IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2017

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Crl.O.P.No.6952 of 2017
and Crl.M.P.Nos.5056 and 5057 of 2017

Vasan @ Vaigundavasan .. Petitioner

Vs.

1.The State of Tamil Nadu,
rep.by its Inspector of Police,
Central Crime Branch,
(Bank Fraud Wing),
Egmore, Chennai-600 008.
(Crime No.581 of 2009).

2.M.Perumal,
Executive, Security & Investigation,
Expressit Logistics Worldwide Ltd.,
Regional Office, S/P.Arcade No.37,
Pazhandi Amman Koil Street,
Adambakkam, Chennai-600 088. .. Respondents

Petition filed under Section 482 of the Criminal Procedure Code, to call for the records relating to the proceedings in C.C.No.1636 of 2015 on the file of the CCB Court (Allikulam Commercial Complex) Egmore at Chennai, in so far as the petitioner / second accused is concerned, and to quash the same.

For Petitioner : Mr.Ajoy Kumar Gnanam

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

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.1636 of 2015 on the file of the CCB Court (Allikulam Commercial Complex) Egmore at Chennai, in so far as the petitioner / second accused is concerned.

2.It is stated by the petitioner in the affidavit filed in support of this petition that the second respondent, who is the Executive Incharge of M/s.Expressit Logistics Worldwide Ltd., a courier service organisation, engaged in the business of delivery of credit card consignments, made a complaint to the Commissioner of Police, Egmore, stating that in the month of April 2009, their Nungambakkam Branch had received an add-on credit card from ABN Amro Bank and the same was delivered to one Mrs.P.K.Kunjappan, though she was not at the address to receive the same. The said card is said to have been issued to one Jayabalan, who is the husband of Mrs.P.K.Kunjappan. Thereafter, according to the second respondent, in the month of October 2009, there was a correspondence from ABN Amro Bank that the said Mrs.P.K.Kunjappan had not received the card, but usage has been made in the add-on credit card for Rs.2,31,247/- although she had not used that card for the said transaction. Based on the said complaint given by the second respondent, the first respondent registered the case in Crime No.518 of 2009 under Sections 419, 420, 465, 467 and 468 r/w Section 471 of IPC, in which no names of the accused much less the name of the petitioner, have been reported. Thereafter, only in the charge sheet, some more offences were added against the petitioner and other two accused. After investigation, the first respondent arrested the petitioner and two others, as if they had colluded and used the said add-on credit card by impersonation, and also for preparing forged driving license by the petitioner. As per the charge sheet, the petitioner and two others had purchased jewellery from four jewellery shops at Ambattur and sold the same to unknown persons at Koyambedu and thereby illegally enriched themselves. The petitioner was arrested on 26.11.2009 and released on bail subsequently.

3.The case of the prosecution is that the petitioner was the friend of the first accused-Muthukumaran, who was an employee of the second respondent Courier Service company, and he had passed on the information about the add-on card which was in his possession and further that the petitioner had created a driving license based on the details in the add-on card and jointly used the same to buy jewellery and textile materials and sold the same to third parties and gained profits thereby.

4.Now the petitioner has come up with this Criminal Original Petition to quash the proceedings of the CCB Court (Allikulam Commercial Complex), Egmore at Chennai in C.C.No.1636 of 2015 in so far as the petitioner is concerned.

5.The learned counsel for the petitioner submits that there is no whisper or reference whatsoever as against the petitioner, when the second respondent gave complaint to the first respondent which was registered in Crime No.581 of 2009. There was no recovery of the so-called jewellery, textiles, forged driving licence and the add-on credit card by the first respondent and hence the theory of the first respondent that the petitioner and the first accused had sold the above jewellery and textiles at Koyambedu to some third persons, is incorrect. Stating so, the learned counsel for the petitioner prayed for quashing the impugned proceedings.

6.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor, who took notice for the first respondent, and also perused the materials available on record.

7.It is seen from the records that no trial has been conducted till now in the case in C.C.No.1636 of 2015 pending on the file of the CCB Court (Allikulam Commercial Complex), Egmore at Chennai. The petitioner's name is specifically indicated in the charge sheet. In the statement given by the second respondent/ defacto complainant, under Section 161 of Cr.PC, it is stated that a sum of Rs.1,40,000/- was taken by swiping the credit card in question and out of the said amount, a sum of Rs.80,000/- has been recovered from the friends of Muthukumaran, who is the accomplice of the petitioner herein. Further, from the Section 161 Statement given by one K.Karunakaran, who was working as Managing Executive in the second respondent Courier company, and was a witness to the confessional statement of the petitioner, it is seen that the petitioner herein had told the police that he is working in HDFC Bank in the Credit Card Division as Assistant Manager; that he knows one Muthukumaran who was working in the Expressit Courier company; that he has a credit card. Stating so, he asked the said Muthukumaran to arrange for a sum of Rs.40,000/- by swiping the card available with him; that the said amount is required to adjust the amount which was already paid by him to the Management for misusing some other credit card. It is also stated by the said Karunakaran in his statement that the petitioner herein had confessed to the police that he had made ready a driving license affixing his photograph and incorporating the name of the credit card holder; taken a xerox copy of the same and thereafter used the said forged copy of the driving license in the shops demanding I.D.Proof, to purchase jewellery and dress materials, and encashed the jewellery and dress materials by selling the same to some unknown persons in the Koyambedu area and shared the proceeds between him and the said Muthukumaran. It is also stated in that statement, that the said Muthukumaran had given a confessional statement stating that that he had stolen the add-on credit card of Jayabalan and had given the same to the petitioner herein asking the petitioner to get money by swiping the said card to adjust a sum of Rs.40,000/- which was already recovered from him; thereafter a forged driving lincense was prepared in the name of Jayabalan and a copy of the same was used by Muthukumaran along with the petitioner herein to purchase jewellery in the jewellery shops. Further, it is seen that both the petitioner and Muthukumaran had approached one Selvakumar, who was working in a petrol bunk by name 'Sri Murugan Agency' in Ambattur on 02.10.2009, 03.10.2009 and 06.10.2009 and asked him to swipe the card to get money for them, by giving 10% commission, and all of them spent money in a lavish manner. In the statement given by one Ashokumar before the police authorities, it is stated by him that on seeing a photograph of the accused on 07.01.2010 which was shown to him by the Sub-Inspector of Police, Central Crime Branch, he identified the petitioner and Muthukumaran; the third person found in the photograph had not come to his shop and he came to know that he is another accused. He also stated that he came to know that the petitioner is the person who had given the driving license stood in the name of Jayabalan. There is a cogency in the Section 161 Statements, and it is a clear case for trial. Under such circumstances, this Court cannot quash the impugned proceedings straightaway, as the truth will not come to light if the trial is not proceeded with. Hence the petitioner must face the trial.

8.With the above observation, the Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KM

To

1.The Chief Metropolitan Magistrate,
(Allikulam Commercial Complex),
Egmore, chennai.

2.The Inspector of Police,
Central Crime Branch,
(Bank Fraud Wing),
Egmore, Chennai-600 008.

3.The Public Prosecutor,
Madras High Court,
Chennai-600 104.

+1cc to Mr.Ajoy Kumar Gnanam, Advocate, S.R.No.21807

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MP(CO)
RS(04/05/2017)