IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2015

CORAM :

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

Crl.O.P.No.5015 of 2015
and
M.P.No.1 of 2015

Najeeb M.Sahib ... Petitioner

Vs.

1. State Rep.by
   Inspector of Police,
   CBCID Cyber Cell,
   Egmore, Chennai 600 008.
   (Crime No.1/2012)

2. K.N.Deenadayalan ... Respondents

Prayer:- Petition has been filed under Section 482 of Cr.P.C. to call for the records in Crime No.1 of 2012 on the file of the Inspector of Police, CB-CID Cyber Cell, Egmore, Chennai 600 008 and quash the same against the petitioner.

For Petitioner : Mr.Thomas T.Jacob

For R1 : Mr.C.Emalias
Additional Public Prosecutor

O R D E R

On 13.04.2015, this Court passed the following detailed order:

> "This petition has been filed to quash the proceedings as against the petitioner in Cr.No.1/2012. It appears that a group of tricksters had obtained bank details of the de facto complainant and had siphoned a total sum of Rs.1.43 lakhs from his bank account during the year 2012. Therefore, the de facto complainant had lodged a complaint, based on which a case in Cr.No.1 of 2012 for offences under Sections 66A, 66C and 66D of I.T. Act and Sec 420 IPC has been registered by the police and investigation was taken up. In the FIR, totally 10 persons were

arrayed as accused. This petitioner is shown as 5th accused.

2. During the course of investigation it appears that, the principal accused had committed default and had used the bank account of this petitioner to park Rs.20 lakhs and that was siphoned from the account of the de facto complainant. This petitioner had given Rs.19 lakhs of the said amount of Rs.20 lakhs that was parked in State Bank of India, Pathanimthitta Branch. This petitioner/accused was in Australia and a look out notice was issued by the police, pursuant to which, when the petitioner came to India, he was arrested by the police on 12.01.2015 and he was released on bail. His passport has also been deposited before the XI Metropolitan Magistrate, Saidapet. Now the petitioner/5th accused and the de facto complainant have come forward with an amicable settlement and the de facto complainant has filed an affidavit wherein, paragraphs 2 and 3 read as follows:

> "2. I submit that the fraudulent transfer from my SBI, SME Branch, Sivakasi C.C.Account No.10620775989 to the Bank Account of the petitioner/accused 5 Najeeb Sahib is Rs.20,00,000/- out of which Rs.1,00,000/- was withheld on the date of complaint and credited back to my account.
>
> 3. I submit that I am receiving the remaining Rs.19,00,000/- vide (a) DD No.863009 drawn on the Punjab National Bank for a sum of Rs.9,50,000/- dated 21.02.2015 and (b) DD No.863010 drawn on the Punjab National Bank for a sum of Rs.9,50,000/- dated 21.02.2015 and am willing to withdraw the case by compounding the case against this petitioner/accused 5 Najeeb Sahib alone and seek this Hon'ble Courts indulgence to permit me to withdraw and compound the case against this petitioner/accused 5 Najeeb Sahib and thus render justice."

3. The learned counsel for the petitioner/accused submits that his entire career is in jeopardy, inasmuch as his passport has been seized and he cannot joint his wife in Australia.

4. On a complete reading of the FIR and the case diary, it appears that this petitioner's role is only in respect of receiving a portion of the siphoned money amounting to Rs.20 lakhs from one of the co-accused and that he does not seem to be involved in the grand design that was executed by the principal accused, who is still absconding.

5. It is seen that this case is of the year 2012 and till date, Final Report has not been filed. The police were able to arrest only 7 accused and the principal accused are still absconding and they are said to be Nigeria and other foreign countries. In view of the fact that the de facto complainant and this petitioner had come to a settlement and that further the role of this petitioner is not very serious, vis-a-vis the principal accused in this case, this Court is of the view that it would serve the interest of justice if the FIR is quashed as against this petitioner alone. This petitioner could also be taken as a witness by the police if he gives full disclosure of his involvement under Section 164 Cr.P.C.

6. Today the petitioner and the de facto complainant are present before this Court and the petitioner handed over the Demand Draft for a sum of 19 lakhs in the presence of this Court."

2. Today the defacto complainant and the petitioner/A5 are present. Mr.Manikkavel, Inspector of Police, CBCID, Cyber Crime, is present and the parties have been identified by him.

4. The second respondent/defacto complainant submitted that the demand draft given by the accused has been realised.

5. In view of the above submissions, this Criminal Original Petition is allowed and the prosecution in Cr.No.1 of 2012 as against Najeeb M.Sahib (A5), petitioner herein, is quashed. Consequently, connected Miscellaneous Petition is closed.

6. It is stated that the passport of the petitioner is with the concerned court. Hence the petitioner is directed to file appropriate application before the concerned court, after producing the copy of this order and collect the passport from the concerned court.

-s/d-
Assistant Registrar( )

True Copy

Sub-Assistant Registrar

To

1. Inspector of Police,
   CBCID Cyber Cell,
   Egmore, Chennai 600 008.

2. The Public Prosector,
   High Court, Madras.

+ 3 ccs to Mr.Thomas T.Jacob, Advocate SR 21293

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