IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.07.2018

Pronounced on : 06.09.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.30035 of 2011
and
M.P.Nos.1 & 2 of 2011

Mr.Krishnaswamy
S/o.Late V.Venkatachari ... Petitioner/Accused-4.

Vs.

1.The Sub Inspector of Police,
Central Crime Branch
Team-II,
Egmore, Chennai-8.

2.Hameed Syed Rafeeq.
S/o.Syed Hameed. ... Respondents/Complainant.

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the proceedings in C.C.No.5202 of 2007 on the file of the XI Metropolitan Magistrate Court, Saidapet, Chennai.

For Petitioner : Mr.K.P.Chandrasekaran.

For 1st Respondent : Ms.V.Saratha Devi, Government Advocate (Crl. Side).

For 2nd Respondent : Not ready in Notice.

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O R D E R

This Criminal Original Petition is filed, to call for the records pertaining to the proceedings in C.C.No.5202 of 2007 on the file of the XI Metropolitan Magistrate Court, Saidapet, Chennai.

2. The above Criminal Original Petition has been filed by the petitioner who is an accused No.4 in C.C.No.5202 of 2007 on the file of the XI Metropolitan Magistrate Court, Saidapet, Chennai - 600 015. The above said case has been registered by

the first respondent on the complaint given by the second respondent. On completion of the investigation, the 1st respondent has filed a final report in C.C.No.5202 of 2007 on the file of the XI Metropolitan Magistrate Court, Saidapet, Chennai against the petitioner and three others for the offences under Sections 420 r/w 34 of the Indian Penal Code.

3.The 2nd respondent is the defacto-complainant, who has been impleaded as respondent No.2 by order of this court dated 29.08.2017.

4.The learned counsel for the petitioner though initially had appeared in this case and there was no representation for the petitioner on 03.07.2018 and the case was posted "for orders" on 06.07.2018. On 06.07.2018, there was no representation for the 2nd respondent. The 1st respondent stated that she had filed her counter and also advanced her arguments based on the available records. On the submissions of the 1st respondent this court proceeds to take up this quash petition on merits. Since adjourning the above case without any progress would further delay the proceedings of the lower Court, which is pending trial from the year 2007 onwards.

5.The contention of the petitioner is that the First Information Report (F.I.R) in the above case was registered on 05.03.2005 and after 2 years the charge sheet was filed on 25.04.2007 and copies of the case papers were furnished to the petitioner only during July 2011, after a lapse of five years.

6.Further contention of the petitioner is that one M.Sivasubramaniyan, who is arrayed as A3 were inducted as Partners to the first accused by S.R.S.T. Mani by way of a registered Partnership Deed, wherein the petitioner and the A3 were sleeping partners and on the request of the A2 namely S.R.S.T.Mani, the petitioner had prepared a project report for the second respondent the agreement had been entered between the second respondent and A2. The petitioner submits that more than 40 years, he was working in Chennai in the capacity as Executive Secretary, assisting number of reputed Top Management Teams. During his long tenure of service, he had prepared several brief project reports and projected financial statements. The breach of contract would not be a reason for filing a criminal case. If the defacto-complainant have any issues, he has to approach the Civil Court and thereby, a Civil case had been given a Criminal colour, hence the case is to be quashed.

7.The learned Government Advocate appearing on behalf of the Central Crime Branch i.e. the 1st respondent had filed the counter and submitted that the 2nd respondent is doing business at Qubla, Kuwait under the name of Limra General Trading and Contracting Company and he has NRI Account and NRO Account with the bankers M/s.State Bank of India at Chennai. The 2nd respondent's brother Mohamed Ali, who is aware of the transactions and started his business with an investment of Rs.2.5 lakhs US Dollars. During the later half of 2003, the 2nd respondent had secured an order from USA based company for supply of frozen and canned foods for the use of army station at Kuwait. Since the 2nd respondent was short of funds for his business, he was looking for finance, at which point of time the accused reported to undertake that they would arrange investors from abroad and had also exchanged several E-mails and Memorandum of understanding was also entered between them. The payments were also made through the bank, though the accused promised to arrange the loan within a period of two months, despite receipt of Rs.10 lakhs which was made through the bankers to the accused by the 2nd respondent. After receipt of the money, the accused eloped and were unable to be contacted. The accused closed their premises and they have vanished. Thereafter on receipt of the complaint from the 2nd respondent, a case was registered in Crime No.148 of 2005 under Section 420 r/w 34 of the Indian Penal Code. The petitioner in this case was arrested on 09.07.2005 and the petitioner had given a confession statement admitting his guilt in the presence of the independent witnesses.

8.The learned Government Advocate appearing for the 1st respondent further submitted that during investigation, it is revealed that the accused were running the company in the name of M/s.ND KAADA INC. @ Navadurga Foundation and the petitioner is one of the Director of the said company. From the records, it could be seen that on 14.11.2003, the accused have received the amount of Rs.10,00,105/- from Kuwait through UTI bank bearing A/c.No.016010200007160. On 19.11.2003, the petitioner/A4 has usurped a sum of Rs.3.5 lakhs. To substantiate the same seven witnesses have been examined, who include the Registrar of Firms, Branch Manager of the bank, brother of the complainant, Auditors and others.

9.The 1st respondent police had conducted a free, fair and impartial investigation in accordance with law and therefore, in compliance of mandatory provisions had filed a final report before the concerned Court. Thereafter, the accused appeared and copies served and charges framed. In this case PW 1 was already examined and at that stage the petitioner had filed the above quash petition and successfully stalled further proceedings of the case. In view of the above, the respondents submits that the quash petition is to be dismissed. It is further submitted that the case has been subsequently transferred to the Special Court for the cases of Central Crime Branch and CBCID, Allikulam, Chennai.

10.Considering the submissions of the 1st respondent and filing of the charge sheet against the accused/petitioner being A4 and already PW.1 has been examined and on perusal of the materials, bank account and the Statement of Accounts, it is apparent that the petitioner had received a sum of Rs.10,00,105/- from the 2nd respondent, from which, on 19.11.2003 an amount of Rs.3.5 lakhs has been taken away by the petitioner which would suffice and on the materials available on record to proceed against the petitioner.

11.In view of the above the quash petition is dismissed. Consequently, the connected Miscellaneous Petitions are closed. Since the case is of the year 2007 and the case is pending trial for more than 11 years without any progress. The Trial Court is directed to complete the trial, within a period of six months from the date of receipt of the copy of this order and report compliance.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vv2

To

1.The XI Metropolitan Magistrate,
Saidapet, Chennai.

2.The Public Prosecutor,
High Court, Madras.

Crl.O.P.No.30035 of 2011

NMI(CO)
NR 10/10/2018