



Crl.OP.No.1522 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.1522 of 2024  
and  
CRL.MP.Nos.1056 & 1057 of 2024

1. Nithin  
2. Saila

... Petitioners

Vs.

1. State by Inspector of Police  
R-2, Police station, Crime Branch,  
Kodambakkam, Chennai 24  
(Cr.No.124/2022)

2. Sruthi

... Respondents

**PRAYER:** Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to CC.No.2809/2023 on the file of the 1<sup>st</sup> respondent and quash the same.

For Petitioner : Mr.Sona Sathishkumar  
for M.Prabakaran  
For Respondents : Ms.J.R.Archana  
Government Advocate  
for R1  
Mr.K.Hemanathan  
for Mr.N. Alagappan for R2



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## **ORDER**

This petition has been filed to quash the proceedings in C.C.No.2809 of 2023 on the file of the Metropolitan Magistrate-XVII, Saidapet, Chennai, thereby taken cognizance for the offences under Sections 406, 420 r/w 34 of IPC, 1860 in Crime No.124 of 2022, as against the petitioners.

2. The case of the prosecution is that the first petitioner is a business man who is running a company by name S.N.Enterprises. The second respondent got introduced to the first petitioner through a common friend working with her in Amazon and they have formed a gang along with few other persons as friends. The first petitioner borrowed loan from the second respondent to start an E-Commerce business and has promised that he would offer an opportunity to her join in the business and promised to return back the money. Thereby, the second respondent has trusted the said words of the first petitioner and submitted her document to the Bank agent and the bank agent processed the maximum loan amount for her CTC and the HDFC Bank has



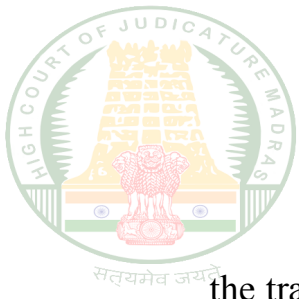
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sanctioned a loan of Rs.11,95,000/- . Thereafter, the second respondent has transferred a sum of Rs.9,95,000/- to S.N.Enterprises and Rs.2,00,000/- to the second petitioner's account on 16.11.2020. The first petitioner has paid E.M.I of Rs.25,793/- for the second respondent's loan for almost 12 months and thereafter he stopped to pay the EMI.

2(ii) The further case of the prosecution is that the second respondent noticed that the 1<sup>st</sup> petitioner company has been registered for the name sake and there is no functioning of business in the said address. The second respondent noticed a ware house named Bally Energy in the said address which had the 1<sup>st</sup> petitioner's name and details on the board. She has inquired about the residence of S.N.Enterprises and has come to know that such a company does not exist and the warehouse is closed for so many days. This had caused suspicion and the second respondent decided to confront the first petitioner about the fraudulent behaviour. When she approached the first petitioner in his residence in the month of January 2022, he has refused to return back the money and has also threatened her. Hence, the 2<sup>nd</sup> respondent lodged the complaint against the petitioners.

3.The learned Counsel appearing for the petitioners submits that



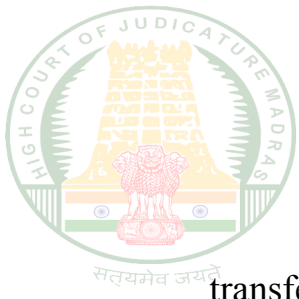
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the transaction between the first petitioner and the second respondent is a commercial transaction and after repayment of substantial amount , the second respondent has lodged a complaint. That apart, the entire amount has been transferred only to the account of the first petitioner and the second petitioner is in no way connected with the allegations even according to the prosecution. Hence, he prayed to quash the proceedings in C.C.No.2809 of 2023 on the file of the learned Metropolitan Magistrate-XVII, Saidapet Chennai.

4. The learned Government Advocate (Crl.Side) appearing for the respondent police, reiterated the prosecution case and on getting instructions from the Investigating Officer, submits that the petitioners/A1 and A2 have refused to return back the money and threatened her with dire consequence. The accused 1 and 2 were arrested and remanded to judicial custody, in pursuance of the action taken in Cr.No.124/2022 and later they were enlarged on bail.

5. The learned counsel for the second respondent submits that after sanctioning personal loan from the bank, the second respondent has



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transferred the entire loan amount i.e., 11,95,000/- to the account of the petitioners. The company itself is in the name of the second respondent and both the accused have committed very serious offence as against the second respondent.

6. Heard the learned counsel appearing for the petitioners, the learned Government Advocate (Crl.Side) appearing for the respondent police and the learned counsel for the second respondent and perused the materials available on record.

7. It is seen that on the complaint lodged by the second respondent, the first respondent registered a case in Crime No.124 of 2022 for the offences under Sections 406, 420 and 34 of IPC. After completion of investigation, the first respondent filed a final report and the same has been taken cognizance in C.C.No.2809 of 2023 by the trial Court and the same is pending. To quash the said criminal proceeding, the petitioner has filed the present petition.

8. The Hon'ble Supreme Court of India in the judgment reported in **2019 (4) SCC 351** in the case of **Devendra Prasad Singh Vs. State of Bihar & Anr., (Crl.A.No.579 of 2019 dated 02.04.2019)** while



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dealing with the petition to quash the entire criminal proceedings held that the High Courts have no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and therefore, there was no *prima facie* case made out as against the accused. It could be done only by the trial Court while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order that the charge sheet has been laid on the basis of the inconsistency statement under Section 161 of Cr.P.C.

9. Further, the Hon'ble Supreme Court of India in the judgment reported in **2019 (10) SCC 686** in the case of ***Central Bureau of Investigation Vs. Arvind Khanna, (CrI.A.No.1572 of 2019*** dated 17.10.2019) held that the High Courts cannot record the findings on the disputed facts. The defence of the accused is to be tested after appreciation of evidence by the trial Court during the trial. Therefore, this Court has no power to consider the disputed facts under Section 482 of Cr.P.C.



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10. The Hon'ble Supreme Court of India in another judgment dated **02.12.2019** passed in ***CrI.A.No.1817 of 2019*** in the case of ***M.Jayanthi Vs. K.R.Meenakshi & anr***, held that while considering the petition for quashment of complaint or charge sheet, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. Further, the Court can also see whether the preconditions requisite for taking cognizance have been complied with or not and whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged. Whether the accused will be able to prove the allegations in a manner known to law would arise only at a later stage i.e., during trial.

11. Further this Court cannot observe at this stage whether the initiation of criminal proceeding itself is malicious or not. The same is required to be considered at the conclusion of the trial. Therefore, the ground raised by the petitioner to quash the final report/charge sheet cannot be entertained to quash the entire proceedings.



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12. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.2809 of 2023 on the file of the learned Metropolitan Magistrate-XVII, Saidapet, Chennai. The petitioners are at liberty to raise all the grounds before the trial Court. Considering the age of the second petitioner, the personal appearance of the second petitioner is dispensed with and she shall be represented by a counsel after filing appropriate application. However, the second petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 351 of BNSS and at the time of passing judgment. The trial Court is directed to complete the trial within a period of six months from the date of receipt of copy of this Order.

13. Accordingly, the Criminal Original Petition stands dismissed. Consequently, the connected miscellaneous petitions are also closed.

17.03.2025

Vv

To

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1. The Metropolitan Magistrate-XVII,  
Saidapet, Chennai
  2. The Inspector of Police  
R-2, Police station, Crime Branch,  
Kodambakkam, Chennai 24.
  3. The Public Prosecutor,  
Madras High Court, Chennai.

**G.K.ILANTHIRAIYAN, J.**

Vv



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