IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P.No.23439 of 2010
and
M.P.No.1 of 2010

1.M.R.Ganesh
2.M.R.Swaminathan
3.M.Ramadoss
4.R.Vedavalli ... Petitioners

Vs.

1. State rep. by its
Inspector of Police,
Central X Crime Branch XIIth Team,
Egmore, Chennai - 600 008.

2. R.Sudhakar ... Respondents
(Impleaded the 2nd respondent as per the
order of this Court dated 14.02.2013
in MP.No.1 of 2011)

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records and quash the entire further criminal proceedings in C.C.No.11546 of 2008, on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai - 600 008.

For Petitioners : Mr.R.Shanmugasundaram,
Senior counsel
for Mr.R.Subramanian

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

M/s.G.Sreedevi (for R2)

JUDGMENT

The petitioners have come up with the present petition to quash the proceedings in Calendar Case No.11546 of 2008, on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai.

2.The case of the petitioners in brief is as follows:
The petitioners 1 and 2 are brothers, the petitioners 3 and 4 are husband and wife both of them are parents of the

petitioners 1 and 2. In 2006, the Defacto-complainant was informed by his friend namely one Balaji that the 1st and 2nd petitioners arranged job in Singapore, so they were contacted by the Defacto-complainant. Thereafter on the direction of the 1st and 2nd petitioners, the Defacto-Complainant paid a sum of Rs.60,000/- to his friend, the aforesaid Balaji and another amount of Rs.90,000/- was paid to the petitioners 3 and 4 on various dates. When the Defacto-Complainant went to Singapore and worked there for about 6 months, it is his allegation, that he was not paid any money as salary by the company in Singapore. So, he was constrained to return back to India and lodged the complaint before the 1st respondent and a case was registered on 26.02.2008. Subsequently, the said case in Crime No.24 of 2008 was investigated and charge sheet was filed as against all the petitioners. By considering the final report filed by the Inspector of Police, Central Crime Branch, Chennai and other records, the cognizance was taken by the Court concerned for the offence under Section 420 of IPC r/w 34 of IPC. Hence, aggrieved over the cognizance taken by the Additional Chief Metropolitan Magistrate, Egmore, Chennai in C.C.No.11546 of 2008, the petitioners have preferred the instant the petition to quash the said proceedings.

3.The learned counsel for the petitioners would submit that the petitioners have not committed any offence as alleged. In order to divert the money transaction between the petitioners and the Defacto-Complainant in the normal course, the false case has been instituted by giving criminal colour. Moreover, the petitioners never assured to procure and provide job to the Defacto-Complainant by taking personal responsibility in Singapore on their own. Apart from that absolutely no evidence is available except the oral statement of the witnesses which will not sufficient to hold that the petitioners were having mens-rea and deceptive intention to cheat the Defacto-Complainant in sharing the common intention.

4.The learned counsel for the petitioner would also submit that as for as the offence under Section 420 of IPC is concerned, the accused must have deceptive intention at the time of the transaction itself. Otherwise, no offence would be made out to frame charge for the offence punishable under Section 420 of IPC. Apart from that he also pointed out that the Defacto-Complainant worked in the employment nearly about 6 months as admitted by him. At the same time, the petitioners will not be responsible for the personal aversion of the Defacto-Complainant in respect of the nature of the work in Singapore. Even according to the compliant and the statement of the Defacto-Complainant, he did not make any allegation as to whether the Defacto-Complainant was cheated when he worked in Singapore by the acts of the accused 1 and 2. In such an event the petitioner cannot be charge sheeted simply under the guise of job racketing.

5.Per contra, the learned Government Advocate (Criminal side) based on the counter affidavit filed by the Investigation Officer, would submit that in pursuance of the lodging of the complaint, the investigation was conducted in the right direction and on collection of material evidence final report was filed as against the petitioners. Further, the learned Magistrate after considering the materials filed along with the final report got satisfied and found prima-facie case, cognizance was taken as per law. He further submits that since evidence available against all the petitioners, the case is entitled to be proceeded with further and the prosecution is ready to prove the case by adducing cogent and reliable evidence and the therefore the petition filed by the petitioner is liable to be dismissed.

6.I heard Mr.R.Shanmugasundaram, learned counsel appearing for the petitioners and Mr.B.Ramesh Babu, learned Government Advocate (Criminal Side), appearing for the 1st respondent and M/s.G.Sreedevi, learned counsel appearing for the 2nd respondent and all the materials available on records are perused.

7.It is the case of the petitioner that they have not committed any offence, but the money transaction between them and the Defacto-Complaint is giving criminal colour and absolutely no evidence is available that the petitioners were having intention to deceive the Defacto-Complainant. Apart from that it is no where found that the petitioners 1 and 2 and the Defacto-Complainant met with each other. Even though it is the crucial factor, no investigation was conducted in this regard. Even in the counter affidavit no explanation is given by the prosecution as to why no investigation was conducted in this connection. When this Court perused the F.I.R. and the statements of witness it is unable to ascertain in what way the petitioners 1 and 2 were having transaction with the Defacto-complainant. This would deeply affect the root of the case. Further, it is taken note by this Court that the arguments advanced by the learned counsel for the petitioners that once the Defacto-Complainant failed to substantiate the accused were having mens-rea, it is unsafe to subject them to face the charges framed against them.

8.This Court is very conscious that the deep discussion of the merit of the case in on application filed for the quashment of the proceedings is not advisable, but it is unsafe to shut its legal conscious to put the accused in the ordeal of trial unnecessarily. In such an event, this Court can use the inherent power as contemplated under Section 482 of Cr.P.C. Further, in opinion of this court the learned Magistrate has not properly appreciated the materials filed along with the charge sheet. As for as the offence under Section 420 of IPC is concerned that too along with Section 34 of IPC, legally acceptable evidence must be put forth along with the charge sheet. This Court finds no credible evidence is available to rope the petitioner in the commission of alleged offence.

9.Therefore, for the discussion in respect of the case, in the considered opinion of this court, the final report filed by the 1st respondent is lack of materials to link the petitioners with the alleged transactions and it is not desirable to allow the further proceedings in C.C.No.11546 of 2008 on the file of the learned Additional Chief Matropolitan Magistrate, Egmore Chennai. Hence, the same is liable to be quashed and accordingly this petition is allowed as prayed for.

10.In the result, this Criminal Original Petition is allowed by setting aside the charge sheet filed in C.C.No.11546 of 2008, on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai, in respect of the petitioners. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vs

To

The Additional Chief Metropolitan Magistrate,
Egmore, Chennai - 600 008.

+1cc to M/s.R.Subramanian, Advocate, S.R.No.36592

Crl.O.P.No.23439 of 2010
and
M.P.No.1 of 2010

GP(CO)
CA(13/06/2017)