IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN

Crl.O.P. No. 28496 of 2014
and
M.P.No.1 of 2014

Ammathurai ...Petitioner/Accused-3

vs.

1. The State rep. by
   the Inspector of Police,
   District Crime Branch,
   Coimbatore District.
   (Crime No.59/2014
   dated 1.10.2014)

2. A.Ponraj ...Respondents
   Complainant & Defacto Complainant

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to quash the First Information Report in Crime No.59/2014 as against the petitioner pending investigation on the file of the first respondent police.

For Petitioner : Mr. K.M.Vijayan,
Senior Counsel
for M/s.S.Sithirai Anandam

For 1st Respondent : Mr.S.Shanmuga Velayutham,
Public Prosecutor, assisted by
M. Maharaja,
Additional Public Prosecutor

For 2nd Respondent : Mr.R.Rajarathinam
for Mr.S.Ramachandran

O R D E R

This petition is filed to quash the FIR in Crime No.59 of 2014 pending on the file of the first respondent police.

2. It is submitted by Mr.K.M.Vijayan, learned Senior Counsel for the petitioner that the petitioner was working in Thiruvidaimarudur Police Station, Thanjavur District and, thereafter, in the year 2010, he was working in Pollachi Town East Police Station. A case in Crime No.649 of 2010 was registered in that police station on the complaint of one Mrs.Arulmozhi against five named persons and others for offence under sections 147, 448, 294(b), and 506(ii) of the IPC r/w section 4 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 and 387 of the IPC. The petitioner as the Inspector of Police took up investigation and after examining witnesses, filed final report before the learned Assistant Sessions Judge, Pollachi, and that was taken on file in S.C.No.11 of 2012 for offence under sections 147, 448, 294(b), 506(ii) and 395 of the IPC and section 3 and 4 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 against Kamatchi and 14 others. The said Sessions Case is pending before the Assistant Sessions Judge, Pollachi and the defacto complainant Arulmozhi filed an Application under section 173(8) of the Cr.P.C., for further investigation and the same is also pending. In the mean while, the first respondent police herein registered a case in Crime No.59 of 2014 against Arulmozhi, Manikandaraju and Ammathurai who is the present petitioner, for the alleged offence under Sections 120(b), 420 and 422 IPC on the basis of a complaint given by one Ponraj, the second respondent herein and that FIR in Crime No.59 of 2014 is sought to be quashed in this petition.

3. The learned Senior Counsel further submitted that the defatco complainant Ponraj was arrayed as A.9 along with fourteen others in S.C.No.11 of 2012 on the file of the Assistant Sessions Judge, Pollachi and as per the charge sheet in S.C.No.11 of 2012 all the accused joined together and formed themselves into an unlawful assembly with an intention of committing offence of molesting and threatening and also to commit dacoity, went to the administrative office of the witness, Arulmozhi in S.C.No.11 of 2012. In the FIR in Crime No.59 of 2014, the aforesaid Ponraj has stated that he advanced a sum of Rs.30,00,000/- to Manikanda Raju and his wife Arulmozhi, and they issued a cheque for a sum of Rs.24,90,000/- in his favour. Similarly, Manikanda Raju and Arulmozhi borrowed a sum

of Rs. 1 crore from Ravichandran and his wife Kamatchi; as also Rs.30,00,000/- from Poojari Subramani, Rs.45,00,000/- from Nataraj; Rs.47,50,000/- from Arumugam; Rs.40,00,000/- from Sanmugavel; Rs.58,00,000/- from Pazhani; Rs.28,00,000/- from S.Rangasamy; Rs.48,00,000/- from Mrs.Maheswari and Rs.50,00,000/- from Thandapani, and when the said Ponraj demanded return of the amount, the said Arulmozhi and Manikandaraju conspired with the then Inspector of Police, Pollachi Town East Police Station who is none other than the petitioner herein and with an intention to cheat those persons, the petitioner foisted false case at the instance of Arulmozhi and Manikanda Raju, against those 15 persons in Crime No.649 of 2010 for offence under sections 147, 448, 294(b), and 506(ii) of the IPC r/w section 4 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 and 387 of the IPC and seized documents in support of Arulmozhi and Manikandaraju and Kamatchi, Ravichandran and Nataraj - Accused Nos.1, 2 and 3 respectively in S.C.No.11 of 2012 were arrested and remanded to custody and therefore, subsequently, a case has been registered against Arulmozhi, Manikanda Raju and Ammathurai, on the basis of the complaint of Ponraj.

4. The learned Senior Counsel further submitted that when the petitioner, in discharge of his official duty, conducted investigation in Crime No.649 of 2010 and filed charge sheet against the accused on the basis of the statement of witnesses given during investigation and when that charge sheet was also taken cognizance by the Court and the same was pending before the learned Assistant Sessions Judge, the petitioner cannot be implicated for having committed the alleged offences of cheating and conspiracy with the defacto complainant in Crime No.649 of 2010 and therefore, Crime No.59 of 2014 filed by the first respondent police is liable to be quashed. The learned Senior Counsel further submitted that without quashing the charge sheet in S.C.No.11 of 2012 on the file of the Assistant Sessions Judge or without getting any order from the Court that investigation in Crime No.649 of 2010 which resulted in S.C.No.11 of 2012 was conducted in a partisan manner and the investigating officer colluded with the defacto complainant, no case can be registered against the petitioner for having conspired with the other accused and filed a false case. He therefore submitted that the registration of FIR in Crime No.59 of 2012 is a clear case of abuse of process of law and with a view to help the accused in S.C.No.11 of 2012, the case has been registered against the petitioner and therefore, the case in Crime No.59 of 2014 is liable to be quashed. He also submitted that the accused persons in S.C.No.11 of 2012 also have not filed any civil suits for recovery of various amounts alleged to have been paid by them to the said

Arulmozhi and Manikanda Raju.

5. The learned Public Prosecutor appearing for the first respondent police submitted that on the basis of a complaint given by Ponraj, a case in Crime No.59 of 2014 for offence under sections 120 (b), 420 and 422 IPC was registered against Arulmozhi, Manikanda Raju and Ammathurai, the petitioner herein, as the Station House Officer was satisfied with the allegations made in the complaint and investigation has to be conducted and in respect of the allegations. He also submitted that a departmental enquiry was conducted and the enquiry officer gave a report dated 29.9.2014 stating that the petitioner helped the said Arulmozhi and Manikandaraju to cheat their creditors and therefore, a prima facie case has been made out against the petitioner for having committed the offences along with two accused and at this stage, FIR cannot be quashed. The learned Public Prosecutor also produced files relating to the enquiry conducted by the Additional Superintendent of Police, Prohibition Enforcement Wing, Coimbatore District dated 29.9.2014, also case diary in S.C.No.11 of 2012.

6. The learned counsel for the second respondent/defacto complainant in Crime No.59 of 2014 submitted that the petitioner misused his official position and foisted false case against the defacto complainant as well as other 14 accused and also under the guise of investigation, forcibly took up various documents executed by Arulmozhi and her husband Manikanda Raju, for having received loan from those accused and thereby, prevented the creditors from filing any civil suit. He further submitted that the report of the Additional Superintendent of Police, Prohibition Enforcement Wing, Coimbatore District, would also confirm the allegations made in the complaint. Therefore, he submitted that more details could be furnished to the police during investigation about the misuse of power by the petitioner while registering Crime No.649 of 2010 and also filing of charge sheet and therefore, at this stage, it is pre-mature to quash the complaint and therefore, the petition is liable to be dismissed. He also submitted that the defacto complaint was not aware of further investigation ordered by this Court in Crime No.649 of 2010 and even assuming that further investigation has been ordered that has nothing to do with the quashing of case in Crime No.59 of 2014 and also submitted that in any event, both the cases in S.C.No.11 of 2014 and FIR in Crime No.59 of 2014 may be tried together and having regard to the fact further investigation was ordered in Crime No.649 of 2010, there is no need to quash the FIR in Crime No.59 of 2014 and depending upon the further investigation report to be filed in S.C.No.11 of 2012, any order can be passed in

the present petition and therefore, no order order may be passed at this stage.

7. It is seen from the submission of the learned Senior Counsel appearing for the petitioner and the learned Public Prosecutor for the first respondent that Crime No.649 of 2010 was investigated by the petitioner and after examination of witnesses, charge sheet was filed and that was also taken cognizance by the learned Assistant Sessions Judge, Pollachi and it is stated that further investigation was also ordered.

8. According to me, whether any further investigation in Crime No.649 of 2010 was conducted or not has no relevancy for this petition. As stated supra, as on date, charge sheet was laid in Crime No.649 of 2010, which culminated in S.C.No.11 of 2012 and the accused are facing trial before the learned Assistant Sessions Judge. It is also admitted that no attempt was made by the accused persons in S.C.No.11 of 2012 including the defacto complainant in Crime No.59 of 2014 to file any Application to quash the charge sheet in S.C.No.11 of 2012. It is seen from the typed set of papers that Criminal O.P.No.20474 of 2010 was filed by A.4 and A.5 and Criminal O.P.No.25568 of 2010 was filed by A.9, A.10, A.15, A.14, A.7, A.12 and A.8 reply to quash the FIR in Crime No.649 of 2010 and those petitions are pending still. Therefore, except filing Crl.O.P.No.25568 of 2010 along with others, the defacto complainant/the second respondent herein did not take any steps to quash the FIR in S.C.No.11 of 2012 though charge sheet was filed in the year 2012.

9. As rightly submitted by the learned Senior Counsel, Mr.K.M.Vijayan, appearing for the petitioner that in order to register a case against the petitioner for having conspired with the defacto complainant and her husband in Crime No.649 of 2010 which culminated in S.C.No.11 of 2012, either the FIR in Crime No.469 of 2010 must have been referred as mistake of fact after investigation or charge sheet in S.C.No.11 of 2012 must have been quashed by the Court holding that the investigation was conducted in a partisan manner and no material was available to frame charge against the accused persons. Therefore, in the absence of any such finding given by the competent court to quash the charge sheet in S.C.No.11 of 2012 on the file of the Assistant Sessions Judge, Pollachi or in the absence of any final report filed by the police that the charge sheet was filed mistakenly and subsequent investigation revealed that such offences had not been committed by the accused in Crime No.649 of 2010, the first respondent police should not have registered the

case in Crime No.59 of 2014 on the basis of the complaint given by the second respondent on the ground that the petitioner misused his position as police officer and foisted false case against the second respondent and other accused which resulted in S.C.No.11 of 2012. In other words, Crime No.59 of 2014 cannot be registered during pendency of the case in S.C.No.11 of 2012, and without quashing the charge sheet in S.C.No.11 of 2012 and without a finding that investigation was done mala fide by abusing official position, the petitioner cannot be arrayed as accused in Crime No.59 of 2014 on the basis of the statement given by Mr.Ponraj who is one of the accused in S.C.No.11 of 2012.

10. Further, the report of the Additional Superintendent of Police, Prohibition Enforcement Wing, Coimbatore District, dated 29.9.2014 wherein he has given a finding that the petitioner helped Arulmozhi and her husband to cheat their creditors has to be rejected. It is seen from the enquiry report that the Investigating Officer, namely, Additional Superintendent of Police, Prohibition Enforcement Wing, Mr.Ramachandran, examined only the 12 accused in S.C.No.11 of 2012 and on the basis of a statement given by those persons, came to the conclusion that the petitioner colluded with the defacto complainant and helped them to cheat the creditors. As stated supra, Crime No.649 of 2010 was investigated and in addition to the defacto complainant and Manikanda Raju, 12 independent witnesses were examined during investigation and 4 police officials were examined by the petitioner during investigation. Those independent witnesses and the police officials who were examined by the petitioner in Crime No.649 of 2010 were not examined by the Additional Superintendent of Police, Prohibition Enforcement Wing, to arrive at the conclusion that the petitioner helped Accused Nos.1 and 2 in Crime No.59 of 2014. Therefore, the enquiry report of the Additional Superintendent of Police, Prohibition Enforcement Wing, cannot be accepted.

11. As rightly submitted by the learned Senior Counsel appearing for the petitioner, offence under sections 422 and 420 also were not made out against the petitioner. Admittedly, no complaint was given by the accused in S.C.No.11 of 2012 against the petitioner herein either during investigation or after filing of the charge sheet stating that he misused his position and colluded with the defacto complainant and filed a case against the accused. Therefore, the conduct of the defacto complainant in not taking steps to challenge the charge sheet filed in S.C.No.11 of 2012 would also go to show that the allegations made in the complaint in Crime No.59 of 2014 cannot be true.

12. As investigation was conducted and charge sheet was laid in S.C.No.11 of 2012 in respect of Crime No.649 of 2010 and the same is pending before the Assistant Sessions Judge, Pollachi, it cannot be stated that the petitioner who was the investigating officer in Crime No.649 of 2010 misused his position and filed a false case against the defacto complainant and others.

13. In the result, the FIR in Crime No.59 of 2014 on the file of the first respondent police is quashed as against the petitioner and the petition is allowed. The connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

asvm

To

1. The Inspector of Police,
   District Crime Branch,
   Coimbatore District.
   (Crime No.59/2014
   dated 1.10.2014)

2. The Public Prosecutor,
   High Court, Madras.

1 CC to M/s.S.Sithirai Anandam, Advocate SR.No. 9576

1 CC to Mr.S.Ramachandran, Advocate SR.No. 9567

1 CC to the Public Prosecutor, SR.No. 9551

CRL.O.P. No.28496 of 2014
and
M.P.No.1 of 2014

SAI (CO)
PSI (12.03.2015)