IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.07.2018
Pronounced on : 24.09.2018

CORAM
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.28779 of 2011
and
M.P.Nos.1 of 2011 & 1 of 2014

P.S.Sethuraman,
S/o.Somu Devar. ... Petitioner/Sole Accused

Vs.

1.The Sub-Inspector of Police,
Central Crime Branch,
Egmore, Chennai - 600 008.

2.Mr.Palani @ Annamalai,
S/o.Mr.Ramasamy,
Executive Director of Big Star G Services
Private Limited,
C-9, Thiru-Vi-Ka Industrial Estate,
Guindy, Chennai - 600 032. ...Respondents
[impleaded the second respondent as per the order of this Court dated 17.04.2012 in M.P.No.1 of 2012]

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to C.C.No.3804 of 2010 on the file of the Chief Metropolitan Magistrate Court, Egmore, Chennai and quash the same.

For Petitioner : Mr.A.Thiyagarajan

For R1 : Ms.V.Saratha Devi,
Government Advocate

For R2 : Mr.B.S.Jothiraman

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O R D E R

The petitioner is an accused in C.C.No.3804 of 2010 on the file of Chief Metropolitan Magistrate, Egmore, Chennai for the offence under Section 420 of the Indian Penal Code has filed the above quash petition.

2.The case of the prosecution in brief is as follows:-

The defacto-complainant who is the Managing Director of Big Star-G Services Pvt.Ltd., during the year 2008 was approached by the accused and his brother one Sekar claiming that they are the owners of Rathimeena Travels and Sethumeena Travels operating luxury Omni bus services and Parcel Service throughout the state and they wanted defacto complainant to invest in their business and promised to make him as a Partner. They had promised that the business venture would yield good profit. Lured by their promises and the deception caused by them, the defacto complainant parted with Rs.20 lakhs all payments were made through bank. On receipt of the amount as promised the petitioner failed to enter into the Memorandum of Agreement and thereafter started avoiding the defacto complainant. After great difficulty, the defacto complainant met the petitioner at his residence asking for return of the money or to honour the commitment. The petitioner raised his voice threatened and warned the defacto complainant that he would be done away if he makes any further claim or approaches the police. Thereafter, a complaint was lodged by the defacto-complainant to the Commissioner of Police, Trichy who had forwarded the same to Uraiyur Police who registered a case in Crime No.1320/09 for offence under Section 420 of the Indian Penal Code. On enquiry, found that the transactions had taken place in Chennai and on the point of jurisdiction the case was transferred to the 1st Respondent who registered a case in Crime No.219 of 2010. Thereafter on completion of investigation charge sheet was filed against the petitioner.

3.The contention of the petitioner is that the Second respondent/defacto complainant has given the amount of Rs.20 lakhs for development of M/s.Sethu Associates, a Partnership firm in the absence of arraying up the Partnership firm and the other partner John Amalraj as accused in the above case is bad in law.

4.Further, there is no mention in the charge sheet about the details of instruments installed or any document particulars. Further, the contention is that the defacto complainant to extract money a false complaint has been preferred by him. It was further contended that the defacto-complainant had volunteered through the said John Amalraj to invest money in Sethu Associates and hence offence U/s.420 is not made out.

5.The petitioner further contended that the defacto complainant to cover up his inability to install website and failure in completing the business and on failing to perform his obligations, to save him from compensation related cases. The defacto complainant has given this false complaint. Further relied upon decision of this Hon’ble Court in C.A.No.848/98

6.The learned Government Advocate had filed a counter on behalf of the 1st respondent narrating the entire facts and about the investigation carried out. Further, the petitioner and his brothers had obtained Anticipatory bail and during enquiry the petitioner brothers Sekar and Sankar had categorically stated that they have no role in the transaction between the petitioner and the 2nd respondent and the petitioner had siphoned out the money on his own accord. Hence, the petitioner alone had been made as an accused. Further the said John Amalraj, Partner of Sethu Associates in his statement had corroborated the fact of the petitioner receipt of Rs.20 lakhs from the defacto complainant and the said amount though was to be accounted in Sethu Associates, the petitioner had not done so and had siphoned out the same and due to the act of the petitioner the Sethu Associates had to be closed. The bank officials of Axis Bank have spoken to the fact about the petitioner having received the Rs.20 lakhs which was paid by the 2nd respondent. Further, it is submitted that the investigation has been conducted in a proper manner evidences have been collected, statement of witnesses have been recorded and corresponding documents have been filed and thereafter only charge sheet has been filed and prayed the quash petition to be dismissed as it has been filed to stall the proceedings of the trial.

7.The 2nd respondent/defacto complainant submits that the petitioner is a chronic defaulter using the name of the family business had committed the above offence. The hard earned money of the defacto complainant had been siphoned out and right from the inception, the petitioner was with the clear intention to cheat and thereby siphoned out the entire amount of Rs.20 lakhs which is corroborated by the statement of Sethu Associates Partner John Amalraj. The said John Amalraj has filed a complaint in Crime No.220 of 2010 for similar nature of offence which on investigation the CCB Egmore, Chennai had filed a charge sheet which taken on file by the Chief Metropolitan Magistrate, Egmore, Chennai in C.C.No.386 of 2011. The petitioner had filed a quash petition to quash C.C.No.386 of 2011 before this Hon'ble Court in Crl.O.P.No.21362 of 2013 which came to be withdrawn on 12-11-2014. The counsel for the defacto-complainant who had appeared as intervener in the said petition submits that since the quash petition was to be dismissed, the petitioner had withdrawn the quash petition.

8.This court on considering the rival submission finds The contention of the petitioner are not sustainable on the facts and the materials available in the above case. The petitioners primary contention is that a business transaction has been given a criminal colour and offence U/s.420 IPC is not made out since at the time of inception there was no element of cheating. It was due to the non performance of the 2nd respondent’s obligation the business could not be completed which cannot be countenanced on the materials available.

9.There are statements of the John Amalraj the partner of Sethu Associates and one Sekar and Shankar who are running Rathimeena Travels and Sethumeena Travels about the money of Rs.20 lakhs received by the petitioner not being accounted in any of these business. The petitioner having deceived and siphoned out Rs.20 lakhs of the defacto complainant cannot now make such a claim. Further, the citation relied by the petitioner is on a Criminal Appeal after the trial. In para-16 of the citation cited it is held as follows:

“ In the said appeal the learned counsel for the appellant submit that having convicted the appellant under section 409 IPC for the very same act, he should not have been convicted for offence U/s.420 IPC. In my considered opinion too, Section 409 and 420 IPC cannot go together. One of the essential ingredients of Section 409 IPC is “trust” reposed whereas U/s.420 IPC the basic element is deception. In an offence U/s.420 IPC, there is no trust reposed. When such trust reposed is breached, it becomes an offence U/s.409 IPC Whereas, when the person so deceived, acts upon such deception then it becomes an offence U/s.420 IPC.”

10.There can therefore be no doubt whatever on continuance of prosecution of the petitioner for office under section 420 IPC in C.C.No.3804 of 2010.

11.In result, the quash petition of the petitioner is dismissed. Since the case is of the year 2010 and the trial court is directed to dispose of the trial within a stipulated period expeditiously from the date of receipt of a copy of this order within a period of three months. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Metropolitan Magistrate,
  Egmore, Chennai.

2.The Sub-Inspector of Police,
  Central Crime Branch,
  Egmore, Chennai - 600 008.

3.The Public Prosecutor,
  High Court, Madras.

+1cc to Mr.A.Thiyagarajan, Advocate, S.R.No.65876
+1cc to Mr.B.S.Jothiraman, Advocate, S.R.No. 65719

Crl.O.P.No.28779 of 2011

MP(CO)

rrs 25/10/2018