

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.O.P. No.9718 of 2016

M/s Hand in Hand India
rep by its General Manager
Mr.K.Thiagarajan
No.90-A, Nasarathpet Village
Opp.Pachaiyappa's Men's College
Little Kancheepuram District
Kancheepuram 631 503. Petitioner

Vs

1.The Inspector of Police
B-3, Kanchi Taluk Police Station
Kancheepuram District.

2.The CBCID
Rep by the Additional Director General of Police
220, Pantheon Road
Egmore, Chennai 600 008. Respondents

Criminal Original Petition filed under Section 482 Cr.P.C., to issue direction to transfer the case in Cr.No.510 of 2012 on the file of the 1st respondent in C.C.No.122 of 2014 pending on the file of the Judicial Magistrate, Kanchipuram to the 2nd respondent for further investigation and file report.

For petitioner : Mr.B.Kumar
Senior Counsel
for M/s AAV Partners

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

O R D E R

This petition has been filed seeking a direction to transfer the case in Cr.No.510 of 2012 on the file of the 1st respondent in C.C.No.122 of 2014 pending on the file of the Judicial Magistrate, Kanchipuram to the 2nd respondent for further investigation and file report.

2. Heard the learned Senior Counsel for the petitioner
<https://hcservices.ecourts.gov.in/hcservices/>

and the learned Additional Public Prosecutor appearing for the State.

3. For the sake of convenience, the parties will be referred to by their name.

4. M/s Hand in Hand India lodged a complaint alleging that one Bhagavandass, their employee had stealthily transferred certain intellectual properties to their erstwhile employee Deepamala on 29.12.2011 and 30.12.2011. On this complaint, the respondent police registered a case in Cr.No.510 of 2012 on 04.06.2012 for offence u/s 408 IPC and after completing the investigation, filed a Final Report against Bhagavandass in C.C.No.122 of 2014 before Judicial Magistrate-2, Kancheepuram for offences u/s 408 IPC and Section 66 of the Information Technology Act, 2008. M/s Hand in Hand India was not satisfied with the investigation, as it felt that the police had left Deepamala from the array of the accused. Therefore, M/s Hand in Hand India filed Crl.O.P.No.25554 of 2014 with the following prayer:

"Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to direct the 3rd respondent to conduct further investigation in Crime No.510 of 2012 on the file of the Inspector of Police, B3, Kanchi Taluk Police Station, Kancheepuram his file under the proper supervision of the 1st and 2nd respondents, and thereby to file a appropriate final report within a stipulated period as fixed by this Court."

5. It is the case of M/s Hand in Hand India that even though there are sufficient materials against Deepamala in the Final Report, yet the police had for some reasons not arrayed her as an accused.

6. When Crl.O.P.No.25554 of 2014 came up for hearing on 16.09.2014, learned Additional Public Prosecutor conceded that there are sufficient materials against Deepamala and the police are intending to conduct further investigation and file amended charge sheet. Recording the submission, this Court disposed of Crl.O.P.No.25554 of 2014 as follows:

"4. In view of such submission made by the learned Additional Public Prosecutor, this Court deems it fit to direct the 3rd respondent police to file either amended or additional charge sheet arraying the additional accused and on receipt of such amended or additional charge sheet, the

concerned Judicial Magistrate Court shall deal with the same in the manner known to law and the petition is accordingly disposed of."

7. On coming to know of this, Deepamala filed M.P.No.1 of 2015 in CrI.O.P.No.25554 of 2014 to recall the order dated 16.09.2014 on the ground that the same has been obtained by suppression of facts. This Court re-heard the case and by order dated 04.09.2015 in M.P.No.1 of 2015 in CrI.O.P.No.25554 of 2014, recalled the order dated 16.09.2014, and dismissed CrI.O.P.No.25554 of 2014. In this background, M/s Hand in Hand India has filed the present petition for a direction to the respondent police to conduct further investigation and file Final Report.

8. Heard Mr.B.Kumar, learned Senior counsel for the petitioner and learned Additional Public Prosecutor appearing for the State.

9. In the considered opinion of this Court, the present petition is not maintainable in the light of Section 362 Cr.P.C., inasmuch as this Court in the order dated 04.09.2015 in M.P.No.1 of 2015 has given a finding in paragraph 24, that there are no materials against Deepamala for the prosecution to proceed against her. That apart, this Court had not only recalled the order dated 16.09.2014, but has also dismissed CrI.O.P.No.25554 of 2014.

10. Under such circumstances, the only remedy open to the petitioner is to approach the Supreme Court challenging the order dated 04.09.2015 and the present petition with the same prayer for further investigation cannot be maintained.

11. It is the grievance of B.Kumar, learned Senior Counsel that, despite there being sufficient materials against Deepamala, on account of the order dated 04.09.2015, she is going scot-free without facing the prosecution. Unfortunately, that cannot be a reason for this Court to entertain this petition and order further investigation, inasmuch as the crux of the allegation in the present petition for transfer is also centered around Deepamala, nor can this Court give a direction to the respondent police to conduct further investigation against Deepamala in view of the order dated 04.09.2015 passed by this Court. However, as held by a Constitution Bench of the Supreme Court in Hardeep Singh vs. State of Punjab and others [(2014) 3 SCC 92], even if an accused has been discharged from a prosecution, yet that cannot be a bar for the Court to array him as accused u/s 319 Cr.P.C. if evidences surface during trial.

In the result, the petition is devoid of merits and the same is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

gms

To

1.The Inspector of Police
B-3, Kanchi Taluk Police Station
Kancheepuram District.

2.The Additional Director General of Police
The CBCID
220, Pantheon Road
Egmore, Chennai 600 008.

3. Judicial Magistrate, Kanchipuram.

4.The Public Prosecutor,
High Court, Chennai.

1 cc to M/s.AAV Partners, Advocates, sr.45278

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