

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.10.2015

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.OP No.24820 of 2015
and
M.P.No.1 of 2015

1.S.Karthikeyan

2.S.Rajkumar

...Petitioners

Vs

1. The Inspector of Police,
Central Crime Branch,
EDF-I Wing Team II, Vepery,
Chennai - 7.

2. Punitha Prabhakaran

...Respondents

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., praying to call for the records relating to case in Crime No.82 of 2015 on the file of the Inspector of Police, Central Crime Branch, EDF-I Wing Team-II, Vepery, Chennai.

For Petitioners : Mr.P.M.Subramaniam
for Mr.K.Kannan

For Respondents : Mr.Mohammed Riyaz [R1]
Government Advocate (Cr1. Side)

ORDER

This Criminal Original Petition has been filed to quash the FIR., in Crime No.82 of 2015, that has been registered against these petitioners, on the complaint given by one Punitha Prabhakaran. In the complaint given by Punitha Prabhakaran, which has formed the basis for registering the FIR, she has stated as follows :

"Respected Sir, One Mr. Shanmugam and his sons Rajkumar and Karthikeyan approached me with export order to POLAND through his friend Mr. Victor. Shanmugam helped me to start MRG Import and Export Business. He said that he is well experienced for the past 30 years. I have paid first Rs.12,00,000/- through RTGS from my Indian Bank account to his bank in Stone India account on 28.11.2013. Again he insisted me and hence I have paid Rs.13,00,000/- through RTGS on 2.12.13. I went to London after that. After receiving Rs.25,00,000/- he has purchased inferior quality granite blocks from PURE MINERALS, Andhra for total of Rs.13,00,000/- All the blocks have crack and no one can use it, he purposely bought those blocks in order to cheat."

2. From the above FIR., the substance of the allegations of Punitha Prabhakaran is that, she had given monies to Shanmugam, the father of the petitioners herein, to a tune of Rs.25,00,000/-, for the purpose of exporting granite blocks, and in that transaction the accused had delivered damaged blocks with cracks and thereby cheated her. Even in the complaint, she has stated that the accused had given a cheque for Rs.40,00,000/-, which when presented was dishonoured. Thereafter, Punitha Prabhakaran has also launched a prosecution in C.C.No.1942 of 2015 before the learned Metropolitan Magistrate, Fast Track Court-II, Egmore, Chennai under Section 138 of The Negotiable Instruments Act, against Shanmugam, the drawer of the cheque. In the said complaint, she seems to have taken a totally different stand, which is as follows :

"7. The complainant submits that on believing the representation of the 1st accused and his two sons, the complainant had initially given a hand-loan of Rs.12,00,000/- (Rupees Twelve Lakhs Only) through RTGS, from Indian Bank, Anna Nagar Branch, Chennai to Oriental Bank of Commerce, 2nd Avenue, Anna Nagar Branch, Chennai on 29.11.2013.

8. The complainant submits that the 1st accused had made a further demand of Rs.13,00,000/- (Rupees Thirteen Lakhs Only) towards hand loan and the complainant released the same vide RTGS on 02.12.2013."

3. Thus, the stand in the Section 138 prosecution is that, the accused had obtained hand-loan from Punitha Prabhakaran, but whereas in the FIR, she has taken a stand that the money was given for export purpose. Of course, it is a settled law that criminal prosecution for an offence of cheating and criminal prosecution under Section 138 of The Negotiable Instruments Act can co-exists as held by the Hon'ble Supreme Court in Dashrath Rupsingh Rathod Vs. State of Maharashtra 2014(4) CTC 666. However, there seems to be a patent contradiction in the police complaint and the complaint under Section 138 of The Negotiable Instruments Act. In the considered opinion of this Court, this contradiction by itself cannot be a reason for quashing the FIR., especially in the teeth of the averments in the police complaint that the goods were despatched to "Poland" by Shanmugam to a person by name Victor, who had taken the goods and documents leaving the complainant high and dry.

4. This Court is of the view that the Inspector of Police may bear in mind the averments in the prosecution under Section 138 of Negotiable Instruments Act and the averments in the complaint that formed the basis of the FIR in Crime No.82 of 2015 and if it is found that the transaction is purely a civil one, it is needless to state that the prosecution should be dropped against the petitioners.

5. This Court directs the Assistant Commissioner of Police, under whose jurisdiction, the Central Crime Branch, EDF-I Wing, Team-II falls to supervise the investigation in Crime No.82 of 2015.

With the above directions, this Criminal Original Petition is closed. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
Central Crime Branch,
EDF-I Wing Team II, Vepery,
Chennai - 7.
2. The Public Prosecutor,
High Court, Madras.
3. Assistant Commissioner of Police,
Central Crime Branch,
EDF-I Wing Team II, Vepery,
Chennai - 7.

1 CC to Mr.P.M.Subramaniam, Advocate SR.No. 57931

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TS (CO)
PSI (03.11.2015)



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