



Crl.O.P.No. 7546 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2025

CORAM:

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

Crl.O.P.No.7546 of 2023 and
Crl.M.P.No.4822 of 2023

1.Umapathi
2.Poonkuzhali

... Petitioners

Vs.

1.State rep. by its
Inspector of Police,
District Crime Branch,
Vellore.
(Crime No.16 of 2022).

2.S.Pichandi

..Respondents

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records relating to FIR in Crime No.16 of 2022 on the file of the Inspector of Police, District Crime Branch, Vellore and quash the same.

For Petitioners : Mr.T.Karthick Srikanth for
M/S K.M.Vijayan Associates

For R1 : Mr.Vinothraja,
Government Advocate (crl.side)



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For R2

: Mr.Adithya Varadarajan

ORDER

This petition has been filed to quash the FIR in Crime No.16 of 2022 on the file of the first respondent, registered for the offences punishable under Sections 418 and 420 of the IPC.

2. The case of the prosecution is that the second respondent entered into a sale agreement in the year 2015 with the petitioners, and the second petitioner's brother, namely Ravi Kumar, for the sale of his property. The petitioners had paid a sum of Rs. 77,00,000/- towards the total sale consideration of Rs. 1,13,00,000/-. However, the said sale was not completed. Subsequently, the petitioners requested a refund of the amount paid, which was partially repaid between the years 2016 and 2020. It is further alleged that a blank cheque and a promissory note, which had been given as security, were misused by the petitioners, who allegedly withdrew a sum of Rs. 42,50,000/- from the account of the second respondent without his consent. Based on this, a case was

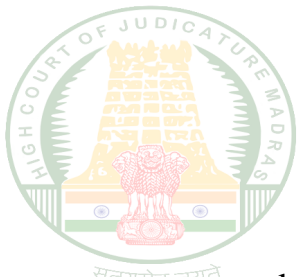


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registered in Crime No.16 of 2022 for the offences punishable under Sections 418 and 420 of the IPC.

3. The learned counsel for the petitioners submitted that the present FIR arises from a failed property transaction, wherein the second respondent, after receiving an advance of Rs. 77,00,000/-, failed to complete the sale due to encumbrances. Despite repeated requests, the sale was evaded for over three years, prompting the petitioners to recover Rs. 53,00,000/- through legal means. The cheque encashed by the first petitioner was part of a mutual settlement and honored through proper banking channels. The second respondent has a history of filing multiple, vexatious complaints across police stations, all of which were closed or advised to be pursued as civil disputes. The current FIR was registered after an inordinate and unexplained delay of over 450 days, clearly indicating *mala fide* intent. That apart, the dispute is civil in nature, and no ingredients of any criminal offence are made out. The police, without proper enquiry or adherence to legal guidelines, registered the complaint, resulting in gross abuse of process. Therefore, the petitioners prays to



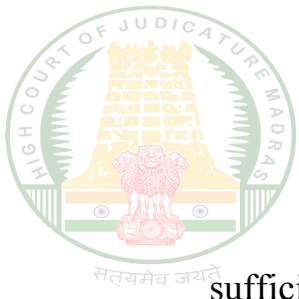
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quash the FIR.

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4. The learned counsel for the second respondent submitted that the first petitioner never entered into any agreement with the second respondent. Though the second respondent received the advance amount, the same was repaid on multiple occasions. The cheque in question was issued only for security purposes. Despite having issued specific instructions to stop payment, the first petitioner, who is a banker, misused the said cheque and encashed it without consent. It was further submitted that the first petitioner had no privity of contract with the second respondent and is in no way connected with the agreement. The conduct of the first petitioner in misusing the cheque amounts to a dishonest act. Therefore, a *prima facie* case exists for investigation under Sections 418 and 420 of IPC in Crime No. 16 of 2022.

5. The learned Government Advocate (Criminal Side) submitted that the investigation in Crime No. 16 of 2022 has been completed, and the final report is ready for filing. It was further submitted that there are



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sufficient materials collected during the course of investigation to proceed against the petitioners, and hence, the petition for quashing the FIR is not maintainable at this stage.

6. Heard both sides and perused the materials placed on record.

7. On a perusal of the First Information Report, this Court finds that there are specific and serious allegations as against the petitioners which attract the ingredients of cognizable offences and warrant thorough investigation. The contentions raised by the petitioners pertain to factual disputes, which cannot be adjudicated at the stage of quashing under Section 528 of BNSS. That apart, the investigation is stated to be completed and the final report is about to be filed. Interfering at this stage would amount to stifling a legitimate criminal prosecution. Whether the transaction is civil or criminal in nature can only be determined during trial based on evidence. It is well settled that an FIR is not expected to be an encyclopaedia of facts. The FIR in the present case discloses a *prima facie* commission of cognizable offences. The

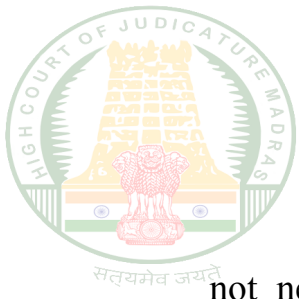


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investigation machinery must be allowed to proceed in accordance with law to unearth the truth and bring the guilty to book.

8. 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., (CrI.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 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



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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.

9. 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 :-

“23.

vi) *Criminal proceedings ought not to be scuttled*



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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 encyclopedia 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;”

10. In view of the above discussions, this Court is not inclined to quash the First Information Report in Crime No.16 of 2022. However, the first respondent is directed to complete the investigation in Crime No.16 of 2022 and file the final report within a period of twelve weeks from the date of receipt of copy of this Order, before the jurisdiction Magistrate, if not already filed.

11. Accordingly, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

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Neutral citation : Yes/No
Speaking/non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

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

2. The Public Prosecutor,
High Court, Madras.

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CrI.M.P.No.4822 of 2023

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