IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11-12-2015

CORAM:

THE HON'BLE MR. JUSTICE P.N.PRAKASH

Crl.R.C.No.1307 of 2010
M.P.No.1 of 2011

1.Kasper @ Kasper Raj
2.Verjin Mary ... Petitioners/Accused 2 & 4

Vs.

Sub-Inspector of Police,
Central Crime Branch,
Egmore, Chennai.
(Cr.No.851/2005) ... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 397 r/w 401 of the Code of Criminal Procedure against the dismissal of discharge application filed in Cr.M.P.No.694 of 2008 in C.C.No.3023 of 2003 by the XI Metropolitan Magistrate, Chennai and to set aside the same.

For Petitioners : Mr.C.Ravichandran

For Respondent : Mr.R.Prathap Kumar
Government Advocate (Crl.Side)

Reserved on	Pronounced on
27-11-2015	11-12-2015

O R D E R

On a complaint lodged by A.Arokia Madavan (defacto complainant), the respondent Police registered a case in Cr.No.851 of 2005 under Section 120B, 420, 506(ii) and 508 IPC on 1.8.2005 against one Alphones Mary and others and proceeded with investigation. After completing the investigation, Final Report for the said offences was filed against (1) Alphones Mary

(A-1); (2) Kasper @ Kasper Raj (A-2); (3) Martin Lucas (A-3); (4) Verjin Mary (A-4); (5) Jerold (A-5); and (6) Paramanandam (A-6), before the learned XI Metropolitan Magistrate, Saidapet, Chennai, for the aforesaid offences and the case was taken on file in C.C.No.3023 of 2007.

2. After appearance of the accused, they were furnished with Final Report and other documents under Section 207 Cr.P.C. At that juncture, Kasper @ Kasper Raj (A-2) and Verjin Mary (A-4) filed an application in Cr.M.P.No.694 of 2004 in C.C.No.203 of 2007 under Section 239 Cr.P.C. for discharging them from the prosecution. The learned Magistrate heard both sides and dismissed the said petition on 5.3.2010, challenging which the said accused have invoked the revisional jurisdiction of this Court under Section 397 r/w 401 of Cr.P.C. by filing this petition.

3. Before adverting to the facts, it may be necessary to bear in mind the Law governing the subject. Under Section 239 Cr.P.C., an accused can be discharged from the case only if the Magistrate considers the charge against the accused to be 'groundless'. The expression 'groundless' has been interpreted to mean, 'no ground for presuming that the accused committed the offence'. In other words, even a strong suspicion is enough to frame a charge. The revisional jurisdiction of this Court while dealing with an order passed by the Magistrate under Section 239 Cr.P.C. refusing to discharge the accused, has been vividly set out by the Supreme Court in 1999 (4) Crimes 287 (SC) (State of U.P. v. Udai Narayan). In the said ruling, the Supreme Court has stated that the High Court cannot scan and scrutinize the materials produced by the Prosecution like an appellate Court.

4. Bearing this principle in mind, the facts obtaining in this case and the materials produced by the Prosecution require to be analyzed to find out as to whether the allegations are 'groundless'.

5. It is the case of the Prosecution that Alphones Mary (A-1) proffered to the defacto complainant and other victims that, the spirit of Virjin Mary would descend on her and bestow her with clairvoyance, on account of which she will be able to fore-tell their future accurately. Believing her representation the defacto complainant and 15 victims have been paying money to her through the other accused over a period of time amounting to Rs.31 lakhs, until they realized that they

have all been taken for a royal ride. Verjin Mary (A-4) is the daughter of Alphones Mary (A-1) and Kasper @ Kasper Raj (A-2) is the husband of Verjin Mary (A-4) and son-in-law of Alphones Mary. The allegation of the Prosecution is that all the family members of Alphones Mary were part and parcel of the ingenious enterprises to hoodwink naive believers and steadily extract money from them. According to the prosecution, the victims were assured of relief from their troubles and on that pretext the accused had collected huge sums of money from them. When the victims started steadily losing money without any corresponding relief, it dawned upon them that they were defrauded, and that, Alphones Mary (A-1) was only a trickster.

6. Mr.C.Ravichandran, learned Counsel appearing for the accused submitted that Kasper @ Kasper Raj (A-2) is a Teacher in a Government School in Natham, Dindigul District, and that, he has nothing to do with the activities of his Mother-in-law, and that, he has been roped in as an accused by the Prosecution for the purpose of extracting money. The learned Counsel further contended that, earlier a similar complaint was given to the Superintendent of Police and the same was closed on the ground that the complainant had not produced satisfactory proof of having given money to the accused. He also submitted that even in the present prosecution, the victims, who admittedly are persons without means, have not submitted any material to show the source of money for the alleged payments made to Alphones Mary (A-1). They have also not stated the dates on which the amounts were paid. The learned Counsel relied upon the following decisions:

(1) (2010) 10 SCC 361 (V.P.Shrivastava v. Indian Explosives Limited)
(2) (2013) 6 SCC 800 (Sarabjit Singh v. State of punjab)

Basing his arguments on the aforesaid judgments, learned Counsel submitted that for the offence of cheating, there should be material to show that there was deception at inception, which ingredient is miserably lacking in the present case.

7. Mr.R.Pratap Kumar, learned Government Advocate (Criminal side) appearing for the State submitted that the statements of the victims have been recorded by the Magistrate under Section 164 Cr.P.C., wherein they have graphically described the manner in which they were cheated by Alphones Mary (A-1) and her family members including the petitioners herein.

8. This Court gave its anxious consideration to the rival submissions.

9. On a perusal of the statements of some of the victims recorded by the Magistrate under section 164 Cr.P.C, it is seen that they have spoken about the role played by the petitioners therein. For instance, one Anthony Lazer has stated that he has a grocery shop and that he got introduced to Alphonse Mary (A-1) and joined her prayer congregation believing the representation made to him that she has mystical powers and Divine Virgin Mary would speak through her during the prayer session. Coming to the role of the petitioners/accused herein he has stated that Alphonse Mary (A-1) exhorted him to make payments through her family members and he paid to Verjin Mary (A-4) Rs.55,000/- and on three occasions he paid money to Kasper @ Kasper Raj (A-2). The statement of the other victims are also on the same lines. After making the payments they were being held in thrall, and they were being intimidated to pay more and more money, to which demand they were meekly submitting. At one point of time when they stopped paying money, they were expelled from the congregation. Anthony Lazer has also stated that once he found Martin, one of the assistants of Alphonse Mary consuming liquor and this aroused suspicion in him about the activities of the group. The members of the group who were making payments realized that they were being defrauded in the name of God and started questioning Alphonse Mary (A-1) and her family members.

10. The contention of the learned counsel for the petitioners that the victims should show the source of their income in order to maintain a charge of cheating, deserves to be rejected in limine on the short ground that the victims are not facing any prosecution for possession of disproportionate assets under the Prevention of Corruption Act for them to prove their source of income. Anthony Lazer has stated that he is the owner of the grocery shop and similarly Maria Joseph, another victim has also stated that he runs a provision shop. The argument of the learned counsel that the victims have not produced any proof of having made payments to the accused, is a submissions in despair. It is common knowledge that tricksters do not give receipts for payments made to them, especially in cases of this nature, where they are invoking the name of God for their malfeasance. This court has no quarrel with the proposition of law laid down in the aforesaid judgements, but the facts obtaining in those cases substantially differ from the facts in this case.

11. For maintaining a prosecution for cheating, there should be deception at inception. In this case the statements of victims recorded u/s 164 Cr.P.C clearly show that the accused represented to them that she has divine and mystic powers and that A-1 is capable of dispelling their travails and suffering, and on that premise huge sums of moneys have been collected from the gullible victims. Thus, there is sufficient material to show that the accused had the necessary mens rea at inception to cheat the victims.

12. The contention that the victims have not stated the date on which the amounts were paid, and that their statements should not be believed, is untenable. If one reads their statements recorded u/s 164 Cr.P.C. in toto, they have vividly narrated the entire sequence of events relating to the payments made by them which cannot be simply brushed aside on the ground that they have not given the dates on which the payments were made.

13. In fine, this is not a case where there is no material as against the petitioners herein, and that the charge against them are groundless. In the result, this petition is dismissed. The trial court shall proceed with the trial without in any manner influenced by what is stated above. It is seen that the petitioners have managed to keep the prosecution pending from 2008 without any progress. The Registry is directed to immediately send back the original records to the trial Court through a Special Messenger. If the accused adopt any dilatory tactics, it is open to the trial court to remand them u/s 309 Cr.P.C and proceed with the trial. Connected M.P.No.1 of 2011 is also dismissed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.XI Metropolitan Magistrate,
Saidapet, Chennai.

2.-do- Through The Chief Metropolitan Magistrate,
Egmore, Chennai.

3.The Sub Inspector of Police,
Central Crime Branch,
Egmore, Chennai.

4.The Public Prosecutor,
High Court, Chennai.

5.The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.C.Ravichandran, Advocate, S.R.No.67142

Crl.R.C.No.1307 of 2010

MSM(CO)
CA(18/12/2015)