

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2018

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Cr1.O.P.No.23851 of 2018

R.Krishnasamy

... Petitioner

Vs.

1.State rep. By
Inspector of Police,
Central Crime Branch,
EDF-I, Team-II,
Vepery, Chennai-600 007.

2.R.Maniyam

... Respondent

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to call for the case records in C.C.No.1176 of 2015 pending on the file of the Metropolitan Magistrate for CCB & CBCID Cases at Allikulam, Egmore, Chennai-3 and quash the same.

For Petitioner : Mr.M.Anandaraj

For Respondents : Mr.M.Mohamed Riyaz
Additional Public Prosecutor for R1
Mr.S.Santhanam for R2

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.1176 of 2015 pending on the file of the Metropolitan Magistrate for CCB & CBCID Cases at Allikulam, Egmore, Chennai-3.

2.The petitioner before this Court has been added as A6 in the final report. It is the case of the prosecution that the defacto complainant was cheated by the accused persons and a cheque was drawn in his favour. The amount was not repaid in spite of entering into a Memorandum of Understanding. Thereafter, the accused persons have threatened the defacto complainant to return back the cheque. A complaint was given and the respondent Police registered an FIR in Crime No.173 of 2013 for the offences under Sections 406, 420, 120(B) IPC and

506(ii) IPC against 5 accused persons. After the investigation, a final report was filed wherein this petitioner was shown as A6.

3.The learned counsel for the petitioner brought to the notice of this Court the final report filed by the respondent Police. In the final report, it has been stated that this petitioner along with A1 had waylaid the defacto complainant and threatened him and also demanded the defacto complainant to return back the cheque and also the Memorandum of Understanding. On this allegation, the Court below has taken cognizance against this petitioner for the offences under Sections 341 and 506(i) of IPC.

4. A reading of the 161 statement given by the defacto complainant shows that there are absolutely no allegations made against this petitioner. The defacto complainant was also present before this Court today and he has categorically stated that this petitioner had nothing to do with the offence and this petitioner never waylaid the defacto complainant on 10.04.2014, as stated by the prosecution.

5.The learned counsel for the petitioner also brought to the notice of this Court the statement given by LW7 and LW8, who speak about this petitioner. A reading of their statement shows that this petitioner had made a confession before the Police, in the presence of witnesses when he was arrested in this case. This is the only material that is available as against this petitioner.

6.It is therefore clear that the name of this petitioner has been added as an accused only based on the confession made by the petitioner before the respondent Police. The respondent Police in their anxiety to file a final report, have added the name of this petitioner also as an accused and have filed the final report before the Court below. It is unfortunate that even the Court below without knowing the rudimentary principles of the Indian Evidence Act and the scope of Sections 25 and 26 of the Indian Evidence Act, has proceeded further to take cognizance of the offence, insofar as this petitioner is concerned. This petitioner should not have been made as an accused merely based on the confession made by him before the Police, since such confession is totally inadmissible under Section 25 of the Indian Evidence Act. That apart, any statement made by any person to the Police Officer in the course of investigation cannot be used in evidence, in view of the bar contained under Section 162 of Cr.P.C. This basic provisions of law are expected to be known by the Judges belonging to the Subordinate Courts. The Subordinate Judge has mechanically taken cognizance of the final report filed against this petitioner in ignorance of the basic principle of law that has been stated herein above.

7.In view of the above, the final report filed as against this petitioner has to be interfered with by this Court in exercise of its jurisdiction under Section 482 of Cr.P.C. The continuation of the proceedings against this petitioner will amount to abuse of process of Court.

8.In the result, the proceedings in C.C.No.1176 of 2015, on the file of the Metropolitan Magistrate for CCB & CBCID Cases at Allikulam, Egmore, Chennai-3, is hereby quashed, insofar as this petitioner is concerned and accordingly, this Criminal Original Petition is allowed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Inspector of Police,
Central Crime Branch,
EDF-I, Team-II,
Vepery, Chennai-600 007.

2.The Public Prosecutor,
Madras High Court,
Chennai.

+1cc to Mr.M.Anandaraj, Advocate sr.no.81277

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rgn(co)
nr 18/12/2018

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