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Case Citation: (2026) ibclaw.in 3566 HC



CrI.O.P.Nos.8077 of 2025 & 1190 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.06.2026

Pronounced on: 01.07.2026

CORAM:

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

CrI.O.P.Nos.8077 of 2025 & 1190 of 2026 and
CrI.MP.Nos.5260, 5262 of 2025, & 721 of 2026

CrI.OP.No.8077 of 2025

S.Venkatraman

... Petitioner

Vs.

ADDITIONAL SUPERINTENDENT OF POLICE,
SPECIAL POLICE ESTABLISHMENT,
CENTRAL BUREAU OF INVESTIGATION,
ECONOMIC OFFENCES WING,
III FLOOR,
'A WING', RAJAJI BHAVAN,
BESANT NAGAR,
CHENNAI 600 090
(REF CRIME.NO. RC. 5(E) AND 6(E)
DATED.19.12.2001)

... Respondent

Prayer:

Criminal Original petition filed under Section 482 of Cr.P.C. praying to call for the records and quash the final report in connection with CC.no.9825 of 2005 pending trial on the file of the Additional Chief Metropolitan Magistrate Court at Egmore, Chennai for offences under sections 120-B r/w 406 & 420 IPC and substantive offences under sections 406 and 420 IPC.

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For Petitioner : Mr.C.Arun Kumar

For Respondent : Mr.B.Mohan,
Special Public Prosecutor for CBI

CrI.OP.No.1190 of 2026

P.Rajarathinam

... Petitioner

Vs.

State rep. By
ADDITIONAL SUPERINTENDENT OF POLICE,
CENTRAL BUREAU OF INVESTIGATION,
ECONOMIC OFFENCES WING,
III FLOOR,
'A WING', RAJAJI BHAVAN,
BESANT NAGAR,
CHENNAI 600 090
(REF CRIME.NO. RC. 5&6/E/2001/CBI/
EOW/Chennai)

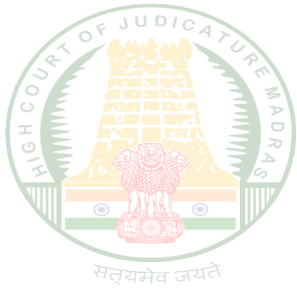
... Respondent

Prayer:

Criminal Original petition filed under Section 528 of BNSS praying to call for the entire records connected with the charge sheet dated 01.04.2005 in CC.no.9825 of 2005(now split up CC.No.1387 of 2006) on the file of the learned Additional Chief Metropolitan Magistrate Court at Egmore, Chennai against the petitioner and quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.M.Radhakrishnan
for Mr.K.Jayaraman

For Respondent : Mr.B.Mohan,
Special Public Prosecutor for CBI



COMMON ORDER

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The criminal original petition in Crl.OP.No.8077 of 2025 has been filed praying to quash the final report in connection with CC.no.9825 of 2005 pending trial on the file of the Additional Chief Metropolitan Magistrate Court at Egmore, Chennai for offences under sections 120-B r/w 406 & 420 IPC and substantive offences under sections 406 and 420 IPC; the criminal original petition in Crl.OP.No.1190 of 2026 has been filed praying to quash the charge sheet dated 01.04.2005 in CC.no.9825 of 2005(now split up CC.No.1387 of 2006) on the file of the learned Additional Chief Metropolitan Magistrate Court at Egmore, Chennai against the petitioner.

2. The petitioner in Crl.OP.No.8077 of 2025 has been arrayed as A1 whereas the petitioner in Crl.OP.No.1190 of 2026 has been arrayed as A5, who is a split up accused from CC.No.9825 of 2005. The case of the prosecution is that the defacto complainant had matured deposit of Rs.30,00,000/- during the year 1997-1998 with M/s.Synergy Financial Exchange Limited, Chennai (in short 'SFEL') in the fixed deposit scheme for which the company issued post dated cheque and the same was dishonoured, thereby the company and Directors have cheated the



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complainant. They were evasive of any commitment to repay the deposits. Further, another victim P.S.B.Rajan invested a sum of Rs.9.25 lakhs in the fixed deposit schemes. The company and the other Directors failed to discharge their responsibilities in repaying the deposited amounts and committed wilful act of cheating and fraud after luring the public to invest through their repeated advertisements. After completion of investigation, the respondent filed final report and the trial court had taken cognizance in CC.No.9825 of 2005. There are totally 9 accused, in which the petitioner in Crl.OP.No.8077 of 2025 is arrayed as A1 whereas the petitioner in Crl.OP.No.1190 of 2026 has been arrayed as A5. However, due to absence, red corner notice was issued against A5 and he was also declared as proclaimed offender and the case has been split up against him and new case is assigned in CC.No.1387 of 2006.

3. The learned counsel for the petitioner in Crl.OP.No.8077 of 2025 submits that the company in which the deposits were collected is not arrayed as an accused. Though the petitioner floated the company in the name of SFEL, the petitioner was one of the Directors and without adding the company, no prosecution can be initiated as against the Directors. Under the penal code, there is no provision to punish the directors by way of vicarious liability for the offence committed by the

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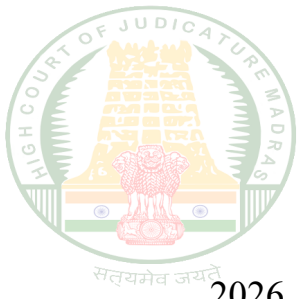
company. The prosecution arrayed the ninth accused, which is a sister concern of SFEL represented by the official liquidator. Now the company is liquidated and has been taken over by official liquidator of this Court. Further, the post dated cheques issued by the company were dishonoured. The fixed deposits were also opened for the customers in the name of the company. In fact, the company board passed order against the company to settle the amount due with interest. The petitioner is not arrayed as accused in his individual capacity, but only as Director of the company. All the documentary evidences produced by the prosecution pertain to the company and not the Directors of the company. The vicarious liability is unknown to criminal jurisprudence unless specifically provided by statute. Therefore, if the company is not made as an accused, then the instrumentalities i.e. the Directors cannot be prosecuted. There are specific provisions making the Directors of the company liable to be punished for the offence committed by the company. But in the Indian Penal Code, there is no such provision that makes the Directors of the company vicariously liable for punishment for the offence committed by the company. Therefore, when the company is not arrayed as an accused, it is fatal to the case of the prosecution and the petitioner cannot be prosecuted in the capacity of Directors.

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3.1 In support of his contention, the learned counsel for the petitioner in Crl.OP.No.8077 of 2025 relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***S.K.Alagh Vs. State of Uttar Pradesh and Others*** reported in (2008) 5 SCC 662, in which the Hon'ble Supreme Court of India held that a person in charge of the affairs of the company and in control thereof has been made vicariously liable for the offence committed by the company along with the company but even in a case falling under Section 406 of IPC, vicarious liability has been held to be non extendable to the Directors or officers of the company. In the absence of any provision laid down under the statute, the Director of a company or an employee cannot be held to be vicariously liable for any offence committed by the company. He also relied upon the judgment of this Court in the case of ***B.Jagadeesh and others Vs. The Deputy Superintendent of Police, EOW-II, Namakkal*** reported in 2011 (2) MWN (Cr.) 494, wherein this Court held that under IPC, there can be no vicarious liability fastened on the Directors of the company for the offence committed by the company for want of any penal provision making the Directors also vicariously liable for punishment. Therefore, the prosecution against the Directors is not maintainable.



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4. The learned counsel for the petitioner in CrI.OP.No.1190 of

2026 submits that even according to the case of the prosecution, P.Rajarithnam & Associates represented by M.V.Subramanian and S.Venkataraman and others represented by Venkataraman entered into memorandum of understanding dated 26.02.1999. Accordingly, one of the obligations of the petitioner is that he took over SFEL, in which the petitioner was not a signatory to the said memorandum of understanding. There was no connection whatsoever between the petitioner and the said memorandum of understanding. Therefore, the obligations or liabilities arising out of the said memorandum of understanding cannot fasten any liability over the petitioner. Therefore, the petitioner is in no way connected with SFEL since he was not a signatory to the memorandum of understanding.

5. Heard, the learned counsel appearing on either side and perused all the materials placed before this Court.

6. On perusal of the counter filed by the respondent and on hearing the submissions of the learned Special Public Prosecutor for CBI appearing for the respondent, it is revealed that in compliance to the orders of this Court dated 31.08.2001, the Case



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RC.5/E/2001/CBI/EOW/Chennai under Sections 409 & 420 r/w 34 of

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IPC was registered on 19.12.2001 by CBI, EOW, Chennai for further investigation in Crime No.1216 of 1999 of Central Crime Branch, Chennai City. The gist of allegations in the FIR of Chennai City, Central Crime Branch in Crime No. 1216 of 1999 is that the complainant had matured deposit of Rs.30 lakhs during 1997-98 with SFEL in the Fixed Deposit Scheme and that post dated cheques issued by the Company for this purpose were dishonoured by the company's bankers. The officials of the company were totally evasive of any commitment to repay the deposits and thereby committed offences punishable under Sections 409, 420 r/w 34 of IPC. The case i.e. RC.6/E/2001/CBI/EOW/Chennai under Section 409 IPC was registered on 19.12.2001 by CBI, EOW, Chennai in compliance to the orders of this Court for further investigation of the case in crime No.277 of 1999 of Central Crime Branch, Chennai. The gist of allegations in the FIR in crime No.277 of 1999 of Chennai City Central Crime Branch is that the complainant invested a total sum of Rs.9.25 lakhs in his name and his family members in the fixed deposit schemes of SFEL during 1997-98. They have not discharged their responsibility in repaying the depositors and committed willful act of cheating and fraud after luring the public to invest in their company through their repeated advertisements and thereby committed the offence punishable under

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Section 409 IPC. During investigation, one, Rajarathinam was arrayed as

accused in the case. In compliance of the order dated 31.08.2001 of this Court, to apprehend the absconding accused, CBI requested NCB-INTERPOL, CBI, New Delhi, to open Red Corner Notice (RCN) against him. Since a Red Corner Notice (RCN) had already been issued against him vide File No.2002/8857, Control No.A-288/4-2002 dated 08.04.2002 on the request of the Commissioner of Police, Madras City, an Addendum/Corrigendum was issued by the IPSG in the RCN Control No.A-288/4-2002 by including the details of the cases RC.5 & 6/(E)/2001 of CBI, EOW, Chennai, It was also mentioned in the Addendum/Corrigendum that the Arrest Warrant in CP No.322 of 1999, issued on 19.10.2001 by this Court has been cancelled and replaced by an Arrest Warrant in Criminal Case No.5/(E)/2001 issued on 12.03.2002 by the Metropolitan Magistrates Court in Egmore, Chennai, India. On completion of investigation, based on the evidence collected, a combined charge sheet dated 14.05.2004 was filed against nine accused persons and charge sheet was taken cognizance by the trial court.

7. The only ground raised by the first accused is that the company was not arrayed as accused and as such, he is not vicariously liable for the offence committed by the company in the capacity of the

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Director of the company. The fifth accused raised only one ground that he was not a signatory to the aforementioned memorandum. Therefore, the obligations or liabilities arising from the memorandum of understanding cannot be considered to be the obligations or liabilities of him. The memorandum of understanding is not found to have been entered into between the petitioner representing the said P.Rajarathinam and Associates and S.Venkatraman and others represented by S.Venkatraman.

8. Insofar as the petitioner in CrI.OP.No.1190 of 2026 is concerned, he is not entitled for any relief under Section 528 of BNS since red corner notice is pending against him pursuant to the non- bailable warrant issued against him. He was also declared as a proclaimed offender. However, it was set aside on condition that he will appear before the trial court. In a company petition in CP.No.322 of 1999 filed by Raghuraman and Sita before this Court against SFEL to wind up the company under the Companies Act, this Court passed an order for winding up of the company SFEL and directed the respondent to register FIR and proceed with the investigation. In pursuant to the direction issued by this Court, the respondent registered FIR in crime No.1216 of 1999 and another crime was also registered in crime No.277 of 1999. This court while adjudication in CP.No.322 of 1999, issued non bailable



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warrant against A5 and also a proclamation order was issued under

Section 82 of Criminal Procedure Code. Further, the Commissioner of Police was directed to form a special squad to secure and produce the petitioner who had been absconding for several months. Further, the National Central Bureau- Interpol, CBI, New Delhi also sought for direction before this Court to open red corner notice against the petitioner who was reported to be in England. In OSA.Nos.339 and 371 of 2001, by order dated 26.09.2005, the Hon'ble Division Bench of this Court passed the following order:

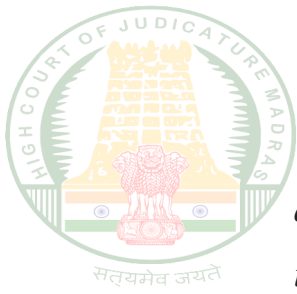
i) The appellant P.Rajarithnam shall make him available for recording any evidence before the Master's Court, within a period of four months from today.

ii) The appellant shall also appear before the appropriate investigating agency, i.e.C.B.I, within the said period.

iii) The appellant shall appear either before the Official Liquidator or Administrator, within the said period of four months.

iv) The investigations pertaining to the issue and shall make appellant shall cooperate in all available of all relevant documents.

v) Since the Counsel has submitted that he will appear, the direction issued by the Court from time to time for arrest shall be kept in abeyance. If, however, the appellant fails to appear before the authority, as directed



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above, it would be open to the appropriate authorities to take appropriate action in accordance with law to secure his presence.

vi), Since Section 82 of Cr.P.C. is not applicable to such matter, the direction regarding issuance of proclamation under Section 82 of Cr.P.C. shall stand quashed.

vii) If the appellant appears, as directed above, such order shall be taken as complied with and no further coercive course are required to be taken against him

9. However, the petitioner failed to appear before the trial court. That apart, there are specific allegations against the petitioner in CrI.OP.No.1190 of 2026 to attract the charges under Sections 120(b) r/w 420, 406 of IPC. The petitioner is the proprietor of M/s.P.Rajarathinam Associates, who took over the company through a memorandum dated 26.02.1999 and appointed the sixth accused as its advisor. As per the memorandum, it is expressly understood that PR Associates will take all the steps to ensure that all the investors in the company are fully protected and taken care of. After such take over, the petitioner collected money from the debtors of company and misappropriated such amounts by converting it to his own use to the tune of Rs.23.04 lakhs. Further, he had collected amounts due to the company from its debtors through his associates without bringing them into the credit of the company's account



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and diverted the amounts to his other associate company, thus depriving the genuine investors from receiving their deposit amount and cheated them. At last, the petitioner filed petition to recall the non-bailable warrant before the trial court in Crl.MP.No.6497 of 2024 without his presence and the same was dismissed and aggrieved by the same, the petitioner preferred criminal revision before this Court in Crl.RC.No.543 of 2024 and the same was also dismissed by an order dated 23.08.2024 as withdrawn. Therefore, as of now, the non bailable warrant and also the red corner notice are pending against him.

10. It is true there is no specific provision in the Indian Penal Code to prosecute the Directors of the company vicariously without prosecuting the company. In the case on hand, already the company was wound up and the properties of the company are dealt with by official liquidator. Therefore, the prosecution did not bring the company as accused. In this regard, the respondent relied upon the judgment of the Hon'ble Supreme court of India rendered by the three-judge-bench in the case of *Ajay Kumar Radheyshyam Goenka Vs. Tourism Finance Corporation of India Limited* reported in *2023 4 Supreme 711*, wherein it was held that by operation of provisions of Insolvency and Bankruptcy Code, the criminal prosecution initiated against the natural persons under



Section 138 and r/w 141 of NI Act r/w Section 200 of Cr.P.C. not terminated. It was further held as follows:

49. *It is true that by virtue of Section 238 of the IBC, the provisions of the [CrPC](#) shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. But, no provision of the IBC bars the continuation of the criminal prosecution initiated against the directors and officials.*

50. *It is equally true that once the corporate debtor comes under the resolution process, its erstwhile managing director(s) cannot continue to represent the company. [Section 305\(2\)](#) of the CrPC states that where a corporation is the accused person or one of the accused persons in an inquiry or trial, it may appoint a representative for the purpose of the inquiry or trial and such appointment need not be under the seal of the corporation. Therefore, it is only the Resolution Professional who can represent the accused company during the pendency of the proceedings under IBC. After the proceedings are over, either the corporate entity may be dissolved or it can be taken over by a new management in which event the company will continue to exist. When a new management takes over, it will have to make arrangements for representing the company. If the company is dissolved as a result of the resolution process, obviously proceedings against it will have to be*



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terminated. But even then, its erstwhile directors may not be able to take advantage of the situation. This is because, this Court in *Aneeta Hada (supra)*, even while overruling its decision in *Anil Hada v. Indian Acrylic Ltd.* reported in (2000) 1 SCC 1, as not laying down the correct law in so far as *Anil Hada (supra)* states that the director or any other officer can be prosecuted without impleadment of the company, proceeded to hold that the matter would stand on a different footing where there is some legal impediment as the doctrine of *lex non cogit ad impossibilia* gets attracted. It was specifically observed that the decision in *Anil Hada (supra)* is overruled with the qualifier as stated in para 51. Considering the same, the ratio of the decision of this Court in *Ajit Balse (supra)* upon which strong reliance is placed on behalf of the appellant is of no avail.

51. What follows from the aforesaid is that for difficulty in prosecuting the corporate debtor under *Section 138* of the NI Act after the approval of the resolution plan under the IBC, we need not let the natural persons i.e., the signatories to the cheques/directors of the corporate debtor escape prosecution. How can one allow the natural persons to escape liability on such specious plea? In such a situation the Latin maxim *Lex Non Cogit Ad Impossibilia* is attracted which means law does not compel a man to do which he cannot possibly perform. *Broom's "Legal Maxims"* contains several illustrative



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cases in support of the maxim. This maxim has been referred to with approval by this Court in *State of Rajasthan v. Shamsheer Singh* reported in 1985 supp SCC 416.

52. Thus, where the proceedings under *Section 138* of the NI Act had already commenced and during the pendency the plan is approved or the company gets dissolved, the directors and the other accused cannot escape from their liability by citing its dissolution. What is dissolved is only the company, not the personal penal liability of the accused covered under *Section 141* of the NI Act. They will have to continue to face the prosecution in view of the law laid down in *Aneeta Hada* (supra). Where the company continues to remain even at the end of the resolution process, the only consequence is that the erstwhile directors can no longer represent it.

FEW OF THE ABSURD SITUATIONS THAT MAY ARISE IF SECTION 138 PROCEEDINGS IN RELATION TO THE SIGNATORIES/DIRECTORS ARE HELD TO BE NOT MAINTAINABLE AFTER THE RESOLUTION PLAN IS APPROVED

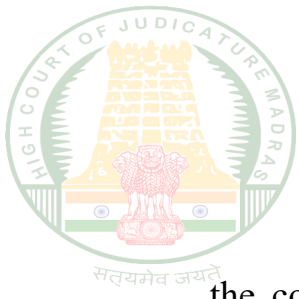
11. Thus, it is clear that pending proceedings, if the company gets dissolved, the signatories / Directors cannot escape from their penal liability by citing its dissolution or wind up. What is dissolved is only the



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company and not the personal penal liability of the accused. The above case is arising out of the Negotiable Instruments Act, where there is specific provision under Section 141 of NI Act to prosecute the Directors of the company and fast upon them vicarious liability once the company gets dissolved and despite the said provision, the Directors and the other accused cannot escape from their liability by citing its dissolution or liquidation. That apart, he already filed petition to discharge himself from the charges and the same was dismissed and the charge sheet was confirmed by this Court in Crl.RC.No.1632 of 2024. Immediately after the dismissal of the criminal revision case, the petitioner filed this petition to quash the entire proceedings, that too after a period of 21 years from the date of filing the charge sheet. During the course of hearing of the company petition for winding up of the company, this Court in CP.No.322 of 1999 and CP.No.349 of 1999 directed the respondent to take charge of the crime No.277 of 1999 registered in crime No.1216 of 1999 registered by the Central Crime Branch, Chennai. Thereafter, the respondent re-registered the FIR in RC.Nos.5 and 6 of 2001. After completion of investigation, joint charge sheet was filed against nine accused persons and the same has been taken cognizance by the trial court.

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12. The petitioner and other accused are full time Directors of

the company and also the third accused is the authorised signatory to operate the accounts of the company. The petitioner along with other accused persons published advertisements in the newspapers calling for deposits from the public and offered interest at the rate of 18% to 24% per annum for their deposits. Thus, they mobilized the deposit of Rs.14.73 crores in the name of the company. The petitioner also floated ninth accused company along with his wife and other accused persons and he was instrumental in diverting the deposits collected in the name of the company to the ninth accused company which were shiphone off, leading to fiscal crisis of the company resulting in non-payment of the deposits to the depositors. Further, there was transfer of funds through cheques from the account of the company to the petitioner and other accused persons' personal bank accounts. Therefore, there are specific allegations against the petitioner in his personal capacity as a director as well. Further, the company was wound up as per the order passed by this Court. The petitioner and other accused persons fraudulently diverted the entire amount which was received in the name of the company to their personal accounts and the A9's account. Further, the petitioner is not prosecuted merely because he was the Director of the company but based on the role played by him in the offence in his personal capacity. The

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petitioner and other accused persons are full time Directors of the company and also the authorised signatories of the company to operate the bank accounts of the company as well as the ninth accused.

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13. That apart, the petitioner along with other accused persons published advertisements in the newspapers calling for deposits and thereby offered interest at the rate of 18% to 24% per annum and thereby collected a sum of Rs.14.73 crores in the name of the company and thereafter floated the ninth accused company. Therefore, the petitioner is not only held liable by way of vicarious liability but also in his personal capacity. Therefore though the company is not arrayed as accused since it was already wound up, the petitioner and other Directors under their personal capacity can be prosecuted for the aforementioned offences.

14. At this juncture, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India reported in *2019 (4) SCC 351* in the case of *Devendra Prasad Singh Vs. State of Bihar & Anr.*, (*Crl.A.No.579 of 2019 dated 02.04.2019*) wherein it was held that while dealing with the petition to quash the entire criminal proceedings held that the High Courts have no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their



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statements and therefore, there was no prima facie case made out as against the accused. It could be done only by the trial Court while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order that the charge sheet has been laid on the basis of the inconsistency statement under Section 161 of Cr.P.C.

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15. Further, the Hon'ble Supreme Court of India in the judgment reported in *2019 (10) SCC 686* in the case of *Central Bureau of Investigation Vs. Arvind Khanna, (Crl.A.No.1572 of 2019 dated 17.10.2019)* held that the High Courts cannot record the findings on the disputed facts. The defence of the accused is to be tested after appreciation of evidence by the trial Court during the trial. Therefore, this Court has no power to consider the disputed facts under Section 482 of Cr.P.C.

16. The Hon'ble Supreme Court of India in another judgment dated *02.12.2019* passed in *Crl.A.No.1817 of 2019* in the case of *M.Jayanthi Vs. K.R.Meenakshi & anr*, held that while considering the petition for quashment of complaint or charge sheet, the Court should not embark upon an enquiry into the validity of the evidence available. All



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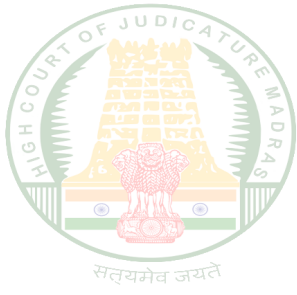
that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. Further, the Court can also see whether the preconditions requisite for taking cognizance have been complied with or not and whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged. Whether the accused will be able to prove the allegations in a manner known to law would arise only at a later stage i.e., during trial.

17. Further this Court cannot observe at this stage as to whether the initiation of criminal proceeding itself is malicious or not. The same is required to be considered at the conclusion of the trial. Therefore, the grounds raised by the petitioner to quash the final report/charge sheet cannot be entertained.

18. In view of the above discussion, this Court finds no grounds to quash the impugned proceedings. As such, both the criminal original petitions are dismissed. Consequently, connected miscellaneous petitions are closed.

01.07.2026

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

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To

- 1.Additional Chief Metropolitan Magistrate Court at Egmore, Chennai
- 2.ADDITIONAL SUPERINTENDENT OF POLICE,
SPECIAL POLICE ESTABLISHMENT,
CENTRAL BUREAU OF INVESTIGATION,
ECONOMIC OFFENCES WING,
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- 3.The Public Prosecutor,
High Court of Madras

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