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CrI.O.P.No.8487 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2025

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.No.8487 of 2023

and

CrI.M.P.No.5387 of 2023

D.Sivarajan

... Petitioner

Vs

1. The Inspector of Police,
Grand Bazar-Police Station,
Puducherry-"State".

2. H.Kumar

... Respondents

Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in Cr.No.79 of 2022 dated 30.03.2022 on the file of the first respondent police and quash the same.

For Petitioner : No appearance

For Respondents : Mr.M.V.Ramachandramurthy,
APP (Pondy) (for R1)



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ORDER

This Criminal Original Petition has been filed to quash the FIR in Crime No.79 of 2022 on the file of the first respondent, registered for the offences under Section 408 of IPC.

2. The case of the prosecution is that when ATM route audit of route no.2148 was planned on 18.03.2022, the petitioner, who is the Branch-in-charge was contacted to support in audit, but the petitioner denied by stating that custodians are not available and he is also not available in the office. On the very same day, when the audit was conducted on suspicion, a total shortage of Rs.37,76,000/- was reported. When the petitioner was called to inform about the shortage, he switched off his phone. When the officials visited the residence of the petitioner, he had absconded along with his family members, which shows that he is in connivance with custodians and have misappropriated ATM cash and fled away. Further, the petitioner has misappropriated the sum of Rs.46,397/- given to him for clearing the electricity bill. The petitioner has also carried with him company property like laptop, ID card and documents. Hence, the second respondent lodged a complaint before the first respondent police. Based on the complaint of the



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second respondent, case in Crime No.79 of 2022 was registered as against the petitioner.

3. The learned Counsel appearing for the petitioner would submit that the petitioner is an innocent person and he has not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No.79 of 2022 for the offences under Section 408 of IPC, as against the petitioner. Hence he prayed to quash the same.

4. The learned Additional Public Prosecutor (Pondy) would submit that the investigation is almost completed and the respondent police have only to file final report.

5. Heard the learned Additional Public Prosecutor (Pondy) appearing for the first respondent and perused the materials placed on record.

6. It is seen from the First Information Report that there are specific allegations as against the petitioner to attract the offence, which has

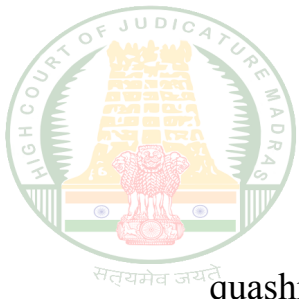


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to be investigated in depth. Further the FIR is not an encyclopedia and it need not contain all facts and it cannot be quashed in the threshold. This Court finds that the FIR discloses *prima facie* commission of cognizable offence and as such this 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 passed 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 the view to taking cognizance of the offence whether a *prima facie* case has been made out for summoning the accused person. The 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



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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 the 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 no 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 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 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 :-



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“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 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*



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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 is not inclined to quash the First Information Report. However, considering the crime is of the year 2022, the first respondent is directed to complete the investigation in Crime No.79 of 2022 and file a final report within a period of two months from the date of receipt of a copy of this order, before the jurisdiction Magistrate, if not already filed.

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

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Index: Yes/No

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Neutral Citation/Yes/No

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To

1. The Inspector of Police,
Grand Bazar-Police Station,
Puducherry.
2. The Public Prosecutor,
High Court of Madras.



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G.K.ILANTHIRAIYAN, J.

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