IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **17-02-2025**

CORAM
THE HONOURABLE MR JUSTICE G.K. ILANTHIRAIYAN

CRL OP NO. 30477 of 2024
AND
CRL MP NO. 17300 OF 2024

Kader Mydeen M.S Alias Mohaed Salih Khader
Mydeen
...Petitioner(s)

Vs

1. State Represented By
The Inspector Of Police,
Avadi CCB Police Station,
Avadi City, Thiruvallur Dt.
(Crime No.38 Of 2024)

2. Ahamed Kabeer ... Respondents

PRAYER: Criminal Original Petition filed under Section 528 of B.N.S.S. praying to call for records and quash the FIR in Crime No.38 of 2024 on the file of the 1st respondent police.

For Petitioner : Mr.M.Vinoth

For Respondents
For R1 : Mr.K.M.D.Muhilan,
Govt. Advocate (Crl. Side)

For R2 : Mr.S.Agilesh Kumar

ORDER

This Criminal Original Petition has been filed to quash the F.I.R. registered in crime No.38 of 2024 on the file of the 1st respondent police for the alleged offence under Secs. 406, 409, 465, 468, 467 and 420 of I.P.C.

2. The case of prosecution is that the defacto complainant is the founding Director and a shareholder of M/s.Seikodenki India Pvt. Ltd., who are in the business of manufacturing of wire harness cable and allied tools. At the time of establishment, the defacto complainant and one Ahmed Kabir held 32% share in the company. Further the petitioner herein held 68% of shares in the company. During January 2018, two other share holders, 1st and 3rd accused joined the company and when the petitioner share was reduced to 35%, the 1st accused share stood at 16.5% and the 3rd accused share stood at 16.5% and the defacto complainant share stood at 32%. The petitioner was the Managing Director of the Company, who appointed the 1st accused as the Operations Director, who purchased raw materials from various suppliers from other countries. That the 1st accused fixed hidden margins and benefitted out of the same and the same was not disclosed to the other directors. It was later found that due to the purchase of raw materials by the 1st accused, the company suffered a monetary loss of Rs.2,00,00,000/- (Rupees two crores only). That on

14.02.2020 the petitioner transferred Rs.2,00,00,000/- to his personal account without informing the other directors. On 12.03.2023 the petitioner herein transferred all his shares to the 1st accused vide a share purchase agreement without intimating other directors neither a resolution nor a meeting was conducted. After which, the 1st accused held a zoom meeting in which defacto complainant and the 1st accused agreed to be as 50-50 shareholders of the company and the defacto complainant was appointed as the Managing Director of the company to handle operations. Further, the 1st accused agreed to have the defacto complainant as the joint signatory in the accounts maintained at ICICI, HDFC, South Indian Bank. But, after the zoom meeting, the 1st accused did not attend phone calls and failed to revert to emails of the defacto complainant and denied access to book of accounts, bank accounts and email domains of the company. The defacto complainant failed in his attempts to conduct the formal board meeting as the 1st and 3rd accused did not cooperate. The defacto complainant sent the notice to South Indian Bank to stop the operations of the Bank Account, but failed to succeed. After which, upon the defacto complainant conducting a internal investigation found that the 1st accused appointed the 4th accused as the General Manager of the company on 14.02.2017 to March 2020. During the period in which the 4th accused was not in India, but she came down to India to March 2020 using a tourist visa and signed the various documents on behalf of the company, thereby violating the immigration laws of India. That the 1st accused appointed a new director without conducting a board meeting. On 19.02.2021 the 1st accused tried to remove the defacto complainant from the post of Director by filing form to Ministry of Corporate Affairs. That upon receiving a letter dated 28.06.2021 from the Ministry of Corporate Affairs to furnish relevant documents for removal of defacto complainant as requested by the Registrar of the companies, the attempt was dropped. Upon knowing the same, the defacto complainant lodged a complaint before the Registrar of the Company on 03.03.2021. Hence, the case.

3. The learned counsel appearing for the petitioner would submit that the petitioner is an innocent person and he has not committed any offence as alleged by the prosecution. Without any base, the third respondent police registered a case in Crime No.38 of 2024 for the offences under Sections 406, 409, 465, 468, 467 and 420 of IPC, as against the petitioner. He would submit that the petitioner was the Director of 1st accused company, however, in the year 2020 itself, he was relieved from the company and as such, he has no relationship with the 1st accused company. He had also pointed out that a sum of Rs.2 crores was already transferred to the company's account by six instalments between 15.02.2020 to 20.02.2020. Hence he prayed to quash the

F.I.R.

4. The learned Government Advocate (Crl. Side) would submit that there is a specific allegation as against the petitioner even in the F.I.R. and a sum of Rs.2 crores has been transferred to company account. That apart, the contentions made by the petitioner before this court cannot be just and proper and it cannot be quashed at the threshold and it can be investigated by the Investigation Officer. He would also submit that investigation is almost completed and the respondent police have only to file final report.

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

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 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.

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 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.

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;

....

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 First Information Report. However, the petitioner is directed to produce his documents before the Investigating Officer during investigation and the 1st respondent is directed to complete the investigation in Crime No.38 of 2024 and thereafter, file a 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.

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

17.02.2025

Internet:Yes/No
Index :Yes/No
Speaking/Non speaking order
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To
1. Inspector Of Police,
Avadi CCB Police Station,
Avadi City, Tiruvallur Dt.

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

G.K.ILANTHIRAIYAN, J.

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