

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2016

CORAM:

THE HONOURABLE MS.JUSTICE R.MALA

Crl.O.P.No.7420 of 2016

And

Crl.M.P.No.3895 of 2016

R.Arun Kumar

... Petitioner

Vs.

1.The Inspector of Police,
CCB II, Central Crime Branch,
Chennai Suburban Police,
St.Thomas Mount, Chennai 600 016.

2.Narayanasekar

... Respondents

Prayer :

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to call for the records in C.C.353 of 2010 on the file of the Judicial Magistrate I, Poonamallee and quash further proceedings.

For Petitioner : Mr.N.Ranganathan

For Respondents: Mr.C.Emalias for R1
Additional Public Prosecutor

ORDER

The petitioner who is the second accused in C.C.No.353 of 2010 on the file of the learned Judicial Magistrate I, Poonamallee has come forward with this petition seeking to quash the entire proceedings against him for the offence punishable under Sections 120(b), 409, 477-B, 465, 467, 468 r/w 471 and 420 IPC.

2.On 09.12.2006, the petitioner was working as a Computer Terminal Operator. On the basis of the complaint given by the Branch Manager of Union Bank of India, a case in Crime No.4 of 2009 has been registered for the offence punishable under Sections 120(b), 409, 477-B, 465, 467, 468 r/w 471 and 420 IPC. After investigation, charge sheet has been levied against three

persons and this petitioner is arrayed as the second accused. Now, he has come forward with this petition for quashing the same.

3.The learned counsel appearing for the petitioner would submit that the petitioner is alleged to have mis-appropriated a sum of Rs.3,27,000/- and that amount has been paid immediately, disciplinary proceedings has been initiated and he was dismissed from service in September, 2009. Thereafter, he preferred an appeal and that appeal was also dismissed. He would further state that once the amount has been repaid, there is no liability to the Bank.

4.The second limb of argument is that trial has commenced in the year 2011 and it is yet to be disposed of and only nine witnesses have been examined and some witnesses were cross examined by the accused and some of the witnesses were not cross examined by the accused. So there is a delay in concluding the trial. He would further submit that charge is not in specific and it is a general charge. Hence, he prayed for quashing of the proceedings.

5.At the time of admission, arguments heard in length.

6.The learned Additional Public Prosecutor would submit that charge sheet has been levied in the year 2010, from the eleven witnesses, all the eleven witnesses were examined in chief and some of the witnesses were cross-examined by the accused and some of the witnesses were not cross-examined by the accused and for cross-examination of P.W.3 and P.W.4, it has been posted. He would further submit that merely because of the non-cooperation of the accused, the case is yet to be disposed of and would further submit that mere repayment of the amount will not exonerate the criminal liability. Hence, he prayed for the dismissal of the petition.

7.Considering the rival submissions made on either side and on perusal of typed set of papers, it is known that on the basis of the complaint given by the Branch Manager, a case in Crime No.4 of 2009 has been registered for the offence punishable under Sections 120(b), 409, 477-B, 465, 467, 468 r/w 471 and 420 IPC. After due investigation, charge sheet has been levied against three persons. The first accused is the then Branch Manager, second accused is the Computer Terminal Operator and the third accused is the private person who is the beneficiary for falsification of record. After investigation, charge sheet was levied and it was taken on file in C.C.No.353 of 2010. Now, this petition has been filed and the delay of six years has not been properly explained.

8.The learned counsel appearing for the petitioner has raised two points for consideration, one, the petitioner is alleged to have mis-appropriated a sum of Rs.3,27,000/- and that amount has been paid immediately, so, there is no liability to the Bank and disciplinary proceedings has also been initiated and he was dismissed from service. Thereafter, he preferred an appeal and that appeal was also dismissed. But, as per the dictum of the Hon'ble Apex Court reported in (2013) 1 SCC (Cri) 160 (Gian Singh Vs. State of Punjab), once there is fabrication of records, falsification of amounts, documents and mis-appropriation of the amount, since the amount has been repaid, the criminal liability cannot be exonerated. In such circumstances, merely because he has repaid the amount, his criminal liability has to be exonerated does not hold good. In the citation referred above, guideline has been given in what circumstances, the petition has been quashed, here it is related to official. It is also appropriate to consider the argument that he was dismissed from service, merely, because he is dismissed from service, we cannot exonerate him from the criminal liability. Hence, the first limb of argument advanced by the learned counsel appearing for the petitioner does not merit acceptance.

9.The second limb of argument is that there is delay in disposal of the case. Admittedly, F.I.R. has been filed in the year 2009, final report has been filed in the year 2010, charges have been framed on 18.02.2012, but now this petition has been filed. According to the learned Additional Public Prosecutor totally, there are eleven witnesses and all the eleven witnesses were examined and because of the non-cross examination of the accused only, the matter is pending. Even today, according to the learned Additional Public Prosecutor, for cross-examination of P.Ws.3 and 4, the matter is posted. The accused cannot take advantage of their own wrong stating that the case is pending for the past six years and it also does not merit acceptance.

10.So, it is a fit case for dismissal as devoid of merits. Accordingly, this Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Inspector of Police,
CCB II, Central Crime Branch,
Chennai Suburban Police,
St.Thomas Mount, Chennai 600 016.

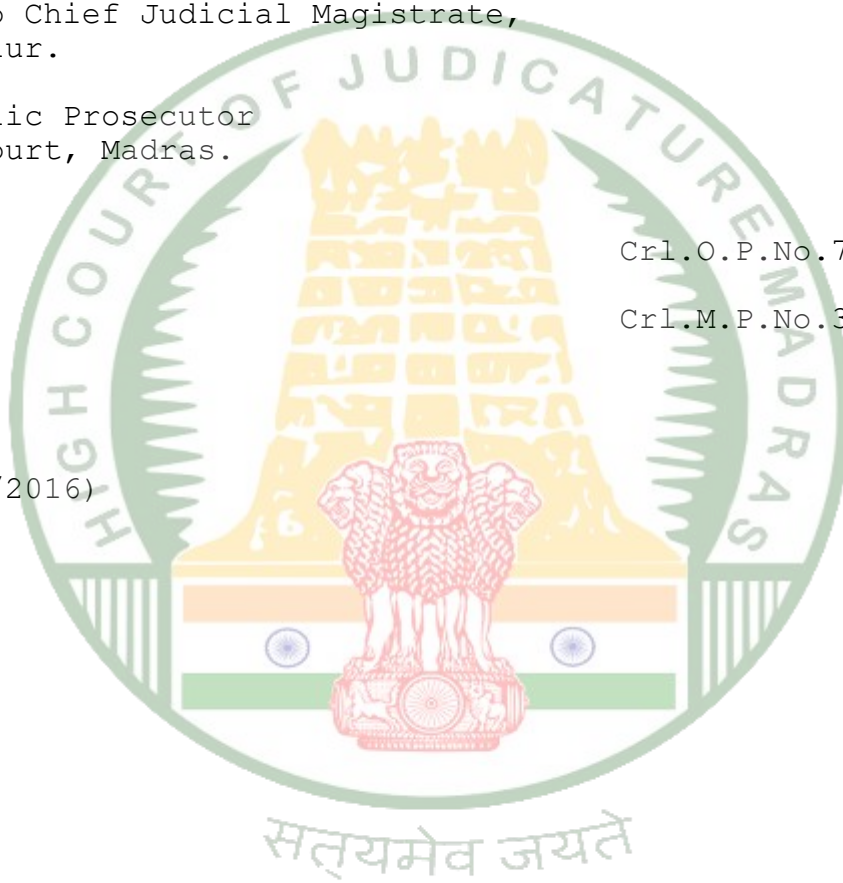
2.The Judicial Magistrate-I
Poonamallee.

3.-Do-Thro Chief Judicial Magistrate,
Tiruvallur.

4.The Public Prosecutor
High Court, Madras.

Crl.O.P.No.7420 of 2016
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rsy(CO)
srg(28/04/2016)



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