IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 13.08.2018

PRONOUNCED ON: 21.08.2018

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. No.7980 of 2017 & Crl.M.P. No.5748 of 2017

A. Kalaiselvan ... Petitioner

vs.

1 State represented by
the Inspector of Police
CCB-II Police Station
Commissioner of Police Office
Vepery, Chennai 600 007

2 Mr. Aldrin
Inspector of Police
CCB-II Police Station
Commissioner of Police Office
Vepery, Chennai 600 007

3 Beulah Ramani Geetha

... Respondents

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for the records pertaining to the FIR in Cr. No.17 of 2017 on the file of the Inspector of Police, CCB – II Police Station, Commissioner of Police Office, Vepery, Chennai 600 007 and quash the same insofar as the petitioner.

For petitioner :Mr. N.R. Elango, Sr. Counsel
for Mr. K. Mageshwaran

For R1 :Ms. M. Prabhavathi
Additional Public Prosecutor

For R2 :No appearance

For R3 :Mr. T. Rajarathinam
for Ms. V. Anusha

ORDER

This Criminal Original Petition has been filed seeking to call for the records pertaining to the FIR in Cr. No.17 of 2017 on the file of the Inspector of Police, CCB - II Police Station, Commissioner of Police Office, Vepery, Chennai 600 007 and quash the same insofar as the petitioner.

2 On the complaint lodged by the third respondent, the first respondent police has registered a case in Cr. No.17 of 2017 on 31.03.2017 under Sections 419, 465, 467, 468, 471 read with 120-B IPC against 10 persons, for quashing which A.1 is before this Court.

3 Heard Mr. N.R. Elango, learned Senior Counsel appearing for Mr. K. Mageshwaran, learned counsel on record for the petitioner, Mrs.M.Prabhavathi, learned Additional Public Prosecutor appearing for the first respondent State and Mr. T. Rajarathinam, learned counsel representing Ms. V. Anusha, learned counsel on record for the de facto complainant (third respondent).

4 It is the case of Beulah Ramani Geetha (de facto complainant) (for short "Beulah") that she had purchased 21 cents of land in Survey No.106/5 in Perambakkam Village in Sholinganallur, Kanchipuram District on 03.02.1997, registered as document no.2944 of 1997; she was working in the Middle East and she purchased the said land when she came to India during her annual holidays; she had handed over the original title deeds to her sister Amala George; on 25.08.1998, Amala George borrowed a sum of Rs.1 lakh from the petitioner (A1) with her (Beulah's) knowledge and handed over the original documents to him; A1 was an advocate and also was into finance business; A1 gave a receipt dated 25.08.1998 in his letter pad acknowledging receipt of the original documents; the borrowed amount was returned to A1 by Amala George; however, A1 did not return the documents and represented that he had lost the documents; Beulah applied for encumbrance certificate from 01.01.1987 to 20.01.2011 and was shocked to learn that 7 sale deeds have been executed in her name by setting up an imposter; hence, the FIR.

5 Mr. N.R. Elango, learned Senior Counsel appearing for A1 submitted that the A1 was not a financier and that he is an advocate by profession; he had appeared for one C. Venkatesan (who is A2 in this case) in Crl.O.P. No.31942 of 2013.

6 The question is what is the relief that was sought in Crl.O.P. No.31942 of 2013 filed by Venkatesan (A2). Venkatesan (A2) gave a complaint dated 03.12.2013 to the Inspector of

Police, B-1, North Beach Police Station against Beulah alleging that her sister Amala George represented that she has 21 cents of vacant land in Perambakkam Village and requested Venkatesan to sell the land; he purchased 1,600 sq. ft. of land on 17.02.2011 vide document no.1089 of 2011; he obtained Power of Attorney dated 03.03.2011 from Beulah for selling the balance land after giving Rs.10 lakhs to Amala George and the sisters had cheated him.

7 After giving such a complaint, when no FIR was registered, Venkatesan filed Crl.O.P. No.31942 of 2013 under Section 482 Cr.P.C. before this Court for a direction to the police to register an FIR. In that petition, A1 represented Venkatesan. This Court, by order dated 12.12.2013 in Crl.O.P. No.31942 of 2013, directed the police to follow the law laid down in Lalita Kumari vs. State of Uttar Pradesh [(2013) 4 Cr. 243 (SC)] and register an FIR if the complaint discloses commission of a cognizable offence. Pursuant to the order passed by this Court, it appears that an FIR in Cr. No.318 of 2013 has been registered by B-1, North Beach Police Station against Beulah and her sister Amala George and investigation is pending. Hence, the learned Senior Counsel appearing for A1 submitted that the present FIR in Cr. No.17 of 2017 registered on the basis of the complaint given by Buela, is an abuse of process of law.

8 Per contra, the learned counsel for Beulah (de facto complainant) produced copies of five fake documents including the documents relating to Venkatesan (A2) and submitted that the photographs found in those documents are not those of Buelah but those of an imposter; he submitted that A1 had given a loan of Rs.1 lakh to Amala George and had collected the parent documents from her as security when Beulah was in the Middle East; after Amala George returned the money, A1 pretended as if he had misplaced the parent documents and was gaining time in the pretext of searching for the documents; as time passed, when A1 was not returning the parent documents, Beulah and Amala George smelt a rat and applied for encumbrance certificate; on seeing the encumbrance certificate, they were shocked to find that their properties have been dealt with by Venkatesan and the other accused named in the FIR; this would not have happened without the connivance of A1 inasmuch as it was A1 who was in possession of the parent documents of the property. This Court perused the receipt dated 25.08.1998 and found that it has been issued in the letter head bearing the name of A1 with a signature therein. Thus, there appears to be sufficient force in the submission of the learned counsel for Beulah.

9 The learned Senior Counsel appearing for A1 disputed the signature in the said receipt and contended that A1 was not involved in the offence.

10 At this juncture, this Court has no reason to disbelieve the receipt dated 25.08.1998 and the contention of the petitioner that the signature therein is not that of A1 cannot be decided in a quash petition under Section 482 Cr.P.C.

11 The learned Senior Counsel brought to the notice of this Court that Beulah has filed a suit in O.S. No.684 of 2013 against the District Munsif Court, Alandur, for a bare injunction against Venkatesan (A2) and in paragraph no.4 of the plaint, she has merely averred that her sister Amala George had borrowed a sum of Rs.1 lakh from one financier and that she has not specifically given the name of A1.

12 It is true that Beulah has not stated in the plaint in O.S. No.684 of 2013 that her sister Amala George had borrowed a sum of Rs.1 lakh from A1 and had handed over the parent documents to him. However, it is Beulah's contention that A1 is a financier-cum-advocate. Had Beulah named the financier in the plaint and if that name is different from the name of A1, then, the contention of the learned Senior Counsel can be accepted. Therefore, the plaint averments in O.S. No.684 of 2013 do not contradict the FIR averments.

13 Be that as it may, Beulah is in possession of a receipt dated 25.08.1998 given in the letter head which bears the name of A1 and there is also a signature therein, evidencing receipt of the parent documents of the property. This shows that there was some connection between A1 on the one hand and Beulah and Amala George, on the other.

14 Bearing this in mind, if the conduct of A1 appearing for Venkatesan (A2) in Crl.O.P. No.31942 of 2013 is seen, it does give room to a strong suspicion that A1 and Venkatesan (A2) were in league. Further, 5 fake documents produced by the learned counsel for Beulah do not contain the photographs of Beulah, but, those of an imposter from whom Venkatesan (A2) has purchased the property. Without the parent documents, Venkatesan (A2) is not a simpleton to purchase the property. When there are materials to show that the parent documents were entrusted to A1 in trust and A1 had appeared for Venkatesan (A2) in Crl.O.P. No.31942 of 2013, it cannot be said that there relationship was purely professional.While that being so, the allegation of Venkatesan in his complaint dated 03.12.2013 in B-1, North Beach P.S. Cr. No.318 of 2013 is suspect.

15 Thus, when there are prima facie materials for the investigation to proceed further, the same cannot be stifled at the threshold in the light of the law laid down in State of Haryana v. Bhajan Lal & Others [AIR 1992 SC 604].

In the result, this Criminal Original Petition is dismissed as being devoid of merits. Connected Crl.M.P. is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

cad

To

1 The Inspector of Police,
CCB-II Police Station,
Commissioner of Police Office,
Vepery,
Chennai 600 007.

2 The Inspector of Police,
B-1, North Beach Police Station,
Chennai.

3 The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

+1cc to Mr.K.Mageshwaran, Advocate Sr.56958
+1cc to Mr.T.Rajarathinam, Advocate Sr.57396

Crl.O.P. No.7980 of 2017

srg 31/08/2018