

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.06.2018

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THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.7512 of 2018

and CRL.M.P.Nos.3885 & 3886 of 2018

Ilayaraja @ Raja ... Petitioner

Vs

1.State rep. by
The Inspector of Police,
N-1 Royapuram Police Station,
Chennai-13.

2.Ganesh Krishnakumar ... Respondents

Criminal Original Petition filed under Section 482 Cr.P.C.,
praying to call for the entire records relating to C.C.No.1016
of 2017 on the file of the Court of XVI Metropolitan Magistrate,
George Town, Chennai and quash the same.

For Petitioner : Mr.S.Mahesh

For 1st Respondent : Ms.P.Kritika Kamal, GA [Crl.
Side]

For 2nd Respondent : Mr.K.G.Senthil Kumar

सत्यमेव जयते
O R D E R

This petition has been filed to quash the proceedings in
C.C.No.1016 of 2017 on the file of the XVI Metropolitan
Magistrate Court, George Town, Chennai.

2.Heard the learned counsel appearing for the petitioner;
the learned Government Advocate [Crl. Side] appearing for the 1st
respondent and the learned counsel appearing for the 2nd
respondent.

3.On the complaint lodged by the 2nd respondent, the
1st respondent conducted a petition enquiry in 916/2014/NIX/CSR
dated 07.11.2014 and thereafter, registered a regular case in

Crime No.1433 of 2014 on 14.11.2014 under Sections 406, 420 and 506[ii] IPC against the petitioner. After completing the investigation, the 1st respondent filed a final report in C.C.No.1016 of 2017 before the XVI Metropolitan Magistrate, George Town, Chennai against the petitioner. For quashing which, this quash petition has been filed.

4.Heard Mr.Ramkumar, learned counsel for the accused; learned Government Advocate [Crl. Side] appearing for the 1st respondent and Mr.Senthil Kumar, learned counsel for the de facto complainant.

5.When the matter was taken up for hearing, learned Government Advocate [Crl. Side] submitted that trial has begun and two witnesses has been examined and that non bailable warrant is pending against the accused from 07.04.2018. On this short ground alone, this quash application is liable to be dismissed.

6.However, Mr.Ramkumar, learned counsel submitted that even if trial had begun, the power of this Court to quash the prosecution under Section 482 of Cr.P.C. is always available, if it is shown that the entire prosecution is an abuse of process of law. He places strong reliance on the following judgments of the Supreme Court :

- i. Anil Mahajan Vs Bhore Industries and Another reported in [2005] 10 SCC 228.
- ii. Anil Ritolia @ A.K.Ritolia Vs State of Bihar and Another reported in 2008 CRI.L.J.353.
- iii. Sobhit Gupta and etc. Vs State of U.P. and Another reported in 2008 CRI.L.J.478.
- iv. P.K.Balachandran Vs State reported in 2015[1] MLJ [Crl]144.

He submitted that the accused has executed a promissory note on 14.11.2014 and therefore, the remedy that is available to the de facto complainant is to file a civil suit.

7.Mr.Senthilkumar, learned counsel for the de facto complainant refuted the contentions.

8.On a perusal of the charge sheet, it is specifically alleged that the accused received Rs.24,50,000/- from the complainant for supplying dresses for sale during Deepavali season. After having received the money, the accused neither supplied the goods nor returned the money. It is true that for

fastening criminal liability under Section 420 IPC, there should be deception at inception. In the cases relied upon by Mr.Ramkumar, materials were produced to show that the accused therein and the complainant were having continuous transaction. However, in this case, it is the specific case of the prosecution that five months prior to the transaction, the de facto complainant came to know about the accused and handed over Rs.24,50,000/-. Admittedly, the accused did not supply the goods at all.

9.Mr.Ramkumar submitted that the accused was forced to execute a promissory note in favour of the complainant on 14.11.2014 by the police.

10.In support of this contention, he pointed out to this Court that FIR in this case was registered on 14.11.2014 and the promissory note is also dated 14.11.2014. On a scrutiny of the records, it is seen that the de facto complainant had given the complaint on 07.11.2014 and only thereafter, on 14.11.2014, the FIR was registered. Therefore, if Mr.Ramkumar's contention is accepted that the promissory note was forcibly obtained on 14.11.2014 by the Police, the de facto complainant cannot maintain a suit on such a promissory note. That is why, the de facto complainant is saying from the beginning that the accused had collected the money and had ran away without even supplying the materials.

11.Mr.Ramkumar placed reliance upon an Advocate notice dated 27.12.2014 addressed to the de facto complainant alleging that the promissory note and cheques were obtained under coercion by the Police on 14.11.2014. All this may show that the said documents were obtained under duress, subsequent to the transaction. Admittedly, till date, the accused had not supplied the goods nor returned the money.

12.Under such circumstances, there are prima facie materials for the trial to proceed and the same cannot be quashed at the threshold, especially, when two witnesses had been examined and a non bailable warrant against the accused is pending. The Supreme Court has held in the case of NIRANJAN SINGH AND ANOTHER Vs PRABHAKAR RAJARAM KHAROTE AND OTHERS reported in AIR 1980 SC 785, that an outlaw cannot claim for the benefit of law. Hence, this petition is dismissed with liberty to the accused to raise all the points before the trial Court, after the charges are framed. Whatever stated herein is of limited purpose only for deciding this quash petition and the trial Court shall proceed

with the trial, without in any manner being influenced by what is stated above. Liberty is given to the accused to surrender before the trial Court within two weeks from the date of receipt of a copy of this order. If the accused absconds, a fresh FIR can be registered against him under Section 229-A IPC. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gya

To

1.XVI Metropolitan Magistrate Court,
George Town, Chennai

2.The Inspector of Police,
N-1 Royapuram Police Station,
Chennai-13.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.J.Ramkumar, Advocate Sr.38191
+1cc to Mr.G.K.Senthilkumar, Advocate Sr.38107

CRL.OP.No.7512 of 2018

gp[co]
srg 05/07/2018

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