

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2018

CORAM

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

CrI.O.P. No.8783 of 2018
and CrI.M.P.Nos.4526 and 4527 of 2018

George Dass Moolayil

... Petitioner

vs.

1. State by
Inspector of Police
Crime, V-5, Thirumangalam Police Station
Chennai 101.

2. David

... Respondents

PRAYER :

Criminal Original Petition filed under Section 482 Cr.P.C. to call for records and quash the charge sheet pending trial in C.C.No.4491 of 2013 on the file of X Metropolitan Magistrate, Allikulam, Chennai as an abuse of process of law.

For petitioner : Mr.Mohan
for Mr.C.V.Kumar

For R1 : Mrs.Kritika Kamal,P.
Government Advocate [CrI.Side]

For R2 : Ms.Sumithra Chakkaravarthy

सत्यमेव जयते
O R D E R

This petition has been filed to call for records and quash the charge sheet pending trial in C.C.No.4491 of 2013 on the file of X Metropolitan Magistrate Court, Allikulam, Chennai as an abuse of process of law.

2. On the complaint lodged by the second respondent, the first respondent police have registered a case in Cr.No.1951 of 2011 and after completing the investigation, have filed a charge sheet in C.C.No.4491 of 2013 and the same is pending on the file of the X Metropolitan Magistrate Court, Allikulam, Chennai for the offences under Sections 420 and 406 IPC against Ousef Freddy

[A1] and George Dass Moolayil [A2] for quashing which, George Dass Moolayil [A2] is before this Court.

3. Heard Mr.Mohan, learned counsel representing Mr.C.V.Kumar, learned counsel on record for the petitioner/accused, Mrs.Kritika Kamal, learned Government Advocate [Crl.Side] and Ms.Sumithra Chakkaravarthy, learned counsel for the de facto complainant.

4. The allegation against the accused is that they had collected Rs.50 lakhs from the de facto complainant on the promise that they would arrange USD 30 million from International Finance Institution, but, after collecting Rs.50 lakhs, the accused had not arranged for the said loan amount and thereby, cheated the de facto complainant.

5. On a reading of the final report and the accompanying Section 161(3) Cr.P.C. statement, it is seen that there are sufficient materials against the accused for the prosecution to proceed and therefore, this is not a fit case to quash the prosecution. That apart, Ousef Freddy [A1] filed a quash application in Crl.O.P.No.7396 of 2015, which has been dismissed by this Court on 25.11.2015.

6. Learned Government Advocate [Crl.Side] submitted that Ousef Freddy [A1] has absconded and NBW is pending against him.

7. Learned counsel for George Dass Moolayil [A2] submitted that the presence of George Dass Moolayil [A2] before the trial Court may be dispensed with.

8. Accepting his submission, this Court directs George Dass Moolayil [A2] to appear before the trial Court and execute a bond for Rs.10,000/- under Section 88 Cr.P.C. without sureties. Thereafter, he shall appear for framing charge, questioning under Section 313 Cr.P.C. and the date of judgment. The accused shall engage an Advocate and give an undertaking that his advocate will cross-examine the witnesses on the day they are examined-in-chief as held by the Supreme Court in Vinoth Kumar vs. State of Punjab [2015(1) MLJ (crl) 288]. The accused shall give a further undertaking that he will not dispute his identity. As and when the presence of the accused is required, it would suffice if the Court informs the counsel appointed by the accused on special vakalat. If the petitioner adopts any dilatory tactics, he should be remanded to custody in the light of the judgment of the Supreme Court in State of Uttar Pradesh v. Shambunath Singh [JT 2001 (4) SC 319]. If the accused absconds, a fresh FIR can be registered against him under Section 229-A IPC. It is for the trial Court to decide to split the case as against George Dass Moolayil [A2] after obtaining

the necessary report of abscondence from the police.

In fine, this petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gms

To

1. The Inspector of Police
Crime, V-5, Thirumangalam Police Station
Chennai 101.
2. X Metropolitan Magistrate,
Allikulam, Chennai.
3. The Public Prosecutor
High Court, Madras.

+1cc to Mr.S.Chakkaravarthy, Advocate, S.R.No.38489

+1cc to Mr.C.V.Kumar, Advocate, S.R.No.38872

Crl.O.P. No.8783 of 2018

CS/03/07/18

सत्यमेव जयते

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