IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.06.2015

Delivered on : 06.07.2015

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.O.P.No.10820 of 2015

S.Venkatesh .. Petitioner

Vs

1. The Commissioner of Police,
   132, Commissioner Office Building,
   EVK Sampath Road, Vepery,
   Chennai - 600 007.

2. The Deputy Commissioner of Police,
   132, Commissioner Office Building,
   EVK Sampath Road, Vepery,
   Chennai - 600 007.

3. The Inspector of Police,
   Team IX (A) EDF - II,
   First Floor,
   Central Crime Branch
   Vepery, Chennai - 600 007 . .Respondents

Criminal Original Petition filed under Section 482 Cr.P.C., to direct the respondents herein to investigate into the complaint dated 30.10.2013 by an officer not less than the rank of Assistant Commissioner of Police and the respondents to file First Information Report (F.I.R.,) against the Karthick and Sivasri under the Criminal Breach of Trust, Cheating and various other relevant provisions of I.P.C.

For Petitioner : Mr.K.M.Srirangan

For Respondents : Mr.C.Emalias, Addl. Public Prosecutor

O R D E R

This petition has been filed to direct the respondents herein to investigate into the complaint dated 30.10.2013 by an officer not less than the rank of Assistant Commissioner of Police and the respondents to file FIR against Karthick and Sivasri under the Criminal Breach of Trust, Cheating and variousevant provisions of I.P.C.

2. Heard the learned counsel for the petitioner; the learned Additional Public Prosecutor appearing for the respondents and perused the materials placed on record.

3. The petitioner lodged a complaint dated 30.10.2014 with the respondent which was enquired into by the 3rd respondent and was closed as purely civil in nature on 14.03.2015. A copy of the Closure Report was furnished to the learned counsel for the petitioner across the bar.

4. Mr.K.M.Srirangan, learned counsel appearing for the petitioner submitted that, the investigation conducted by the police was very perfunctory and the Investigating Officer failed to note that a cognizable offence has been made out by the petitioner in his complaint.

5. This Court carefully perused the complaint given by the petitioner and the reasons given by the Investigating Officer for closing the complaint.

6. According to the petitioner, he came into contact with one Sivasri in 2009, who represented to him that she has an office at Dubai, where she indulged in commodity exchange business and solicited investment from the petitioner. The petitioner seems to have invested 16,69,500 AEDirham between 2009 and 2010 through HSBC bank. It is alleged by the petitioner that his estimated profits were 1,68,000 AED as on June 2010, which she did not pay. It is stated in the complaint that Sivasri gave two cheques drawn on HSBC Bank, Dubai, which she asked him not to present.

7. The complaint further states that Sivasri introduced one Karthik, to whom, the petitioner had paid several amounts by money transfer. The sum and substance of the allegation is that, Sivasri and Karthick together had cheated the petitioner to a tune of Rs.2.28crores. What begs the question is, even according to the petitioner, Sivasri herself had to pay huge amounts as profit to him in 2010, despite which, he continued to have business dealings with Karthick who is said to be Sivasri's contact man.

8. Therefore, this Court feels that, the complaint itself does not disclose the commission of a cognizable offence and it is only an attempt by the petitioner to give criminal colour to a purely civil dispute.

9. Learned counsel for the petitioner submitted that, the police after holding that there is no case made out for registering an FIR, has sent a postcard advising the petitioner to approach the Dubai police for relief. According to the learned counsel, this advise by the police itself shows that, there is substance in the complaint of the petitioner.

Unsolicited advise given by the police cannot lead to the inference that the facts disclosed in the complaint makes out a case for police investigation.

10. Mr.K.M.Srirangan, learned counsel for the petitioner relied upon the following judgments to highlight the amplitude of the power of the o this Court under Section 482 Cr.P.C.

i. [2014] 14 SCC 222 [Surya Baksh Singh Vs. State of Uttarpradesh]

ii. AIR 1996 SCC 2452 [Central Bureau of Investigation, SPE, SIU [X], New Delhi Vs Duncans Agro Industries Ltd., Calcutta]

iii. [2013] 2 SCC 488 [National Bank of Oman Vs Barakara Abdul Aziz and another]

11. It is true that, this Court has ample power under Section 482 Cr.P.C, but the said power has to be exercised with circumspection and it should not be used as an instrument of oppression by directing the police to register an FIR on a complaint of this nature, especially, when the police have conducted preliminary enquiry and have given reasons for not registering an FIR. If the petitioner is not satisfied, it is open to him to file a private complaint.

12. Mr.K.M.Srirangan, learned counsel for the petitioner submitted that under Section 4 IPC, an Indian who commits an offence abroad can be punished here in India. I have no quarrel with this proposition, but I am unable to persuade myself to hold that, the complaint discloses the commission of a cognizable offence. The police have conducted preliminary enquiry and during the preliminary enquriy, they found that the petitioner has invested money in Dubai in commodity exchange business in the year 2010 and after having lost the money in that business, is now trying to recover the same through the process of criminal law. The police have also noted that the petitioner had not produced any material to show that, he paid Rs.29lakhs to Karthick for recovering the money that was given to Sivasri. Thus, when there is no cognizable offence made out, the question of invoking Section 4 IPC does not arise.

13. In the result, the petition is devoid of merits and the same is dismissed.

Sd/-
Asst.Registrar (Ad-1)

/true copy/

Sub Asst. Registrar

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To

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4. The Public Prosecutor,
   High Court, Madras.

   +1 cc to Mr. K.M. Srirangan,Advocate sr.no.33394.

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