

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.07.2018

Pronounced on : 12.10.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.25977 of 2010

and

M.P.Nos.1 & 2 of 2010

1.B.K.Krishnamurthy.

2.Mahalakshmi.

3.B.K.Anandakumar. ..Petitioners/Accused Nos.1 to 3

/Vs./

1.E.Krishnan,
S/o.Easwaran Pilai.Respondent No.1/Complainant

2.Misria.

3.S.Premkumar.Respondents 2&3/Accused Nos.4 & 5

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.139 of 2010 on the file of the Judicial Magistrate Court, Thiruvallur and quash the proceedings thereby discharge the petitioners in as much as the entire proceedings initiated by the respondent/complainant are actuated by malice, ill-will and hatred and it is nothing but double jeopardy and sheer abuse of process of Court and process of law.

For Petitioners : Mr.Ravichandran Sundaresan

For Respondents : No appearance

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O R D E R

The petitioners are accused Nos.1 to 3 in a private complaint filed by the first respondent/Complainant under Section 406 and 420 of the Indian Penal Code in C.C.No.139 of 2010 on the file of the Judicial Magistrate Court No.I, Tiruvallur.

2.The case of the first respondent/complainant is that he is an employee of Udayam Benefit Fund for more than ten years and he is aware of the entire money transaction and loan dealings of its customers.

3.For the sake of convenience the petitioners herein are referred to as "Accused" and the complainant as "First Respondent".

4.The first accused is the father of the second accused and the second accused is one of the Directors of Udayam Benefit Fund. The third accused is the master brain of the illegal dealings of Udayam Benefit Fund. The respondent Nos.2 and 3/Accused Nos.4 and 5 are the loanees of the Udayam Benefit Fund.

5.Further contention is that the first accused is into Benami money transactions and violating the Income Tax Rules and Regulations. The second accused recommended respondent Nos.2 and 3/Accused Nos.4 and 5 for getting loan from Udayam Benefit Fund. On the recommendation of the second accused respondent Nos.2 and 3/Accused Nos.4 and 5 received loan from Udayam Benefit Fund. Further, after getting loan from the Udayam Benefit Fund, the respondent Nos.2 and 3/Accused Nos.4 and 5 unable to pay the loan amount. The fourth accused is liable to pay a sum of Rs.84,367/- (Rupees eighty four thousand three hundred and sixty seven only) and the fifth accused is liable to pay a sum of Rs.2,27,702/- (Rupees two lakh twenty seven thousand seven hundred and two only). The third accused had given a false complaint before the Inspector of Police, Economic Offence Wing, Anna Nagar, Chennai - 600 040 to receive Rs.1,00,000/- (Rupees one lakh only), which belongs to one Govindammal, a complaint was given to the Additional Director General of Police, Economic Offence Wing, Anna Nagar, Chennai - 600 040. The Additional Director General of Police ordered for enquiry and it is pending till date. Thus, the respondent Nos.2 and 3/Accused Nos.4 and 5 had dishonestedly, fraudulently, cleverly colluded with other accused and cheated the Udayam Benefit Fund by non payment. The complainant had approached the District Crime Branch, Tiruvallur on 02.03.2010, who failed to entertain the complaint and hence, the private complaint was filed by the first respondent/complainant.

6.Despite several notices were attempted to be served on the first respondent/complainant, the notices could not be served and were returned from the year 2010. This Court directed the petitioners to take a final notice on 08.06.2017. The said notice was effected on 23.10.2017, which was returned on 28.10.2017, the Affidavit of service has been filed. Thereafter, the name of the first respondent/complainant has been printed in the cause list and despite the same, there was

no representation for the first respondent/complainant, hence, this Court proposed to pass orders on merits based on the statements of the petitioners and on perusal of the materials before this Court.

7.It is strange to find how the Lower Court entertained such a complaint given by the first respondent/complainant, who is an employee of the Udayam Benefit Fund against the Director, Directors father and other persons describing them as loanees and for evasion of payment of Income Tax. On a bare perusal of the complaint and on the materials, it is seen that if the complaint taken as whole un-controverted then to there is no case made out.

8.In view of the above, the case against the petitioners/accused Nos.1 to 3 and of the respondent Nos.2 and 3/Accused Nos.4 and 5 in C.C.No.139 of 2010 on the file of the Judicial Magistrate Court, Thiruvallur is quashed and accordingly, this Criminal Original Petition stands allowed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate,
Thiruvallur.

2.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.Ravichandran Sundaresan, Advocate, S.R.No.71328

Crl.O.P.No.25977 of 2010

CA (CO)

rrs 02/11/2018

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