

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.04.2017
CORAM
THE HON'BLE MR. JUSTICE M.V.MURALIDARAN
CRL.O.P.No.577 of 2011
and
M.P.No.1 of 2011

Shyam Singh

.. Petitioner

Vs

1.State rep. by
Sub-Inspector of Police,
Central Crime Branch,
Team No.8, Cr.No.238/09
Egmore, Chennai-600 008.

2.S.Lakshmi

.. Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.6863 of 2010 pending on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai and quash the same.

For Petitioner : Mrs.Jayasree Baskar
for Mr.K.V.Sridharan

For Respondents: Mr.B.Ramesh Babu (for R1)
Government Advocate (Crl.Side)

Mr.C.E.Pratap (for R2)

ORDER

The petitioner herein is the 3rd accused in the above C.C.No.6863 of 2010 on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai. The said final report in Criminal Case No.6863 of 2010 came to be filed in correspondence with investigation conducted by the 1st respondent in pursuant to registration of F.I.R. in Cr.No.238 of 2009 dated 11.06.2009 as against the petitioner and 2 others under Sections 406 and 420 of IPC on the complaint of the defacto complainant.

2.The brief facts in nutshell behind the charges laid in C.C.No.6863 of 2010 against the petitioner as follows:

According to the 2nd respondent / defacto complainant namely S.Lakshmi, the 1st accused and the 2nd accused in above C.C. operated a consultancy in the name and style of Vigro consultancy and the defacto complainant in order to secure a job to her daughter Umadevi has paid sum of Rs.1,60,000/-. Though

the 1st and the 2nd accused secured petitioner's daughter with Extreme InfoTech Software Private Limited owned by the petitioner, but the defacto complainant's daughter was not paid with salary regularly.

3. For 4 months of employment only a rupees of 20,000 was paid as an aggregate salary. Thus the defacto complainant as well her daughter was cheated and accordingly she lodged a complaint before the 1st respondent. The 1st respondent registered a case under Sections 406 and 420 of IPC and proceeded with investigation.

4. The 1st respondent is pursuant to investigation, filed the charge sheet under Section 420 r/w 34 of IPC as against the above consultancy owners as the accused Nos.1 and 2 and against the petitioner herein who is the proprietor of Xtreme InfoTech Software Private Limited namely Shayam Singh as the 3rd accused.

5. In support of charge laid, totally 8 witnesses were cited. The 7th and 8th witnesses are investigation officers handled the case. The 1st witness is the defacto complainant, 2nd witness is Uma Devi the defacto complainant's daughter, 3rd and 4th witnesses namely Thiraviyam Pillai and Mahendran relatives of de facto - complainant. The Witnesses nos 5 and 6 are the owners of the building premises of the 1st accused consultancy operating at Thiruvallikeni and Alwar Thirunagar respectively.

6. I heard Mrs. Jayasree Baskar for Mr. K.V. Sridharan, learned counsel for the petitioner, Mr. B. Ramesh Babu, learned Government Advocate (Criminal Side) for the 1st respondent and Mr. C.E. Pratap, learned counsel for the 2nd respondent and perused the entire materials available on record.

7. According to the complaint, the petitioner herein has cheated the defacto complainant's daughter in guise of securing employment.

8. It is the defacto complainant's case that her daughter though was provided with a name sake job but was not extracted any work and was paid only with Rs.20,000/- salary for 4 months.

9. Though this Court has allowed the quash petition filed by the 1st accused the consultant of the private employment consultancy but the same cannot be done to quash the F.I.R. in as much as the third accused / petitioner herein is concerned.

10. The simple reason is that there are several disputed question of facts. According to the defacto complainant her daughter was regular in employment but according to the petitioner herein the defacto complainant's daughter was irregular in attendance.

11.In this context it is also equally important to note that the defacto complainant's daughter vide her statement under section 163 CrPC has stated that she demanded for termination of service and again it is her case that she was not paid with salary for the months she worked months she worked.

12.It is needless to say that such disputed question of facts cannot be gone through in this criminal original petition while exercising power under section 482 by this Court, which has to be used sparingly and cautiously in appropriate cases. Therefore they issue requires trial.

13.It is made clear that this Court has not expressed any opinion are the observation made above will not have any impact in the trial. The dismissal of the present criminal original petition cannot be interpreted as the charge against the accused is endorsed by this Court. The Trial court is directed to conduct the trial and influenced by this Court.

14.In the result, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

vs

To

The XI Metropolitan Magistrate,
Saidapet, Chennai.

+1cc to Mr.K.V.Sridharan, Advocate, S.R.No.23697

CRL.O.P.No.577 of 2011
and
M.P.No.1 of 2011

rrs 10/01/2019