

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 9-10-2015

CORAM:

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

Criminal Original Petition No.23579 of 2015  
M.P.Nos.1, 2 of 2015

Asir Jayakumar

.. Petitioner

Vs.

State, rep.by its  
Inspector of Police,  
City Crime Branch,  
Tiruppur City

.. Respondent

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure with a prayer to call for the records and quash the charge sheet and the proceeding pertaining to C.C.No.427 of 2014 on the file of the Judicial Magistrate-II, Tiruppur, against the petitioner.

For Petitioner : Mrs.M.Sheela  
For Respondent : Mr.C.Emalias,  
Addl.Public Prosecutor

|             |               |
|-------------|---------------|
| Reserved on | Pronounced on |
| 6-10-2015   | 9-10-2015     |

सतयमेव जयते  
O R D E R

On a complaint lodged by S.Sreedhar Babu, the respondent/Police registered a case in Crime No.24 of 2012 and after completing investigation, the Police filed final report before the learned Judicial Magistrate, No.II, Tiruppur for the offences under Section 120(B), 408, 467, 471, 420 r/w 109 IPC against three accused, challenging which Asir Jayakumar (A-3) is before this Court.

2. It is the case of the prosecution that Sathiya Sheela (A-1) and Asir Jayakumar (A-3) were working with M/s.SBMS Merchandising Services, run by the defacto complainant, and that they had forged certain documents and syphoned off money from

the firm's account over a period of time, thereby causing loss to the defacto complainant and unjustly gained.

3. The learned Counsel appearing for the petitioner submitted that there are no materials as against the petitioner/A-3, inasmuch as he had merely received the money from A-1 and had paid it back to her.

4. The allegations made against the petitioner/A-3 has been narrated in the final report as follows:

"On 13.01.11 A1 obtained a cheque Number 575797 of IDBI A/c.No.113104000266345 for Rs.33,500/- with the signature of the defacto complainant as staff salary. But altered and forged the same, for Rs.1,33,500/- and used the same as genuine by presenting the same at IDBI Bank in Tiruppur Branch and transferred a sum of Rs.1,00,000/- to the account of A3 for which he was not entitled and the accused A3 who shared the conspiracy took the said amount knowing that the said amount is the amount misappropriated and the accused A1 and A3 converted the said amount to their own use thereby both A1 and A3 committed criminal breach of trust of the said amount of Rs.1,00,000/- of M/s.SB Merchandising Services."

5. Mrs.M.Sheela, learned Counsel appearing for the petitioner submitted that A-1 had arrived at an amicable settlement with the defacto complainant on 13.7.2012 and in support of this contention she produced a copy of the alleged settlement deed. Further, learned counsel also relied on the judgment of the Madhya Pradesh High Court in Umang Choudhary v. The State of Madhya Pradesh (MCRC 16978-2014, dated 15.7.2015).

6. On a careful reading of the ruling of the Madhya Pradesh High Court relied upon by the learned Counsel for the petitioner, it is seen that the defacto Complainant and the accused had together filed a compromise application before the Sessions Judge, Jabalpur, and in those circumstances the Madhya Pradesh High Court quashed the prosecution by relying upon the Judgment of the Supreme Court in B.S.Joshi v. State of Haryana ((2003) 4 SCC 675).

7. Recently the Hon'ble Supreme Court in CBI v. Maninder Singh (2015 (9) Scale 365) has deprecated the practise of quashing prosecution in serious offences like forgery on the ground that the accused and the complainant had amicably settled.

8. In this case, the defacto complainant has not come forward to file any compromise memo before this Court. That apart, the allegation against the petitioner/A-3 is that he had in conspiracy with A-1 and A-2 had helped A-1 to syphon the money from the Firm's account. It is also further alleged that certain cheques were forged and altered by A-1 in furtherance of the conspiracy, and the account of this petitioner has been used for syphoning the amount. In the teeth of such serious allegations, this Court is of the view that this is not the fit case to quash the prosecution against the petitioner/A-3.

9. In the result, this petition is devoid of merits and accordingly this petition is dismissed. Connected miscellaneous petitions are also dismissed.

vr

s/d-  
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1. The Judicial Magistrate No.II, Tiruppur
  2. Thro'The Chief Judicial Magistrate, Tiruppur.
  3. The Inspector of Police, City Crime Branch, Tiruppur City
  4. The Public Prosecutor, High Court, Madras.
- + 1 cc to Ms.M.Sheela, Advocate SR 55439

kji(co)  
prk19/10

सत्यमेव जयते

Cr1.O.P.No.23579 of 2015

WEB COPY