

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2016

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP.No.15478 of 2016
and Crl.MP Nos.7647 and 7648 of 2016

S.P.Hemasri ... Petitioner

Vs

1.State represented by
The Inspector of Police,
CCB VIII Team,
Egmore, Chennai.

2.M.Paramasivam ... Respondents

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in CC.No.4557 of 2013 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai, and to quash the same.

For Petitioner	:Mr.Ilayaraja Kandasamy
For Respondents	:Mr.C.Emalias, [for R1] Additional Public Prosecutor Mr.M.Ravi [for R2] (<i>Pro bono</i>)

ORDER

This Criminal Original Petition has been filed to quash the proceedings in CC.No.4557 of 2013 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai.

2. Heard Mr.Ilayaraja Kandasamy, learned counsel appearing for the petitioner; Mr.C.Emalias, learned Additional Public Prosecutor appearing for the first respondent and Mr.M.Ravi for the de facto complainant /2nd respondent.

3. Pursuant to the directions issued by this Court, Paramasivam, the *de facto* complainant in this case appeared before this Court on 18.08.2016. When this Court questioned Paramasivam as to whether he want legal assistance, he said in the affirmative and further submitted that he has no means to appoint advocate of his choice and requested this Court to make arrangements for legal assistance.

4. Recording his submission, this Court requested Mr.M.Ravi, Advocate (Enrl.No.617/89) who has sufficient experience on the criminal side to appear for Paramasivam pro bono. Mr.M.Ravi undertook to appear for Paramasivam.

5. The learned counsel for the petitioner was directed to serve copies of petition and typed set of papers on Mr.M.Ravi and accordingly it was served and the case was adjourned to today.

6. For the sake of convenience, the parties will be referred to by their name. It is the case of M.Paramasivam (*de facto* complainant) that he is well known to Pandithurai (A2) and that Pandithurai promised him that he will secure employment with the help of Arun Krishna (A1) for job seekers in Bharat Petroleum Corporation, which is a public sector enterprise. Accordingly, Paramasivam introduced about 11 persons from whom Arun Krishna (A1) and Pandithurai (A2) had totally collected around Rs.48,86,000/- and cheated them.

7. On the complaint lodged by Paramasivam, the respondent Police registered a case in Crime No.275 of 2012 against Arunkrishna (A1) and Pandithurai (A2) and after completing the investigation, has filed a final report in C.C.No.4557 of 2013 before the Chief Metropolitan Magistrate, Egmore, Chennai, for the offences under Sections 420, 468, 471 IPC r/w 34 IPC against Arunkrishna (A1), Pandithurai (A2) and S.P.Hemasri (A3), challenging which, Hemasri is before this Court.

8. Hemasri submitted that she is the daughter of Pandithurai and the only allegation against her is that two of the victims had deposited money directly into the bank account of Pandithurai in Central Bank of India, Teynampet Branch, which is a joint account that was opened in the name of Pandithurai and his daughter Hemasri, for the purpose of getting educational loan for Hemasri, who had just then joined Engineering Course in Meenakshi College of Engineering in the year 2008.

9. Per contra Mr.M.Ravi, Advocate appearing for Paramasivam submitted that the victims had deposited the money in the said account, which stands in the name of both Pandithurai and Hemasri and therefore, it cannot be stated that she is totally innocent.

10. Mr.C.Emalias, the learned Additional Public Prosecutor fairly conceded that apart from the above, there is no other material to implicate Hemasri in the offence.

11. This Court gave its anxious consideration to the rival submissions and also perused the records. As stated above Hemasri was not shown as accused in the FIR. Only during investigation, it came to light that some of the victims had made payments directly into the bank account bearing No.3040533790, Central Bank of India, Teynampet Branch, Chennai. Enough materials are produced before this Court to show that the said Savings Bank Account was opened only during the month of February 2009, pursuant to the bank sanctioning educational loan of Rs.2,10,000/- for enabling Hemasri to pursue a degree course in Engineering in Meenakshi College of Engineering.

12. One of the requirements for such education loan is that, the parent and the ward should open a joint savings bank account in the Bank for the purpose of availing the loan. Only in those circumstances, the said bank account was opened and the loan was availed.

13. The transaction in question in this case has taken place in the year of 2011 and at the instance of Pandithurai some of the victims had remitted money into the said savings bank account. On this ground alone, it cannot be stated that Hemasri had shared common intention with her father Pandithurai and Arun Krishna (A1) to cheat the *de facto* complainant and other victims.

14. In the facts and circumstances of this case, this Court is of the view that prosecution of Hemasri with the aid of Section 34 of IPC is a abuse of process of law and accordingly, this petition is allowed and prosecution in C.C.No.4557 of 2013 as against Hemasri is hereby quashed. Consequently, connected miscellaneous petitions are closed.

15. This Court places on record its appreciation for the services rendered by Mr.M.Ravi, Advocate, for taking up the case of the *de facto* complainant *pro bono* and effectively espousing his cause.

16. The trial Court is directed to expeditiously proceed with the trial in C.C.No.4557 of 2013. The trial Court should ensure that the accused cross-examined the witnesses on the day they are examined-in-chief as directed by the Supreme Court in ***Vinodh Kumar Vs State of Punjab reported in 2015[1] MCJ [Crl] 288***. If the accused adopt dilatory tactics, it is open to the trial Court to remand them to custody as held by the Supreme Court in ***State of Uttarpradesh Vs Shambu Nath Singh reported in JT 2001[4] SC 319***.

23.08.2016

ds

P.N.PRAKASH,J
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To

- 1.The Chief Metropolitan Magistrate,
Egmore,
Chennai.
- 2.The Inspector of Police,
CCB VIII Team,
Egmore,
Chennai.
- 3.The Public Prosecutor,
High Court, Chennai.

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