IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2018

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.10306 of 2018
and
Crl.M.P.Nos.5265 & 5266 of 2018

Palanisamy ..Petitioner/Accused-2

Vs

1. State rep by
   Inspector of Police,
   City Crime Branch,
   Tiruppur City,
   Tiruppur. ..1st Respondent/Complainant

2. A.Neelakanthan ..2nd Respondents/Defacto Complainant

Prayer:- Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in C.C.No.703 of 2014 on the file of the Judicial Magistrate Court No.1, Tiruppur and quash the same.

For Petitioner :Mr.N.Ponraj

For Respondents :Ms.P.Kritika Kamal, Government Advocate (Crl.Side) for R1

:No Appearance for R2

ORDER

This petition has been filed to call for the records in C.C.No.703 of 2014 on the file of the Judicial Magistrate Court No.1, Tiruppur and quash the same.

2.On the complaint lodged by the Branch Manager, State Bank of India, the respondent police registered a case in Cr.No.35 of 2011 on 05.11.2011. After completing the investigation, charge sheet has been filed in C.C.No.703 of 2014 before the learned Judicial Magistrate No.1, Tiruppur for the offences under Sections 120 (b), 406 and 420 IPC against the petitioner herein (A2), challenging which, A2 is before this Court.

3.Heard, Mr.N.Ponraj, learned counsel for the petitioner and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) for the first respondent.

4.It is the case of the de facto complainant that A1, A2 and A3 were partners in Adith Knitting Mills and they had applied for loan for purchasing machinery and term loan for promotion of the business from the bank by agreeing to hypothecate the machinery so purchased, in favour of the bank.

5.Accordingly, the bank had sanctioned a sum of Rs.One Crore towards cash credit and Rs.1,13,00,000/- as term loan to the Firm of the accused. As the accused failed to repay the loan amount, when the bank took steps to seize the hypothecated machinery and goods, it was found that the accused removed the machinery from the factory premises and disposed them without the knowledge of the bank. It is further alleged that the accused has given a stock statement as on 31.08.2011, which was found to be false. In this regard, the police have examined 11 witnesses and filed a charge sheet.

6.In support of his submission, the learned counsel for the petitioner relied on the decision of the Supreme Court in Indian Oil Corporation vs. NEPC India Ltd. and Others (2006 [6] SCC 736). The learned counsel further submitted that considering the said decision of the Supreme Court and the facts and circumstances of the case, the complaint relates to contractual disputes of a civil nature and hence, the complaint has to be quashed.

7.Per contra, the learned Government Advocate (Crl. Side) refuted the contentions put forth by the learned counsel for the petitioner.

8.In Indian Oil Corporation Ltd., (supra), Indian Oil Corporation Ltd., supplied fuel to NEPC and for the payment of dues, NEPC hypothecated two aircrafts. In those facts, the Supreme Court has held that an offence under Sections 405 and 415 of IPC will not attract. In this case, the bank has given loan for purchase of machinery and until the loan is discharged by the accused, the accused has no right to dispose the machinery as it legally belongs to the bank. That apart, it is the specific allegation of the de facto complainant that the accused has given the statement of stock on 31.08.2011, which was found to be false, because, as on the said date, there was no stock available in the plant of the accused.

9.In the light of the said serious allegations against the accused, this is not a fit case to quash the proceedings. In this case, the accused had been charged under Sections 120-B, 406 and 420 IPC for conspiring to cheat the bank by applying for the loan by committing fraud.

10.In view of the above, this Criminal Original Petition is liable to be dismissed being devoid of merits.

11.At this juncture, learned counsel for the petitioner submitted that the presence of the petitioner before the trial Court may be dispensed with.

12. Accepting the said submission, the petitioner is directed to surrender before the trial Court within a period of two weeks from the date of receipt of a copy of this order and execute a bond u/s 88 Cr.P.C for Rs.10,000/- [Rupees ten thousand only] without sureties and thereafter, his presence before the trial Court shall be dispensed with on condition that he shall be present for receiving the charge sheet, for answering the charge, at the time of questioning under Section 313, Cr.P.C. and at the time of passing judgment. He shall file an affidavit of undertaking before the Trial Court that he will not dispute his identity and that the counsel named by him in the affidavit will cross-examine the prosecution witnesses on the day they are examined-in-chief, as held by the Supreme Court in Vinod Kumar vs. State of Punjab, [2015 (1) MLJ (Crl.) 288]. If the petitioner adopts any dilatory tactics, it is open to the Trial Court to insist upon his presence and remand him to custody as laid down by the Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]. If thereafter the petitioner absconds, the trial Court shall direct registration of an FIR against him u/s 229-A IPC.

The Criminal Original Petition stands dismissed with the above said directions. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

cla
To
1. The Judicial Magistrate Court No.1, Tiruppur.
2. -do- Through The Chief Judicial Magistrate, Tiruppur.
3. The Inspector of Police,
City Crime Branch, Tiruppur City, Tiruppur.
4. The Public Prosecutor,
Madras High Court, Chennai.

Crl.O.P.No.10306 of 2018
and
Crl.M.P.Nos.5265 & 5266 of 2018

RV(CO)
EU(25/04/2018)