

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.OP.No.25335 of 2016

Udaya Bharathi

.. Petitioner

Vs

1. The State

Rep. by the Inspector of Police,
Economic Offences Wing (EOW)
Villupuram.

2. N.Elumalai

.. Respondents

Criminal Original Petition filed under Section 482 Cr.P.C., praying to call for the records pertaining to the proceedings in C.C.No.53 of 2013, on the file of Chief Judicial Magistrate, Villupuram in Crime No.01/2013 dated 20.06.2013, on the file of the 1st respondent for offence U/S 420 IPC and Section 4 r/w 76 Chit Fund Act, 1982 quash the same as far as the petitioner is concerned.

For Petitioner : Ms.S.Nandhini Devi

For R1 : Mr.C.Emalias,
Addl. Public Prosecutor

O R D E R

This Criminal Original Petition has been filed to call for the records pertaining to the proceedings in C.C.No.53 of 2013, on the file of the Chief Judicial Magistrate Court, Villupuram in Crime No.1/2013 dated 20.06.2013, on the file of the 1st respondent for offences under Section 420 IPC and Section 4 r/w 76 Chit Fund Act, 1982 and quash the same as far as the petitioner is concerned.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the 1st respondent.

3. Today, Mrs.L.Vasantakumari, Inspector of Police, EOW, Villupuram District is present.

4. On the complaint lodged by N.Elumalai, the first respondent police registered a case in Crime No.1 of 2013 on

20.06.2013 and after completing the investigation, filed the final report in C.C.No.53 of 2013 before the Chief Judicial Magistrate, Villupuram for offences under Section 420 IPC and Section 4 r/w 76 Chit Fund Act, 1982 against Kannan and five others including the petitioner herein, who has been arrayed as A3, challenging which, the petitioner is before this Court.

5. The petitioner is son of Kannan (A1). It is the case of the prosecution that Kannan (A1) and his family members were conducting unauthorized chit fund and collected Rs.49,42,850/- from about 42 customers and had not repaid the amount. Hence, the charge sheet.

6. The learned counsel appearing for the petitioner strenuously contended that there is no iota of material as against Udhaya Bharathi and that he merely assisted his father by writing on a slate during the transaction. She also contended that a learned Single Judge of this Court has quashed the prosecution against Kamalraj (A5), the brother of the petitioner, in CrI.OP.No.4141 of 2014 on 17.03.2014 and that the petitioner's case also stands on the same footing.

7. Per contra, learned Additional Public Prosecutor submitted that Kannan (A1) is a deaf and dumb and that it was this petitioner, who used to write on slate all the transactions and show to Kannan (A1).

8. On a perusal of the statement of the witnesses, they are implicating the petitioner and therefore it cannot be stated that there are no prima facie materials as against the petitioner for quashing the prosecution.

9. Learned Additional Public Prosecutor submitted that further Investigation was ordered in this case and after completing the further investigation, police have filed supplementary final report before the Chief Judicial Magistrate, Villupuram on 25.08.2014, in which four other persons have been arrayed as accused.

10. Taking into consideration the above facts, there are prima facie materials as against the accused inasmuch as the petitioner's father who was running Chit business was deaf and dumb and it was this petitioner, who was actively assisting and hence, the prosecution cannot be quashed at the threshold.

11. Learned counsel appearing for the petitioner prayed that the presence of the petitioner before the trial Court may be dispensed with.

12. Accepting the above submission of the learned counsel for the petitioner, the petitioner shall be present for receiving the charge sheet, for answering the charge, at the time of questioning under Section 313, Cr.P.C. and at the time of passing judgment. He shall file an affidavit of undertaking before the Trial Court that he will not dispute his identity and that the counsel named by him in the affidavit will cross-examine the prosecution witnesses on the day they are examined-in-chief, as held by the Supreme Court in Vinod Kumar vs. State of Punjab, [2015 (1) MLJ (Crl.) 288]. If the petitioner adopts any dilatory tactics, the trial Court can insist upon his presence.

13. With the above direction, this petition is dismissed with liberty to the petitioner to raise all the points before the trial Court.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Chief Judicial Magistrate,
Villupuram.

2. The Inspector of Police,
Economic Offences Wing (EOW)
Villupuram.

3. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.B.Ravi Advocate sr 71077

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