IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on :20.04.2018
Orders Pronounced on:24.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.717 of 2017
and
Crl.M.P.No.6754 of 2017

1.R.Suresh Kennedy
2.D.S.Mani ...Petitioners

Vs.

State rep.by
The Inspector of Police,
Vaniambadi Town Police Station,
Vellore District.

2. Sivasakthivel ...Respondents

PRAYER: Petition filed under Section 397 read with 401 of the Criminal Procedure Code, to set aside the order in Crl.M.P.No.4220 of 2015 in C.C.No.15 of 2015, dated 20.04.2017 on the file of Principal District Munsif cum Judicial Magistrate Court, Vaniambadi, Vellore District.

For Petitioner : Mr.K.Mohanamurali
For R1 : Mr.R.Surya Prakash
For R2 : Mr.A.Baskaran

O R D E R

The petitioners herein are the accused/A4&A5.

2. The present criminal revision is filed to set aside the order in Crl.M.P.No.4220 of 2015 in C.C.No.15 of 2015 dated 20.04.2017 on the file of the District Munsif cum Judicial Magistrate Court, Vaniambadi, Vellore District.

3. The case of the prosecution is that a complaint dated 22.03.2012 was lodged by one Siva Sakthivel against Sivakumar and his Driver Vijay.

i) The sum and substance of the complaint is that the defacto complainant entered into a written agreement with Sivakumar. Accordingly, Rs.5,00,000/- was transferred from

Indian Bank, Vaniambadi to IOB, Karur through RTGS and Rs.22,25,600/- transferred through RTGS on 30.03.2011 and he claims in active connivance with the Bank Officials money was mis-appropriated from his account.

4. The learned counsel for the petitioner would submit that all the petitioners are employees in the Bank and no prima facie case has made against them for the alleged offence and since they are bank employee hence, they have falsely implicated in this case.

5. Heard both sides and perused the records.

6. The petitioners who are A4 and A5 herein it is alleged that they have employees of Karur Vysya Bank and they wrongly implicated in this case and ropped in this case merely because they are part of the transaction in clearing the cheque mentioned by the A1.

7. Heard and perused the records.

8. After investigation, final report submitted under Section 409, 419, 420 and 506(2) r/w 34 IPC and 420, 465, 468, 471, 120(b) r/w 109 IPC and taken on file as C.C.No.15 of 2015.

9. In the discharge petition it was pleaded that, the complaint by the defacto complainant against a 3rd party account holder not maintainable and further contended that

i) The respondent-petitioner failed to conduct proper enquiry or investigation and conducted the same in an improper manner, falsely implicated these petitioners A4 and A5.

ii) The complaint lodged by the defacto complainant there is no specific allegation against these petitioners and no prima facie case was made in the complaint made against these petitioners.

iii) The petitioner who are Bank employees and no role to play with the accused 1 and 2 against whom the defacto complainant registered his complaint.

iv) There cannot be any criminal conspiracy under Section 120(B) IPC among 3 to 8 accused especially when each one of them worked in their individual capacity in discharge of their official duty.

v) The 1st petitioner and the 2nd petitioner in the course of official duty honoured the payment of Rs.2,35,000/- and Rs.2,65,000/-through cheques issued by Sharp Machineries A/c. No.2444 respectively.

vi) The respondent failed and neglected to note that the defacto complainant does not have locus standi to merit a complaint for a 3rd party's account. The same was also observed in the orders passed by this Hon'ble Court in Crl.O.P.No.32359 of 2013 Crl.O.P.No.32814 of 2013 dated 07.01.2014 and this Hon'ble Court categorically observed as follows:

> "7. Even according to the allocations, the defacto complainant had credited the money in the account of second accused. But the second accused has not made any complaint against first accused. If it is true that his signature had been forged, it is not known, as to how second accused has been arrayed as an accused in this case. So far as the petitioners are concerned, they are only bank officials, against whom, there are no substantial allegations.
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> 8. In my considered opinion the registration of the present case itself appears to be clear abuse of process of Court. When the allegation is that the signature of second accused has been forged, I do not understand, as to how second accused has not made any complaint against first accused, how a case can be registered against the petitioners, that is the reason why I have to express my prima facie view that it is a clear abuse or process of Court."

Inspite of the same the respondent proceed to file the final report charging the petitioners for an alleged offence 3 to 8 accused were charged with 465, 468, 471, r/w 109 of I.P.C if 109 of I.P.C and 120 B of I.P.C

vii) None of the witnesses spoke about the petitioner accused 4 and 5 in their statement recorded under Section 161 Cr.P.C alleges any offence against these petitioners.

10. Heard the learned Government Advocate (Crl.side) and learned counsel for the second respondent.

11. The learned counsel for the second respondent would submit that a criminal conspiracy between the accused and the defacto-complainant and as a consequence of the same, they are not upholded the specimen signature of the defacto-complainant and thereby, allowed the A1 to withdraw the amount. After obtaining the forged signature, in view of the deliberate action of not upholding the specimen signature of the account holder, the entire transaction has taken place and amount has been withdrawn for the account of defacto-complainant.

12. On perusal of the documents filed along with Final Report and statement of witnesses therein, I find that there is a sufficient material to proceed against this petitioner. It is settled law that at the time of framing charges, Court is required to evaluate materials and documents available on record to decide whether facts emerging therefrom taken at their face

value would disclose existence of ingredients constituting the alleged offence. At this stage, the Court cannot go deep into the probative value of the materials on record and the Court also cannot evaluate sufficiency of evidence to convict accused. The Court should consider the materials submitted by the prosecution alone and the accused is not entitled to produce any material at this stage and the Court is also not required to consider any such material.

13. In the instant case, on perusal of the records, there are materials available on record, prima facie to show that all the petitioners herein are involved in the offence and that they have deliberately failed to upload the specimen signature of the account holder Vijay in the computer and permitted the A1 to withdraw the amount from his account and I find no illegality or irregularity in the order passed by the Court below.

14. Accordingly, this Criminal Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

To
1.The Principal District Munsif cum Judicial Magistrate Court, Vaniambadi, Vellore District.

2. The Chief Judicial Magistrate
Vellore.

Copy to
The Section officer
Criminal Section, High Court, Madras 104.

+1 CC to Mr.K. Mohanamurali, Advocate sr 49182.
+1 CC to Mr.N. Baskaran, Advocate sr 49308.

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SP(09/08/2018)