission that after cheating the second Respondent/*de facto* complainant and his son-in-law, the Accused persons sold out the said hotel to a third party and the said hotel is now running successfully under the name and style of 'Madurai Biriyani' and they are getting huge profits after developing the hotel with the investment made by the second Respondent/*de facto* complainant. The investigation had commenced. At this stage, in order to escape from the criminal case, this Petition has been filed. This Petition lacks merits and has to be dismissed. The learned Counsel for the second Respondent/*de facto* complainant relied on the following rulings:



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(i) *Udayakumar Vs. State of Kerala rep. by the Public*

WEB COPY *Prosecutor, High Court of Kerala*, reported in

2023/KER/73844. The Kerala High Court in Paragraph 8 has

held as under:

“8. When a crime registered by the Police on the basis of a complaint forwarded by the Magistrate under Section 156(3) of Cr.P.C is pending investigation, it cannot be said that the person arrayed as an accused in the FIR is aggrieved by registering that crime. When a complaint is forwarded by the Magistrate under Section 156(3) of Cr.P.C for investigation, the SHO concerned is duty bound to register a crime and to investigate the matter. Column 7 of the printed FIR asks for the details of the known/ identifiable/suspected/unknown accused with full particulars. The name of the petitioner is shown in column 7 of Annexure-B FIR, as he was the respondent in Annexure-A complaint forwarded to the Police Station from JFCM-I, Varkala. Only by investigation, Police will find out whether the person named in column No.7 was the real culprit and whether he had committed a cognizable offence as alleged in the complaint, and if found so, a charge sheet will be filed against him, and then of course, the petitioner will get locus standi to challenge that accusation, on grounds which are legally sustainable. Before conducting investigation as to whether the petitioner had committed a cognizable offence or not, and before a final report is filed charging him for the offences alleged, in normal course, he cannot challenge the investigation undertaken by Police, which was so directed by the Magistrate under Section 156(3) of Cr.P.C. When investigation undertaken by Police as ordered by the Magistrate under Section 156(3) of Cr.P.C. is in progress, this Court cannot interfere with



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the investigation, which is a statutory function exercised by Police. Unless there are compelling and justifiable reasons, there cannot be any interference with the investigation proceedings.”

(ii) ***C.Kasthuriraj Vs. The State rep. by the Inspector of Police, K-4, Anna Nagar Police Station and others***, dated 03.02.2023 passed by this Court in ***Crl.O.P.Nos.22099 & 22374 of 2019***. In the said Judgement, the learned Single Judge of this Court in Paragraph 14 has held as follows:

“14. Though it is correct to state that the Court has to record the reasons basing on the allegations how it got satisfied about the prima facie case, that would benefit the petitioner only if the complaint given by the second respondent is bald and the learned Magistrate has mechanically passed an order to register an FIR without appreciating the baldness in the complaint. The order has been given with more clarity. Had it recorded the reasons as to why the Court got satisfied about the prima facie case that could have been a better order, but that cannot be the reason to set aside the order even when the complaint contains the material particulars. Hence it cannot be said that the order has been passed without application of mind. ”

19. The learned Government Advocate (Crl. Side) also submitted his arguments. It is the submission of the learned Government Advocate (Crl Side) that the case was registered based on the direction issued by the



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learned Judicial Magistrate under Section 156(3) of Cr.P.C. After the police failed to act upon the complaint of the second Respondent/*de facto* complainant, he obtained an order from the Judicial Magistrate, and only then, the case was registered. It is the further contention of the learned Government Advocate (Crl. Side) that the case having registered on the direction of the learned Judicial Magistrate cannot be quashed. The learned Government Advocate (Crl. Side) seeks to dismiss this Petition.

20. The short point that arises for consideration in this Criminal Original Petition is that 'whether the FIR in Crime No.3/2023 pending on the file of the first Respondent Police is to be quashed?'

21. On consideration of rival submission, it is found that the contention of the learned Counsel for the Petitioner is that for mere money dispute based on the lease out of the Hotel between the Petitioner/A2 and the second Respondent/*de facto* complainant, the case was registered by the first Respondent police based on the complaint of the second Respondent/ *de facto* complainant. It is the submission of the learned Counsel for the Petitioner that the civil dispute had been converted into criminal case only for harassing the Petitioner under the



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pretext of arrest and remand. On consideration of submission of the learned Counsel for the second Respondent/*de facto* complainant, it is found that it was money dispute based on the lease out of the Hotel belonging to the Accused persons by the second Respondent/*de facto* complainant and the contract entered into between the second Respondent/*de facto* complainant and the Accused persons.

22. Based on the contract, the hotel business was taken up by the son-in-law of the second Respondent/*de facto* complainant. The son-in-law of the second Respondent/*de facto* complainant was unable to get profits from the leased hotel that cannot be a reason to file a complaint as though the Petitioner had instigated the second Respondent/*de facto* complainant to invest in the hotel business. Usually, in business transaction, the party entered into business may suffer losses due to several factors beyond his/her individual capacity. That cannot be used as against the persons who leased out the Hotel. The content of the counter affidavit filed by the second Respondent/*de facto* complainant is nothing but a civil dispute as pointed out by the learned Counsel for the Petitioner/A2. In the civil dispute, for which, an agreement was entered into in India at Virudhunagar between both parties, the person who



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suffered loss has to seek relief for recovery of money based on the contract. The subject matter of the dispute will be put to test only in the civil case. The Police Authorities are not competent to decide whether the contract was a fraudulent contract or the contract is maintainable as per the Contract Act even though offences under Section 406 and 420 of IPC have overlapped the features of the civil contract. Invariably, it can be twisted as criminal offence also.

23. From what had been argued between the parties, it is found that it is a purely a civil dispute. It is the contention of the Petitioner that they suffered loss having let out the premises for running hotel by the mismanagement of the son-in-law of the second Respondent/*de facto* complainant. The Accused persons also faced losses. It is the contention of the second Respondent/*de facto* complainant that based on the representation given by the Petitioner and his acquaintance who is also acquaintance of the second Respondent/*de facto* complainant, the second Respondent/*de facto* complainant believed that he can run the hotel business leased out from the Accused persons. Whatever circumstances that led to the hostile and who was liable for causing losses are all questions to be decided in a civil suit. That cannot be considered by an



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Investigation Officer. The submission of the learned Counsel for the second Respondent/*de facto* complainant and the learned Government Advocate (Crl. Side) that this petition is not maintainable as the second Respondent/*de facto* complainant had obtained order from the learned Judicial Magistrate and only then, the FIR was registered that cannot be a ground to dismiss this Criminal Original Petition. The cases are decided on merits available before the Court.

24. From what had been argued by both parties, it is found that it is purely civil dispute. The contention raised by the learned Counsel for the second Respondent/*de facto* complainant that even though it is a civil dispute, it has ingredients to attract Sections 406 & 420 of IPC and this Petition has to be dismissed, will not hold as the subject matter in Crl.M.C.No.4592 of 2022 which was relied on by the learned Counsel for the second Respondent/*de facto* complainant is different from the offence alleged in this case. Here, it is submitted by both parties that they had entered into a contract for lease of the hotel to be run in Sharjah at Dubai. The contract was entered in India at Virudhunagar. Therefore, the same can be agitated only in a civil case. It cannot be converted into the criminal case.



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25. The facts of the reported rulings are different. The case in ***C.Kasthuriraj Vs. The State rep. by the Inspector of Police, K-4, Anna Nagar Police Station and others***, in ***Crl.O.P.Nos.22099 & 22374 of 2019*** is with regard to the sexual offence.

26. The Magistrate who passed the order under Section 156(3) of Criminal Procedure Code has considered that a *prima facie* case is made out. But only after hearing the petitioner/A and after perusing the typed set of papers filed in this petition, this Court had arrived at a conclusion that origin of the case is with regard to lease out of the hotel by the Accused who had run the hotel successfully in Dubai and decided to lease out due to shortage of manpower. The second Respondent/*de facto* complainant took up the hotel business on lease with an intention to run the hotel business successfully and if they succeeded, they wanted to purchase the same. Unfortunately, they suffered loss. Now, the dispute arose that on basis of the contract, the second Respondent/*de facto* complainant who ran the hotel business on lease blames the Accused 1 to 3 as having misrepresented him, based on which, they invested money and



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suffered loss. It is for the civil court to appreciate facts in the light of the evidence let in by both parties. Therefore, it is a clear case of civil dispute. It cannot be converted into criminal case.

27. As per the reported rulings of the Honourable Supreme Court in [1] *Naresh Kumar and another Vs. State of Karnataka and another*, reported in 2024 - INSC - 196, [2] *Sarabjit Kaur Vs. The State of Punjab and another*, reported in (2023) 5 SCC 360, and [3] *Vesa Holdings (P) Ltd. Vs. State of Kerala*, reported in (2015) 8 SCC 293, the civil dispute cannot be converted into criminal case to exert pressure on the accused for recovery of money. Also, as per the reported rulings of the Honourable Supreme Court in *State of Haryana and others Vs. Ch.Bhajan Lal and others*, reported in AIR 1992 SC 604 : 1992 SCC (CRI) 426, guidelines have been issued by the Honourable Supreme Court regarding the quashing of FIR, quashing of charge sheet and quashing of private complaint, where, one of the guidelines was that the attempt of the affected party to convert the civil dispute into criminal case with an ulterior motive to exert pressure on the Accused for recovery of money, cannot be entertained. Here also, same guideline applies to the facts of this case. Under these circumstances, the submission of the learned Counsel for the Petitioner is found acceptable in the facts and circumstances of the case. The submission of the learned Counsel for the second Respondent/de facto complainant and the learned Government



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Advocate (Crl. Side) seeking to dismiss this Petition in the light of the rulings of the Kerala High Court in Udayakumar Vs. State of Kerala represented by the Public Prosecutor, High Court of Kerala, reported in 2023/KER/73844 and that of this Court in C.Kasthuriraj Vs. The State represented by the Inspector of Police, K-4, Anna Nagar Police Station and others, in Crl.O.P.Nos.22099 & 22374 of 2019 is found unacceptable and is rejected in the light of the reported rulings of the Honourable Supreme Court relied on the learned counsel for the petitioner in which it is stated that breach of contract is not always a criminal offence and warning not to convert such dispute into criminal case for early remedy and to exert pressure on the party to the contract. Therefore, in the light of the Honourable Supreme Court's Judgment relied on by the learned counsel for the petitioner, the rulings relied on by the learned counsel for the second respondent are rejected.

28. In the light of the above discussion, the point for consideration is answered in favour of the Petitioner/A2 and against the prosecution. Therefore, the FIR in Crime No.3 of 2023 pending on the file of the District Crime Branch, Virudhunagar District is quashed.

29. In the result, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.



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Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order

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To

- 1.The Judicial Magistrate No.II,
Virudhunagar, Virudhunagar District.
- 2.The Inspector of Police,
District Crime Branch,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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SATHI KUMAR SUKUMARA KURUP, J.

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