IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P No.23440 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,
   X Central Crime Branch XIIth Team,
   Egmore, Chennai - 600 008.

2. N.Malaiappan ... 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.12249 of 2008, on the file of the XI Metropolitan Magistrate, Saidapet, 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)
Mr.R.Natesh Kumar (for R2)

JUDGMENT

The petitioners have come up with the present petition to quash the proceedings in Calendar Case No.12249 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 2005, the Defacto-complainant was introduced by his friend namely one Ravi Sankar that the petitioners 1 and 2 would arranged job in Singapore, and both of them told the Defacto-Complainant that they were engaged in securing employment for Indians in Singapore including all the formalities. The further allegation is that the Defacto-Complainant introduced one K.M.Locknath of Bangalore, Pradeep of Bangalore, Mr. Karaimurugan of Sivakasi through the E-mail the petitioners 1 and 2 were having contracted the victims and instructed them to part with a sum of Rs.2,00,000/- to each as advance payment further, the 1st petitioner was regularly contacting the aforesaid 3 persons that the application was being processed favorably. Mr.Locknath paid Rs 5,00,500/- to the 2nd petitioner, thereafter another Rs.2,00,000/- and Rs.3,00,000/- respectively demanded. Thereafter, no communication from the petitioners 1 and 2 and failed to arrange job in Singapore.

3.So, he was constrained to lodge the complaint before the 1st respondent and a case was registered on 06.11.2007. Subsequently, the said case in Crime No.713 of 2007 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 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.12249 of 2008, the petitioners have preferred the instant the petition to quash the said proceedings.

4.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. Moreover, the Defacto-Complainant is a third person and he had not parted with any money and no one has come forward to lodge compliant against the petitioners in respect of the alleged offence.

5.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 has not even alleged that he parted with any money to any of the petitioners. At the same time, the petitioners will not be responsible for the allegations of the Defacto-Complainant in respect of a third person, who allegedly cheated by the petitioners. 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. Further, it is also brought to the notice of this Court that absolutely not even oral evidence is available to hold the petitioners having nexus in respect of the allegations of the Defcto-Complainant

6.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.

7.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 Mr.R.Natesh Kumar, learned counsel appearing for the 2nd respondent and all the materials available on records are perused.

8.It is the case of the petitioners 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 nowhere 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.

9.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. Further, this court has also ascertained as none of the affected person has lodged any complaint against the petitioners before the authorities concerned.

10.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 is 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 petitioners in the commission of alleged offence. In the absence of such evidence as against the petitioners by pointing the guilt, the same would not make out any case.

11.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.12249 of 2008, on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai. Hence, the same is liable to be quashed and accordingly this petition is allowed as prayed for.

12.In the result, the Criminal Original Petition is allowed and the charge sheet filed in C.C.No.12249 of 2008, on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai, is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

The XI Metropolitan Magistrate,
Saidapet, Chennai.

+1 CC to Mr. R. Subramanian, Advocate sr 36593

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