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Crl.O.P.No.19151 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2025

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.19151 of 2023

and

Crl.M.P.No.14369 of 2023

1.C.Y. Sathaya Narayanan

2.Indra Devi

... Petitioners

Versus

1.The State Rep.by,
Inspector of Police,
Central Crime Branch,
Veppery, Chennai – 54.
(Crime No.214 of 2023)

2.Vijay Ganesh Kumar

.. Respondents

[Amended as per order dated 30.08.2023 in Crl.M.P.No.13746 of 2023]

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records pertaining to Crime No.214 of 2023 pending on the file of the Inspector of Police, Central Crime Branch, Veppery, Chennai – 54, and quash the same.



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For Petitioners : Mr. M. Velmurugan
For Respondents : Mr. R. Vinothraja, (for R1)
Government Advocate (Criminal Side)
: Mr. N. Manoharan (for R2)

ORDER

This petition has been filed to quash the proceedings in the First Information Report in Crime No.214 of 2023 pending on the file of the first respondent.

2. On the complaint lodged by the second respondent, the first respondent registered the First Information Report in Crime No.214 of 2023 for the offence under Sections 406 and 420 of the Indian Penal Code, 1860 (IPC.,) as against the petitioners. The second respondent, who runs a trading and investment business in the name and style of M/s. Revenza Global Ventures Private Limited, in Chennai. The 1st petitioner claimed himself as a Manager Director of the company, namely, M/s. VTS Enterprises India Private Limited, offered a joint venture business and induced the second respondent to appoint one of the directors from his company to the petitioner company to monitor the day-to-day affairs,



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and thereby one Mrs. Aarthilalwani acted as a director of the petitioner's company from 01.11.2021 to 29.11.2021. Thereafter, the petitioners and the second respondent entered into business agreements, initially sharing profits. However, the petitioners allegedly misrepresented the petitioner company's financial performance, stating that it was Rs.22,83,00,000/- and assured the second respondent that the company would earn a profit of Rs.83,28,922/-. Accordingly, the second respondent supplied goods worth Rs.4,97,96,572/-, to various suppliers, and being the inducers, the petitioners are liable to pay the said sum. Therefore, the petitioner company issued a cheque to discharge their liability which was dishonored. Consequently, the petitioners were accused of cheating the second respondent. Hence, the said case in Crime No.214 of 2023 was registered for the offence under Sections 406 and 420 of IPC., as against the petitioners.

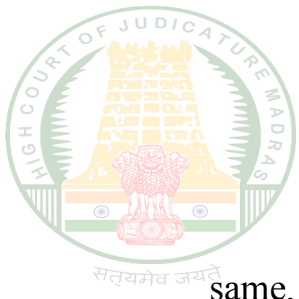
3. Learned counsel for the petitioners would submit that the petitioners are arrayed as A1 and A2 in Crime No.214 of 2023. The second respondent had voluntarily joined in the petitioners company by



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way of joint venture business. Further, the second respondent's company's director was also inducted as one of the directors of the petitioner's company. Subsequently, the directorship was withdrawn. The second respondent had made payment to various suppliers of M/s. Sai Balaji Agro Foods and M/s. P.S.M. Viswanathan Chetty & Co., M/s. Presanna Flour Mills Private Limited, Way Cool Foods and Products Private Limited, etc., from 01.12.2021 to 16.12.2022 and the petitioners had no knowledge about the payments made by the second respondent and the petitioners did not authorise him to make those payments. That apart, it is completely a commercial transaction between the suppliers and second respondent. Now, the petitioners are made as scape goats for the business loss. For the very same set of allegations on the petitioners, the second respondent had already initiated proceedings for the offence under Section 138 of the Negotiable Instruments Act, 1818 in C.C.No.3069 of 2023 pending on the file of Metropolitan Magistrate, Fast Track Court, Chennai. Now, it is ended in the confession of the petitioners that the petitioners are convicted for the offence under Section 138 of the Negotiable Instruments Act, 1818. Aggrieved by the



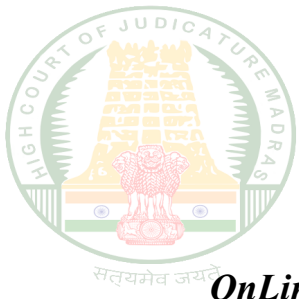
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same, the petitioners have preferred an appeal, which is pending before the Appellate Court. Therefore, for the very same set of allegations, that too after filing the complaint for the offence under Section 138 of NI Act, the present complaint has been lodged and the same has been registered in Crime No.214 of 2023. Therefore, the present complaint is not at all maintainable and is liable to be set aside. There is absolutely no averments to attract the offence under Sections 406 and 420 of IPC.

4. He further submitted that there is a bar under Section 300(1) of Cr.P.C., that once a person is convicted for an allegation, no further complaint can be lodged for the very same set of allegation. The petitioner was already convicted for the offence under Section 138 of NI Act, for the very same set of allegation levelled as against the petitioners, therefore, the present First Information Report in Crime No.214 of 2023 is not sustainable and is liable to be quashed.

5. Further, he pointed out that a similar issue, in the case of, ***J. Vedasingh v. R.M. Govindan and Others.***, reported in ***2022 SCC***



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OnLine SC 1010, has already been referred to a larger bench of the Hon'ble Supreme Court of India, by a two judge bench to resolve the conflicting interpretations and provide clarity on the legal issues.

6. Further, he submitted that the ingredients of Section 420 of IPC, is not made out. In the case of ***Archana Rana v. State of Uttar Pradesh and Another in Crl.A.No.167 of 2021 dated 01.03.2021***, the ingredients to constitute an offence under Section 420 of IPC were stated as follows:-

- (i) A person must commit the offence of cheating under Section 415 and
- (ii) The person cheated must be dishonestly induced to
 - (a) Deliver property to any person or
 - (b) Make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.

7. The learned counsel for the petitioner also submitted that as per the business agreement dated 01.12.2021 and the Master supply

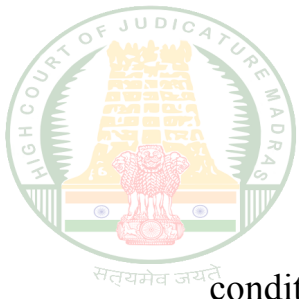


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agreement dated 25.01.2022 there is an arbitration clause to settle the issue amicably before the arbitrator. Therefore, the present complaint cannot be maintainable.

8. Learned counsel for the second respondent submitted that the petitioners induced the second respondent to invest huge money and offered a joint venture business. The first petitioner introduced himself as the Managing Director of M/s. VTS Enterprises India Private Limited and it is a reputable supplier of Dhall products in and around Tamilnadu. Utilizing the said circumstances, the petitioners induced the second respondent to invest huge money, by way of financial support to expand their business. Thereafter, the second respondent's company director also was inducted as a director of the petitioners company and both the companies entered into a business agreement dated 01.12.2021 and 25.01.2022. As per the terms and conditions, the second respondent had ventured into the business with various suppliers and purchased goods from 01.12.2021 to 16.12.2022. Thereafter, the second respondent raised invoices and paid to the respective suppliers. As per the terms and



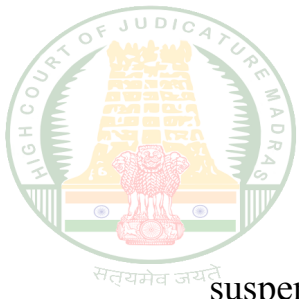
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conditions, the petitioners have to share their profits in the said business transactions to the second respondent. The petitioners have also shown their Provisional Balance Sheet and GST transaction of the petitioners company as a proof and thereby induced the second respondent to invest huge money. Accordingly, the second respondent had supplied goods to the tune of Rs.4,97,96,572/- to various suppliers. Towards the said liability, the petitioners company had issued a cheque for the said sum. When it was presented for collection, and it was returned as “dishonored”. Therefore, the second respondent initiated proceedings for the offence under Section 138 of Negotiable Instruments Act, 1881, as against the petitioners.

9. Heard the learned counsel on either side and perused the materials available on record.

10. After the fullfledged trial, the Trial Court convicted the petitioner for the offence under Section 138 of NI Act. Aggrieved by the same, the petitioners had preferred an appeal and their sentences were

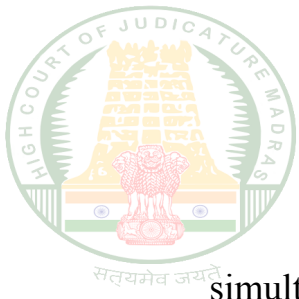


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suspended on condition that the petitioners shall deposit 20% of the cheque amount. However the petitioners did not even comply with the condition so far. Therefore, issuance of the cheque itself attracts the offence under Section 420 of IPC. Thereafter the dishonored cheque itself attracts the offence under Section 138 of NI Act. Therefore, both are distinct offences and both the offences can be invoked as against the petitioners/accused as stated supra, from the day-one of the transactions, the petitioners induced the second respondent to invest in the joint venture business and received huge supply of goods. Thereafter, the petitioners did not pay any amount for the received goods. Therefore, the offence under Sections 406 and 420 of IPC, are clearly made out as against the petitioners.

11. The Hon'ble Supreme Court of India, in the case of, ***Bijoy Kumar Moni v. Paresh Manna and Another***, reported in ***2024 INSC 1024***, referred to the issue of cognizance of the offence under Section 138 of NI Act, on filing a private complaint and the complaint filed for the offence under Sections 406 and 420 of IPC., can be proceeded



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simultaneously or one after another. This was held by a two Judge Division Bench of the Hon'ble Supreme Court of India. Therefore, in this case, the Hon'ble Supreme Court of India, referred this issue to the larger bench. The issues raised in the case cited supra by the two Judge Bench of the Hon'ble Supreme Court of India, are stated as follows:-

“12.

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.....

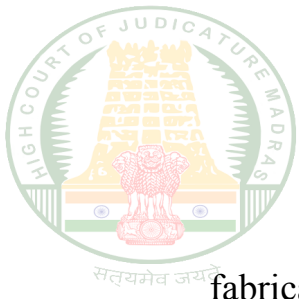
*(1) Whether the ratio of the judgment, in the case of **G. Sagar Suri (supra)** and **Kolla Veera Rahav Rao (supra)**, lay down the correct law?*

Or

*The view taken in the case of **Sangeetaben Mahendrabhai Patel (supra)** as followed in **M/s. V.S Reddy and Sons (supra)** which is subsequent and conflicting, lay down the correct proposition of law?*

(2) Whether on similar set of allegations of fact the accused can be tried for an offence under NI Act which is special enactment and also for offences under IPC unaffected by the prior conviction or acquittal and, the bar of Section 300(1) of Cr.P.C., would attract for such trial?”

12. The above judgements is squarely applicable to the case on hand for the simple reason that from the day-one the petitioners had induced the second respondent to invest huge sums by showing



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fabricated documents such as provisional balance sheet and GST transactions of the first petitioner's company as if their turnover was huge and thereby deceived the second respondent to supply huge quantity of materials. Thereafter, they have not shared any profits with the second respondent. When the second respondent asked for payments the petitioners had issued a cheque and the same was presented for collection. Thereafter it got dishonored and as such the second respondent initiated prosecution for the offence under Section 138 of NI Act. Therefore, the dishonoring of cheque alone attracts the offence under Section 138 of NI Act. Whereas in order to attract the offence under Section 406 and 420 of IPC., there must be an inducement while entering into the business.

13. The above said averments very much attract the offence under Section 406 and 420 of IPC. Therefore, both transactions are completely different and it cannot be said both the complaints are lodged for the same set of allegations.



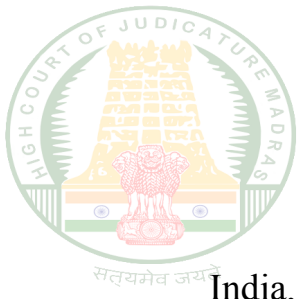
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14. On perusal of both agreements referred by the learned counsel for the petitioner, and as per the above said averments, the offence under Sections 406 and 420 of IPC are clearly made out, and as such, the First Information Report cannot be quashed and in view of the same, this Criminal Original Petition is liable to be dismissed.

15. It is seen from the First Information Report that there are specific allegations as against these petitioners 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 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.

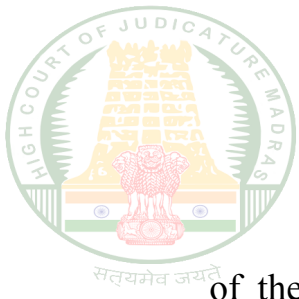
16. Therefore, despite the presence of the arbitration clause in the agreement of the parties, this Court does not find any reason to quash the proceedings, as per the law laid down by the Hon'ble Supreme Court of



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India, 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



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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 not 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.

17. 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.*



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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; ”

18. 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 2024, the first respondent is directed to complete the



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investigation in Crime No.21 of 2024 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.

19. With the above observations and direction, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is also closed.

18.03.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order

klt

To

1.The State Rep.by,
Inspector of Police,
Central Crime Branch,
Veppery, Chennai – 54.
(Crime No.214 of 2023)

2. The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN, J.

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