IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.07.2018

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THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.17700 of 2018
and Crl.M.P.Nos.9197 & 9198 of 2018

S.Kaja Mohideen .. Petitioner/A2

Vs

1. The State rep. by
The Inspector of Police,
E4, Thousand Light,P-S
Chennai - 600 006. ..1st Respondent/Complaianant

2. Jayaprakash .. 2nd Respondent/Defacto Complainant

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the proceeding in C.C.No.5482 of 2017 on the file of the XIV Metropolitan Magistrate Court, Egmore at Chennai and quash the same.

For Petitioner : Mr.B.Ravi Raja
For Respondents : Ms.Kritika Kamal (for R1)
Govt. Advocate [Crl. Side]

O R D E R

This petition has been filed to quash the proceedings in C.C.No.5482 of 2017 on the file of the XIV Metropolitan Magistrate Court, Egmore, Chennai.

2.On the complaint lodged by Jayaprakash, the 1st respondent Police registered a case in Crime No.1023 of 2016 on 27.07.2016 and after completing the investigation, have filed a charge sheet in C.C.No.5482 of 2017 before the XIV Metropolitan Magistrate Court, Egmore, Chennai against seven accused. For quashing which, Kaja Mohideen is before this Court.

3.Heard the learned counsel for the petitioner/A2 and the learned Government Advocate [Crl. Side] appearing for the respondents.

4.The case of the prosecution is that the de facto complainant is the Manager of Centrum Direct Limited, which is into foreign exchange business; that A4 to A7 were employees of the company; that A4 to A7 conspired that A1 to A3 to steal foreign currency kept in the company's chest and pursuant to the conspiracy, on 21.07.2016, A4 to A7 had taken Rs.2,60,00,000/- worth of foreign currency and had given it to Kaa Pee Forex run by Mohammed Sherif/A1 and Kaja Mohideen/A2; on coming to know of it, police complaint was lodged, FIR was registered and police swung into action and arrested some of the accused and recovered huge hull of foreign exchange at various places.

5.Learned counsel appearing for A2 submitted that A2 had nothing to do with Kaa Pee Forex and that, it was his son A1 who was managing the affairs. He also submitted that A2 was not part of the conspiracy and A2 had volunatarily surrendered before the Magistrate and handed over huge amounts to the police by selling his jewels and other properties.

6.Per contra, the learned Government Advocate [Crl. Side] took this Court through the 161[3] Cr.P.C statements of various witnesses, especially that of J.Sebastian, who has stated that on 13.08.2016, Kaja Mohideen/A2 was interrogated by the police and pursuant to the disclosure made by him, a sum of Rs.50,00,000/- in foreign currencies [66,000 Euros] was seized from his residence.

7.Learned counsel for the petitioner/A2 submitted that the complainant has not given the denomination of the amounts lost and through the seizure from the residence of A2 cannot be related to the alleged theft in the complainant's office.

8.In the opinion of this Court, this is a disputed question of fact which cannot be gone into in a petition under Section 482 Cr.P.C. There are prima facie materials to show the involvement of this petitioner along with his son in receiving the stolen amount in foreign currencies. The plan of the conspirators was to handover the booty to A1 and A2 and A1 was supposed to carry it abroad, so it will go out of the reach of the local police. The role of the petitioner has been spoken by witnesses Elanchezhiyan/LW13 and Rajesh Kanna/LW14. In such view of the matter, this is not a fit case to quash the prosecution at the threshold. Since there are sufficient materials to frame charges against the petitioner, this petition is dismissed with liberty to the petitioner to raise all the points after the charges are framed. Consequently, connected Miscellaneous Petitions are closed.

9.However, the learned counsel for the petitioner/A2 submitted that the presence of the petitioner before the trial Court may be dispensed with.

10.Accepting the submission, till the charges are framed, the petitioner should regularly appear before the trial Court. After the charges are framed, his presence before the trial Court shall be dispensed with, on condition that he shall file an affidavit before the trial Court that he will not dispute his identity and that, his counsel will cross-examine the witnesses when they examined in-chief, as held by the Supreme Court in Vinodh Kumar Vs State of Punjab reported in 2015[1] MLJ [Crl] 288. The petitioner shall present before the trial Court for receiving copies under Section 207 Cr.P.C., for answering charges, for questioning under Section 313 Cr.P.C. and on the date of judgment. For other hearings, if the petitioner files an application under Section 317 Cr.P.C., the same shall be liberally construed. If the accused adopts any dilatory tactics, the trial Court shall insist upon the presence of the accused. If the accused absconds, a fresh FIR can be registered against him under Section 229-A of IPC.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

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To
1.The XIV Metropolitan Magistrate Court,
Egmore, Chennai.

2. Do Through The Chief Metropolitan Magistrate
Egmore, Chennai 8.

3.The Inspector of Police,
E4, Thousand Light,
Chennai - 600 006.

4.The Public Prosecutor,
High Court, Madras.

+3 CCS to Mr.G. Nandagopal, Advocate sr 45562

CRL.OP.No.17700 of 2018

SP(24/07/2018)