

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2018

CORAM

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

Crl.O.P. No.16972 of 2018
and
Crl.MP.Nos.8770 & 8771 of 2018

C.Soman

...Petitioner

vs.

1.The State

Rep. by its Inspector of Police
S-11, Tambaram Police Station
Chennai-15.

2.N.Inderchand

...Respondents

Criminal Original Petition filed under Section 482, Cr.P.C.
to call for the records and quash the charge sheet in
C.C.No.743/2010 on the file of the Judicial Magistrate, Tambaram.

For petitioner :Mr.V.Karthikeyan

For Respondents :Mrs.Kritika Kamal.P.
Government Advocate (Crl. Side) for R1

O R D E R

This Criminal Original Petition has been filed to call for
the records and quash the charge sheet in C.C.No.743/2010 on the
file of the Judicial Magistrate Court, Tambaram.

2. Today, Mr.Sukumar, SI, S11, Tambaram Police Station,
Chennai, is present before this Court.

3. On the complaint lodged by the second respondent, the
first respondent police registered a case in Crime No.731 of
2009 and after completing the investigation, have filed a charge
sheet, in C.C.No.743 of 2010 before the Judicial Magistrate,
Tambaram, for the offences under Sections 420 and 506(i) IPC
against Raji (A1) and Soman (A2), for quashing which, Soman (A2)
is before this Court.

4. Heard Mr.V.Karthikeyan, learned counsel for the petitioner, who submitted that there is absolutely no prima facie case as against Soman (A2) inasmuch as a purely a civil transaction has been given criminal colour.

5. On instructions, the learned Government Advocate (Crl. Side) submitted that LW1 appeared before the trial Court on 02.07.2018, but, on account of the representation made by Soman (A2) that the quash petition is pending, the trial court adjourned the case.

6. In the opinion of this Court, mere pendency of the quash petition cannot be a reason for sending away the witness, who comes to give evidence in a criminal case. On a perusal of the complaint that forms basis for registration of the FIR, it is seen that the de facto complainant is doing jewelery and finance business; that he knew Soman (A2) for a long time, since Soman (A2) was his customer; that Soman (A2) introduced one Raji (A1) who promised to give 2 kgs of gold, towards which, the de facto complainant gave a sum of Rs.5 lakhs on 08.11.2018; that both Raji (A1) and Soman (A2) had executed a loan agreement as if they had borrowed loan and they had also given the Registration Certificate Book and Insurance Certificate of 2 lorries, belonging to Raji (A1); that they neither returned the money nor gave the promised 2 kgs of gold. Hence, the FIR and consequent charge sheet.

7. As rightly contended by Mr.V.Karthikeyan, learned counsel for the petitioner/accused No.2, the transaction prima facie appears to be civil in nature inasmuch as the loan agreement has been executed and the Registration Certificate Book and Insurance Certificate of 2 lorries have been given to the de facto complainant as security. However, the allegation of the de facto complainant is that the money was taken only for the purpose of giving 2 kgs of gold and that Raji (A1) did not give gold as promised by him. This Court cannot go into disputed questions of fact in a quash petition. Hence, this petition is closed, with liberty to the petitioner/A2 to raise all the points before the trial Court during trial.

8. The trial Court shall complete the trial within a period of six months from the date of receipt of a copy of this order.

9. The learned counsel for the accused sought permission of this Court to dispense with the personal appearance of the petitioner.

10. Accepting his submission, the petitioner shall appear before the trial Court for receiving the charge sheet, for questioning under Section 240 Cr.PC, at the time of questioning under Section 313 Cr.P.C. and at the time of passing judgment. For the other hearings, the petitioner shall file a petition before the trial Court under Section 317 Cr.PC., giving an undertaking that he will not dispute his identity and that the counsel named by him in the affidavit will cross-examine the prosecution witnesses on the day they are examined-in-chief, as held by the Supreme Court in Vinod Kumar vs. State of Punjab [2015(1) MLJ (Cr1) 288]. On such a petition being filed, the trial Court may liberally consider the same. If the accused adopts any dilatory tactics, it is open to the trial Court to insist upon his presence and remand him to custody as laid down by the Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]. If the accused absconds, the trial Court shall direct registration of an FIR against him under Section 229-A IPC. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

mk

To

- 1.The Judicial Magistrate,
Tambaram.
- 2.The Inspector of Police
S-11,Tambaram Police Station
Chennai-15.
- 3.The Public Prosecutor
High Court, Madras-104.

SPD(CO)
BM 18/07/2018.

Cr1.O.P. No.16972 of 2018