



Crl.O.P.(MD).No.20770 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.11.2023

Pronounced on : 07.03.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Crl.O.P(MD).No.20770 of 2023

and

Crl.M.P(MD). No.16298 of 2023

V.Tambiran Thozhan

... Petitioner/Accused No.2

Vs.

1.The State of Tamilnadu rep. by
The Deputy Superintendent of Police,
Vigilance and Anti Corruption Wing,
Thoothukudi,
Thoothukudi District.
(Crime No.06 of 2023)

... 1st Respondent/Complainant

2.T.Jeyakrishnan

... 2nd Respondent/De-facto
Complainant

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to quash the FIR in Crime No.6 of 2023 dated 02.11.2023 on the file of the Vigilance and Anti Corruption Wing, Thoothukudi, Thoothukudi District in so far as the petitioner is concerned.

For Petitioner : Mr.S.Xavier Rajini
For Respondents : Mr.B.Nambi Selvan
Additional Public Prosecutor



Crl.O.P.(MD).No.20770 of 2023

ORDER

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The petitioner/Accused No.2 in Crime No.6 of 2023 on the file of the Vigilance and Anti Corruption Wing, Thoothukudi, Thoothukudi District has filed this quash petition to quash the said FIR as against him only.

2.The brief facts of the case as follows:

The first respondent/Vigilance Department received secret information about the receipt of bribe from the contractors at the time of the final settlement of bills due to them after completion of the contract work allotted to them. Therefore, they made a surprise raid on 01.11.2023 at 16.50 hours, in the Public Works Department Office, situated at Door No.1/J, Tamil Salai, Thoothukudi. During the course of the raid, the Vigilance Department, made a search in the Office and recovered a sum of Rs.2,28,000/- from one Vasudevan, who was working as Assistant in the said office ie., in the pant pocket a sum of Rs.1,28,000/- and from his Almirah a sum of Rs.1,00,000/-. When the Vigilance Officer enquired about the possession of the said huge amount, he confessed that the said amount belonged to the petitioner who was the Executive Engineer and he asked to receive a sum of Rs.1,28,000/- from the contractor on his behalf and he kept the same. Further, he confessed that the petitioner handed over a sum of Rs.1,00,000/- to keep it safely.



Crl.O.P.(MD).No.20770 of 2023

2.1.The Inspection team made a personal search of one Mr.A.L.Sundaresan, Senior Drafting Officer of the said office and a sum of Rs.14,000/- was recovered and there was no explanation for the possession of the said amount.

2.2.The Inspection team also made a search of one Murugesh Kumar, who was standing in the front side of the office and seized a sum of Rs.13,000/-.

2.3.Thereafter, the inspection team made a search of one Assistant Executive Engineer, Tmt.K.Ganga Parameshwari, and a sum of Rs.7,500/- was recovered.

2.4.The Inspection team further conducted search in the shirt pocket of one Mr.Joseph Chandrasekar, and from him a sum of Rs.25,000/- was recovered.

2.5.All the persons have not furnished any explanation for possession of the above said amount and they have not disclosed any source of the said amount. Therefore, the first respondent police recovered the said amount from all the above persons. Thereafter, the respondent police recorded the statement of various persons and registered a case for the alleged offences punishable under Section 7 of the Prevention of Corruption Act, 1988 as amended in 2018, by arraying Vasudevan as Accused No.1, the petitioner as Accused No.2, A.L.Sundaresan as Accused No.3,



Crl.O.P.(MD).No.20770 of 2023

Gangaparameshwari as Accused No.4, P.Murugeshkumar as Accused No.5 and Joseph Chandrasekar as Accused No.6.

3. Pending investigation, the petitioner filed this quash petition stating that he never handed over the amount of Rs.1,00,000/- to Accused No.1/Vasudevan and he never instructed Vasudevan to receive a sum of Rs.1,28,000/- from the contractor to keep it in his custody. A false case was registered against him and on the basis of the confession of the first accused, he was arrayed as accused. He further raised the ground that he never had the habit of receiving bribe and if he had the habit of receiving bribe, he would have received bribe directly and he also stated that the respondent police received the written explanation by force from the first accused and hence, he seeks for the quashment of FIR, filed against the him. The learned counsel for the petitioner made elaborate submissions reiterating the above grounds.

4. Per contra, the learned Additional Public Prosecutor submitted that during the surprise check, huge amount was recovered from the office under suspicious circumstances. There was no proper explanation from each officer and the private persons. Therefore, investigation in this case has to be conducted. The FIR was registered only on 02.11.2023. The quash petition was filed on 07.11.2023. Sufficient materials were recovered from the office apart from the recovery of the



Crl.O.P.(MD).No.20770 of 2023

unaccounted money. Therefore, in the initial stage of the investigation, this quash petition is not maintainable and he relied on the following judgment of the Hon'ble Supreme Court.

(i) Crl.A.No.232 of 2020 (Rajeev Kourav Vs. Baisahab and Ors.)

(ii) 2023 6 SCC 559 (State of Chhattisgarh and Anr. vs. Aman Kumar Singh and Ors.)

(iii) 2022 Live law SC 488 (Satish Kumar Jatav vs. The State of U.P. & Ors.)

5. This Court has considered the rival submissions and perused the documents filed along with the typed set of papers and the precedents relied by the learned Additional Public Prosecutor.

6. In this case, recovery of a huge unaccounted amount of Rs.3,28,000/- from the office of the Public Works Department in a single day shocks the judicial conscience of this Court and unimaginable extend of corruption spread over the Government departments. The investigating agency received the secret information about the illegal transaction of bribe during the payment of the bill to the contractors. Some of the private persons also were present at the scene of the



Crl.O.P.(MD).No.20770 of 2023

occurrence with huge unaccounted money. There was no explanation on the side of the accused for the possession of the amount at the time of the recovery. The investigating agency collected number of documents and recorded the statements from various persons. Therefore, the investigating agency has a primordial duty to conduct the investigation on the basis of the material collected and also connected materials relating to various contracts to be executed and the investigation has to be completed. Further FIR was registered only on 02.11.2023 and the quash petition has been filed on 07.11.2023. Within a period of five days from the registration of the FIR, this quash petition has been filed.

7. The argument of the learned counsel for the petitioner that no material is available against the petitioner cannot be considered at this stage. It is well settled principle, inherent power under Section 482 of Cr.P.C., to quash the FIR can be entertained only in exceptional circumstances, as per the following guidelines issued by the Hon'ble Supreme Court in the following cases:

Neeharika Infrastructure (P) Ltd. v. State of Maharashtra, (2021) 19 SCC 401 at page 444.

13. From the aforesaid decisions of this Court, right from the decision of the Privy Council in Khwaja Nazir Ahmad [King Emperor v. Khwaja Nazir Ahmad,



Crl.O.P.(MD).No.20770 of 2023

1944 SCC OnLine PC 29 : (1943-44) 71 IA 203 : AIR 1945 PC 18] , the following principles of law emerge:

13.1. Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences.

13.2. Courts would not thwart any investigation into the cognizable offences.

13.3. However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on.

13.4. The power of quashing should be exercised sparingly with circumspection, in the “rarest of rare cases”. (The rarest of rare cases standard in its application for quashing under Section 482CrPC is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court.)

13.5. While examining an FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint.

13.6. Criminal proceedings ought not to be scuttled at the initial stage.

13.7. Quashing of a complaint/FIR should be an



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Crl.O.P.(MD).No.20770 of 2023

exception and a rarity than an ordinary rule.

13.8. Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482CrPC.

13.9. The functions of the judiciary and the police are complementary, not overlapping.

13.10. Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences.

13.11. Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice.

13.12. The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if



Crl.O.P.(MD).No.20770 of 2023

the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure.

13.13. The power under Section 482 CrPC is very wide, but conferment of wide power requires the Court to be cautious. It casts an onerous and more diligent duty on the Court.

13.14. However, at the same time, the Court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in R.P. Kapur [R.P. Kapur v. State of Punjab, 1960 SCC OnLine SC 21 : AIR 1960 SC 866] and Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , has the jurisdiction to quash the FIR/complaint.

13.15. When a prayer for quashing the FIR is made by the alleged accused, the Court when it exercises the power under Section 482 CrPC, only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the



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Crl.O.P.(MD).No.20770 of 2023

*investigating agency/police to investigate the allegations
in the FIR.*

8. Further, in the latest decision of the Hon'ble Supreme Court in the case of State of **Chattisgarh v. Aman Kumar Singh** reported in **2023 6 SCC 559**, the Hon'ble Supreme Court cautioned the High Courts not to quash the FIR pertaining to the corruption cases upon reiterating the principle that for quashing the first information report, the High Court should not embark on an enquiry as to the “probability, reliability or genuineness of the allegations made therein in the following words:

65. Thus, it being the settled principle of law that when an investigation is yet to start, there should be no scrutiny to what extent the allegations in a first information report are probable, reliable or genuine and also that a first information report can be registered merely on suspicion, the High Court ought to have realised that the FIR which, according to it, was based on “probabilities” ought not to have been interdicted. Viewed through the prism of gravity of allegations, a first information report based on “probability” of a crime having been committed would obviously be of a higher degree as compared to a first information report lodged on a “mere suspicion” that a crime has been committed. The High Court failed to



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Crl.O.P.(MD).No.20770 of 2023

bear in mind these principles and precisely did what it was not supposed to do at this stage. We are, thus, unhesitatingly of the view that the High Court was not justified in its interference on the ground it did.

*80. Having regard to what we have observed above in paras 47 to 50 (supra) and to maintain probity in the system of governance as well as to ensure that societal pollutants are weeded out at the earliest, it would be eminently desirable if the High Courts maintain a hands-off approach and not quash a first information report pertaining to “corruption” cases, specially at the stage of investigation, even though certain elements of strong-arm tactics of the ruling dispensation might be discernible. The considerations that could apply to quashing of first information reports pertaining to offences punishable under general penal statutes *ex proprio vigore* may not be applicable to a PC Act offence. Majorly, the proper course for the High Courts to follow, in cases under the PC Act, would be to permit the investigation to be taken to its logical conclusion and leave the aggrieved party to pursue the remedy made available by law at an appropriate stage. If at all interference in any case is considered necessary, the same should rest on the very special features of the case.*



Crl.O.P.(MD).No.20770 of 2023

9. By applying the above said principle, in this case, the amount was recovered and the documents were seized and the investigation is yet to be commenced on the basis of the collected documents at the time of the surprise check. Therefore, the petitioner has not made out any case to quash the FIR and hence, this petition is liable to be dismissed.

10. Accordingly, this Criminal Original Petition stands dismissed. Consequently, connected Criminal Miscellaneous Petition is closed.

07.03.2024

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

To

1. The Deputy Superintendent of Police,
Vigilance and Anti Corruption Wing,
Thoothukudi,
Thoothukudi District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.O.P.(MD).No.20770 of 2023

P.VADAMALAI, J.

VSD

Pre - Delivery Order made in
Crl.O.P(MD).No.20770 of 2023
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