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Crl.OP.Nos.15631 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.04.2025

CORAM:

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

Crl.O.P.No.15631 of 2023

and

Crl.MP.No.9727 of 2023

1. Samina Juzar
2. Mohsin Juzar
3. Zainab Mohsin

... Petitioners

Vs.

1. The Inspector of Police,
Central Crime Branch,
Tiruppur City,
Tiruppur District.

2. Rathinasamy

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C to call for the records relating to the case in Cr.No.5 of 2023 pending investigation on the file of the first respondent police and quash the same.

For Petitioners : Mr.K.G.Senthil Kumar

For Respondents : Mr.A.Gopinath
Government Advocate (Crl.Side)
for R1
: Ms.E.Harini



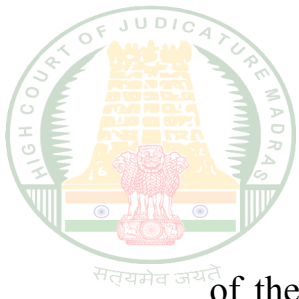
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ORDER

This Criminal Original Petition has been filed to quash the FIR registered in Cr.Nos.5 of 2023 on the file of the first respondent.

2. The case of the prosecution is that that the defacto complainant had invested Rs.50,00,000/- in the petitioners trading corporation namely M/s.Global Marketing, Manufacturing Enterprises, Excellent Trading Corporation and SZ Marketing in which the petitioners and two other family members were the directors. The second respondent was approached by the petitioners and two other accused on 26.02.2020. Since the petitioners has got an order from the Government of Kerala (KSEB) for supply of electrical equipments and showed the purchase order of KSEB and if the second respondent invest , they would get 40% profit out of which 30% will be shared by them and 10% will be given to the second respondent per month for, which the petitioners and two other accused has undertaken to deposit the original title deeds as security



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of their house and plots at Kollam, Kerala. Based on the assurance, the second respondent had invested a sum of Rs.50,00,000/- on 25.07.2021 and given it to the petitioners by way of cash and they have executed a joint promissory note for a sum of Rs.40,00,000/- and the third petitioner had executed a promissory note and handed over to A1 since she was at Dubai for a sum of Rs.10,00,000/-, it was witnessed by the second respondent's friend one Mr.Swaminathan. That apart, they have also handed over the original title deeds of Kollam Property and a letter of undertaking was given by A1. Thereafter, they have not shared the profit from August 2021. When the same was questioned by the second respondent on 08.11.2021 A1 to A3 came to the second respondent's Garment Company and told that they have expanded the business and they would return the investment and profit amount in the month of August 2022 ie. 13 months profit + Capital and gave five cheques in each one's name for sum of Rs.23,00,000/- and further executed a letter of undertaking as per their word the second respondent when presented the said cheques on 22.08.2022, the same was returned on 23.08.2022. When



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the second respondent tried to contact the petitioners , A1 attended the phone and threatened him with dire consequences. After executing promissory notes, letter of undertaking, deposit of title deeds and cheques which came to be dishonoured and refused to share the profit, thereby cheated the second respondent for a sum of Rs.1,15,00,000/- (Rs.50,00,000/- Capital + Rs.65,00,000/- Profit. Hence, the complaint.

3. On the complaint lodged by the second respondent, the first respondent has registered an FIR against the petitioners in Cr.Nos.5 of 2023 for the offence punishable under Sections 420 and 406 of IPC.

4. The learned counsel appearing for the petitioner submitted that it is only money transaction between the petitioner and second respondent. There is no offence made out under Section 406 and 420 of IPC. Infact, the entire allegations are civil in nature. He further states that the petitioner also filed a suit in O.S.No.348 of 2021 and it is pending.



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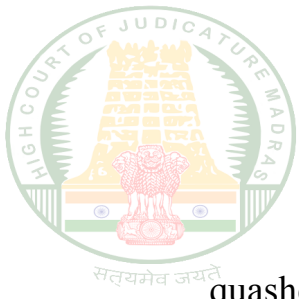
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5. The learned Government Advocate (CrI.Side) appearing for the respondent police and the learned counsel appearing for the second respondent reiterated the prosecution case and opposed to allow the petition.

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

7. A perusal of records revealed that in one hand the petitioner had assured that share with the parties and on the other hand filed a suit not to take any steps with regards to the documents submitted by the petitioner at the time of receiving deposits from the second respondent.

8. . It is seen from the First Information Report that there are specific allegations as against the petitioner to attract the offences 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

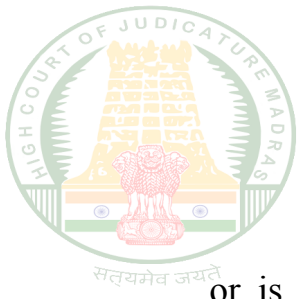


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quashed in the threshold. This Court finds that the FIR discloses prima facie commission of cognizable offence and as such this Court cannot interfere with the investigation. The investigating machinery has to step in to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code.

9. 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



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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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10. 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*



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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;”

11. 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 2023, the first respondent is directed to complete the investigation in Crime No.5 of 2023 and file a final report within a period of two months from the date of receipt of copy of this Order, before the jurisdiction Magistrate, if not already filed.



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

08.04.2025

Vv

To

1. The Inspector of Police,
Central Crime Branch,
Coimbatore City,
Coimbatore District.
2. The Public Prosecutor,
Madras High Court,
Chennai.



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