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Crl.OP.No.2469 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.03.2025

CORAM:

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

Crl.O.P.No.2469 of 2024

Rajesh S. Shinde

... Petitioner

Vs.

1. The State

Represented by the Inspector of Police,
K-10,Koyambedu Police Station(Crime)
(Cr.No.39 of 2024)

2. Elumalai

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C to call for the records culminating in the impugned FIR in Cr.No.39 of 2024, pending investigation on the file of the first respondent police and quash the same.

For Petitioner : Mr.Arun Anbumani

For Respondents : Mr.A.Gopinath
Government Advocate (Crl.Side)
for R1
: Mr.S.V.Karthikeyan for R2



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ORDER

This petition has been filed to quash the first information report registered in Crime No. 39 of 2024 on the file of the first respondent police.

2. The gist of the allegation in the impugned FIR is that the second respondent for expanding his fruit business, had obtained a loan from the petitioner to the tune of Rs.20,00,000/- by depositing the original title deed of his fruits shop. Even after repaying the entire amount with interest, the petitioner had demanded more interest and threatened him to transfer the said shop to his name. The further case is that the petitioner has refused to return back the original title deed of his fruits shop and demanded a sum of Rs.16,00,000/- and threatened to stall the business of the second respondent. Hence, the second respondent has lodged a complaint against the petitioner. Based on the complaint lodged by the second respondent, the first respondent has registered an FIR as against the petitioner in Cr.No.39 of 2024 for the offences punishable under Sections 406 and 420 of IPC, 1860.

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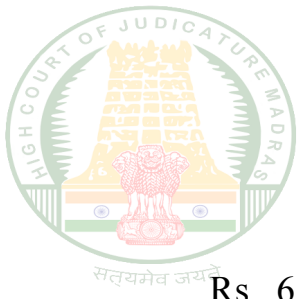


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3. The learned counsel appearing for the petitioner submits that the petitioner is the sole Proprietor of M/s.M.D.Fruits, a wholesale merchant of fruits in the Koyambedu Fruit Market. He has been running the said business for about 25 years. The second respondent is a semi whole sale and retail merchant of fruits in the Koyambedu Fruit Market and he used to buy fruits from the petitioner's firm on credit basis and running account. With the acquaintance and business relationship over the years, the second respondent has obtained a loan for a sum of Rs.20,00,000/- from the petitioner agreeing to pay interest @ 1.5% per month until repayment of the principal sum. For availing the said loan, the second respondent has handed over the original sale deed of his shop at No.T/E -28 in the fruit market and the same would have to be returned to the second respondent once he clears the loan.

4. The learned counsel for the petitioner further submits that towards repayment of the balance outstanding on the loan transaction as well as for the fruit purchase business transaction, the second respondent has issued three post dated cheques for Rs.7,00,000/- ,



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Rs. 6,00,000/- and Rs.3,00,000/- respectively, drawn on his firm account dated 05.11.2023. While so, before clearance of the said post dated cheques, the second respondent has addressed a letter dated 10.10.2023 for returning of the original sale deed of his shop, which was handed over to the petitioner at the time of borrowal of loan and the same was returnable only upon repayment of the entire loan amount. Further he states that all the three post dated cheques were returned as dishonoured with an endorsement, " payment stopped by drawer.

5. The learned counsel for the petitioner further submits that the entire business transaction between the petitioner and the second respondent is entirely civil in nature and the same has been given a criminal colour. As stated supra, for the recovery of money due to the petitioner from the defacto complainant and for the dishonour of the cheques issued by the defacto complainant, the petitioner has already initiated necessary proceedings under Section 138 of Negotiable Instruments Act before the appropriate Court. Without any base, the first respondent police registered a case in Crime No. 39 of 2024 for



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the offences under Sections 406 and 420 of IPC, as against the petitioner. Hence he prayed to quash the same.

6. The learned counsel appearing for the second respondent submits that the second respondent has borrowed a loan of Rs.20,00,000/-from the petitioner by depositing the original parent document deed. Even after repaying the entire loan amount with interest, the petitioner demanded more interest and refused to return back the original parent document.

7. The learned Government Advocate (Crl.Side) appearing for the respondent reiterated the prosecution case and submits that even after repaying the entire loan amount with interest, the petitioner demanded more interest and refused to return back the original parent document.

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



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9. It is seen from the impugned First Information Report that there are specific allegations as against the petitioner to attract the offences punishable under Sections 406 and 420 of IPC, which has to be investigated in depth. Further the FIR is not an encyclopedia and it need not contain all facts and it cannot be quashed in the threshold. This Court finds that the FIR discloses prima facie commission of cognizable offence and as such this Court cannot interfere with the investigation. The investigating machinery has to step in to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code.

7. The Hon'ble Supreme Court of India in the judgment reported in **2019 (14) SCC 350** in the case of ***Sau. Kamal Shivaji Pokarnekar vs. The State of Maharashtra & ors., (Crl.A.No.255 of 2019 dated 12.02.2019)*** held that the learned Magistrate while taking cognizance and summoning, is required to apply his judicial mind only with a view to take cognizance of the offence whether a *prima facie* case has been made out for summoning the accused person. The



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learned Magistrate is not required to evaluate the merits of the materials or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to conviction or not. Only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive, the complaint/FIR can be taken for consideration for quashment. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by Magistrate, it can be considered for quashment. Therefore, it is not necessary that a meticulous analysis of the case should be done before trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification to interfere. At the initial stage of issuance of process, it is not open to the Court to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Therefore, the criminal complaint cannot be quashed only



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on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are *prima facie* made out in the complaint, the criminal proceeding shall not be interdicted.

8. Further the Hon'ble Supreme Court of India issued the following directions in the judgment reported in **2021 SCC Online SC 315** in the case of ***M/s.Neeharika Infrastructure Pvt. Ltd., Vs. State of Maharashtra & ors.***, as follows :-

“23.

vi) *Criminal proceedings ought not to be scuttled at the initial stage;*

vii) *Quashing of a complaint/FIR should be an exception rather than an ordinary rule;*

.....

xii) *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*



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complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if 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;

.....

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR; ”

9. In view of the above discussions, this Court finds no grounds to quash the First Information Report. However the first respondent is directed to complete the investigation in Crime No.39



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of 2024 and file a final report within a period of three months from the date of receipt of copy of this Order, before the jurisdiction Magistrate, if not already filed.

10. Accordingly, this Criminal Original Petition stands dismissed.

11.03.2025

Vv

To

1. The Inspector of Police,
T-14, Pallikaranai Traffic Investigation Wing,
Chennai-600 100.
2. The Public Prosecutor,
Madras High Court,
Chennai.



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Vv

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