



Crl.O.P.No.20065 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2025

CORAM:

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

Crl.O.P.No.20065 of 2023

and

Crl.M.P.No.13590 of 2023

1.S.Kushal Raj

2.Nisha Devi

... Petitioners

Vs

1.State represented by,
The Sub – Inspector of Police,
C-3, Seven Wells Police Station,
Chennai.
(Ref:Crime No.11/2023)

2.Shantilal Bhandari

... Respondents

PRAYER: Criminal Original Petition filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to quash the FIR in Crime No.11 of 2023, on the file of the Sub Inspector of Police, C-3, Seven Wells Police Station, Chennai, for offence under Sections 147, 295A, 343, 448, 506 (ii) & 149 IPC.

For Petitioner : Mr.Devaraj

For R1 : Mr.K.M.D.Muhilan
Government Advocate (Crl.side)

ORDER



CrI.O.P.No.20065 of 2023

This petition has been filed to quash the FIR in Crime No.11 of 2023,

on the file of the Sub Inspector of Police, C-3, Seven Wells Police Station, Chennai, for the offence under Sections 147, 295A, 343, 448, 506 (ii) & 149 IPC.

2.The petitioners have been arrayed as A1 & A2. The case of the prosecution is that the petitioners had borrowed money from the defacto complainant and they have not repaid the same. Therefore, the defacto complainant sent a notice, dated 14.06.2022, asking them to pay the principal amount and interest due to him. Enraged by this, the accused, with the help of antisocial elements, trespassed into the property and wrongfully restrained the defacto complainant and insulted him by bringing beef and ate it and also consumed alcohol. The accused also threatened the defacto complainant and his family members with dire consequences. Hence the complaint.

3.The learned counsel for the petitioners would submit that the defacto complainant, namely, the second respondent died and the entire FIR came to be registered only on the civil dispute, which is pending between the petitioners and the second respondent. He also produced the complaints in various suits. He further submitted that since the defacto complainant died,



there is absolutely no power for the investigating officer to proceed further.

Hence he prayed to quash the same.

4. Heard the learned Counsel appearing on either side and perused the materials placed on record.

5. In this context, it is relevant to rely upon the judgment of 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 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.

6. 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;*



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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 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;*”

7.In view of the above discussions, this Court is not inclined to quash



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the First Information Report. However, the first respondent is directed to complete the investigation in Crime No.11 of 2023 and file a final report within a period of 12 weeks from the date of receipt of copy of this order, before the jurisdiction Magistrate, if not already filed.

8.Accordingly, this Criminal Original Petition stands dismissed.

Consequently, connected miscellaneous petition is closed.

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Internet: Yes

Index: Yes/No

Speaking/Non speaking order

To

1.State represented by,
The Sub – Inspector of Police,
C-3, Seven Wells Police Station,
Chennai.(Ref:Crime No.11/2023)

2. The Public Prosecutor,
High Court, Madras.

G.K.ILANTHIRAIYAN. J.

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