



*Crl.O.P.No.10911 of 2025*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2025

CORAM:

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

Crl.O.P.No.10911 of 2025  
and Crl.M.P.No.7236 of 2025

B.Kalaivani

.... Petitioner

Vs

1.State by,  
The Inspector of Police (Crime)  
M-5, Police Station,  
Ennore, Chennai 57.

2.Arunachalam ..... Respondents

**PRAYER:** Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records in Crime No 850 of 2024 on the file of the 1<sup>st</sup> Respondent and quash the same.

For Petitioner : Mr.K.Nirmal Kumar  
For R1 : Mr.A.Gopinath  
Government Advocate (Crl.Side)

**ORDER**

This Criminal Original Petition has been filed seeking to quash the FIR registered in Crime No.850 of 2024 on the file of the first respondent for the offence under Section 316(5) of the Bharatiya Nyaya Sanhita, 2023.

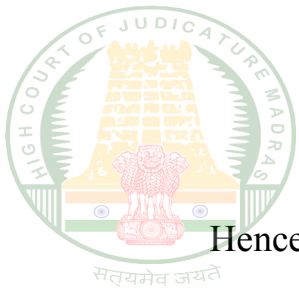


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2. Heard the learned counsel appearing for the petitioner and

the learned Government Advocate (Crl.Side) appearing for the first respondent. Perused the materials available on record.

3. The case of the prosecution is that, on 26.10.2024, the second respondent lodged a complaint alleging that he is engaged in the business of importing and exporting mobile parts under the name and style of Rohith Enterprise. On 20.06.2023, he imported mobile parts and LCD screens from Ningbo Peaceport Import and Export Co.Ltd., China. Since he was unable to make payment to the said Chinese company, he approached his auditor, who referred him to the petitioner's company, for handling import-export money transaction on a commission basis of Rs.5,000/- per transaction. Believing the words of the auditor, the second respondent deposited a sum of Rs.26,90,000/- from his account to the petitioner's company account for the business transaction to Chinese company. However, instead of forwarding the amount to the intended recipient, the petitioner transferred the funds to her personal account. When the second respondent questioned the same, there was a money dispute between her and the auditor and that was a reason for transferring the amount to her personal account. Further, it is alleged that the petitioner threatened the second respondent with dire consequences.



Hence, this case.

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4. In support of his contention, the learned counsel appearing for the petitioner relied upon the Judgment of the Hon'ble Supreme Court of India reported in **(2024) 10 SCC 690** in the case of ***Delhi Race Club (1940) Limited and others Vs. State of Uttar Pradesh and another***, wherein the Hon'ble Supreme Court of India held as follows :

*“44. At the most, the Court of the Additional Chief Judicial Magistrate could have issued process for the offence punishable under Section 420 IPC i.e. Cheating but in any circumstances no case of criminal breach of trust is made out. The reason being that indisputably there is no entrustment of any property in the case at hand. It is not even the case of the complainant that any property was lawfully entrusted to the appellants and that the same has been dishonestly misappropriated. The case of the complainant is plain and simple. He says that the price of the goods sold by him has not been paid. Once there is a sale, Section 406 IPC goes out of picture. According to the complainant, the invoices raised by him were not cleared. No case worth the name of cheating is also made out.”*

5. A perusal of the FIR reveals that instead of transferring the amount to the intended recipient, the petitioner transferred the entire



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amount to her personal account. Therefore, the above Judgment is not

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applicable to the facts of the present case. The entire averments in the complaint, clearly disclose the commission of an offence punishable under Section 316(5) of the Bharatiya Nyaya Sanhita, 2023.

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



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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 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.



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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 :-

“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;*



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.....

*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 is not inclined to quash the FIR in Crime No.439 of 2015 on the file of the first respondent. Accordingly, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

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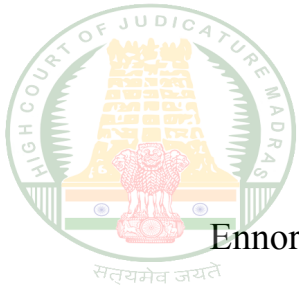
**G.K.ILANTHIRAIYAN, J.**

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To

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2. The Public Prosecutor,  
Madras High Court, Chennai.

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