

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2018

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Cr1.O.P.No.26120 of 2018

Mr.Ian Mellsop

... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by the Inspector of Police,
J-8, Neelankarai Police Station,
Chennai.

2.VGP Marine Kingdom Pvt. Ltd.,
Represented by its Manager Mr.Samuvel
No.6, Dharmaraja Koil Street,
Saidapet,
Chennai-600 015.

... Respondents

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records of the 1st respondent in FIR No.1435 of 2018 dated 18.09.2018 on the file of the 1st respondent Police Station and quash the same.

For Petitioner : Mr.C.Vijay Anand

For Respondents : Mr.M.Mohamed Riyaz

Additional Public Prosecutor for R1

Mr.D.Jayasingh for R2

ORDER

This Criminal Original Petition has been filed seeking to quash the FIR No.1435 of 2018 pending on the file of the first respondent.

2. The second respondent has given a complaint against the petitioner on the ground that they had engaged the service of the petitioner for construction of an aquarium. Thereafter, money was borrowed from the bank and the second respondent paid

a sum of Rs.2.28 million USD. However, no machinery was supplied and therefore, according to the second respondent, the petitioner has cheated the second respondent. That apart, the complaint also states that the accused has stolen certain important documents that were entrusted to him. The list of various documents is also found in the complaint. According to the second respondent, this amounts to breach of trust and theft, since those documents exclusively belonging to the complainant. On these averments, the first respondent Police have registered an FIR for an offence under Sections 307 and 406 of IPC.

3. The learned counsel for the petitioner would submit that the entire complaint is false and the complaint has been given as a counter blast for an earlier complaint given by the petitioner against the second respondent. The learned counsel would further submit that the entire complaint is vague without any particulars and a dispute which is purely civil in nature has been given a criminal colour. The learned counsel for the petitioner would further submit that on 15.09.2018, certain persons engaged by the second respondent had attacked the petitioner and the petitioner was also locked inside the premises and was not allowed to get out from the premises. The petitioner thereafter gave a complaint to the first respondent and the first respondent has registered an FIR in Cr.No.1428 of 2018 for an alleged offence under Sections 452, 342, 294(b), 323 and 506(2) of IPC.

4. The learned counsel for the petitioner would further submit that the petitioner is a citizen of New Zealand and a false complaint given against the petitioner is attended with mala fides. The learned counsel also relied upon various agreements that were entered into between the parties and also impressed upon this Court to take into account the sequence of events and submitted that the entire complaint is an abuse of process of law and the same has to be interfered with by this Court under Section 482 of Cr.P.C.

5. The learned Additional Public Prosecutor, on instructions, would submit that the FIR registered on the basis of the complaint made by the petitioner and also the FIR registered on the basis of the complaint given by the second respondent, have been transferred to the file of the CCB, Chennai. The learned Additional Public Prosecutor would further submit that both the FIRs are now investigated by the CCB, Chennai. He would also submit that only after full fledged investigation, the truth will be known and at this stage, this Court should not interfere with the investigation conducted by the Police.

6. The learned counsel for the second respondent would submit that the allegations made in the complaint makes out an offence of cheating, theft and criminal breach of trust. The learned counsel would further submit that even though the petitioner claims that he has supplied the materials and has also completed 80% of the project, the same is completely denied on the ground that it is false and no materials were brought in even after the receipt of USD 2.28 millions from the second respondent.

7. The learned counsel would further submit that this Court cannot go into the various factual issues that have been raised by the learned counsel for the petitioner and it has to be investigated by the respondent police.

8. The learned counsel for the petitioner relied upon the judgments of the Hon'ble Supreme Court in the case of (1) ANUPRIYA PAL & OTHERS V. STATE OF UTTAR PRADESH in Crl.A. No.994 of 2018 (Arising out of SLP (crl.) No.1823 of 2017 & (2) M.N.OHA & OTHERS V. ALOK KUMAR SRIVASTAV AND ANOTHER IN Crl.A.No.1582 of 2009 (Arising out of SLP(crl.) No.1875 of 2008).

9. This Court has carefully considered the averments made on either side.

10. The Hon'ble Supreme Court in the case of GUNMALA SALES V. ANU MEHTA reported in 2015 (1) SCC 103, has categorically held that while the Court exercises its jurisdiction under Section 482 of Cr.P.C. for quashing the FIR, the Court cannot conduct a mini investigation. The Court has to merely go by the allegations made in the complaint. The learned counsel for the petitioner impressed upon this Court to look into various documents and also to take into consideration the sequence of the events.

11. In the considered view of this Court, this Court cannot undertake this exercise since this Court will be indirectly examining the documents and also various facts, which exclusively falls within the domain of investigation. Therefore, this Court does not want to look into any materials that have been placed by the learned counsel for the petitioner at this stage and all those materials can be submitted before the respondent police in the course of investigation.

12. Insofar as the arguments of the learned counsel for the petitioner on the ground that the complaint does not make out an offence, this Court is of the considered view that necessary allegations have been made in the complaint and the FIR is not an encyclopedia of the entire case. It is only an information given by the complainant to enable the police to set the law in

motion and thereafter to investigate in order to find out whether any offence has been committed by the accused persons, based on the materials collected in the course of investigation. The arguments advanced by the learned counsel for the petitioner to the effect that the documents in question which is said to have been stolen by the petitioner belongs to the petitioner and therefore, there is no question of the petitioner committing breach of trust by stealing his own property. Again this is a factual issue which has to be investigated by the respondent police. This Court does not want to get into the realm of investigation.

13. The further submission made by the learned counsel for the petitioner that this complaint has been given as a counter blast for the earlier complaint given by the petitioner, is also a factual issue. Admittedly, both FIRs are now investigated by the CCB, Chennai and at the end of investigation, the Police will be in a position to find out which complaint is true and which complaint is false. Therefore, this Court cannot quash the FIR on the ground that the complaint given by the second respondent is a counter blast for the earlier complaint.

14. Insofar as the judgments relied upon by the learned counsel for the petitioner, the first judgment relied upon by the learned counsel for the petitioner in ANUPRIYA PAL & OTHERS V. STATE OF UTTAR PRADESH (as stated supra) was a dispute between the husband and wife and on the facts of that case, the Hon'ble Supreme Court found that no offence under Section 420 has been made out. The Hon'ble Supreme Court has further found that the complaint itself has been filed only as the counter blast to the maintenance proceedings initiated by the wife. The Hon'ble Supreme Court found that the husband has harassed the wife and has lodged a complaint and the Court found that it was an abuse of process of law. This judgment cannot be taken as a precedent to the facts of this case.

15. The next judgment that has been relied upon by the learned counsel for the petitioner in M.N.OHA & OTHERS V. ALOK KUMAR SRIVASTAV AND ANOTHER (as stated supra) wherein the case arose out of a private complaint, that was filed along with all the documents. It must be kept in mind that the private complaint filed under Section 200 Cr.P.C., is more akin to a final report filed under Section 173(2) of Cr.P.C. Therefore, when a private complaint is filed before the Court, the Court will have the advantage of the complaint, documents filed along with the complaint and also the statement given by the witnesses. Based on all the materials, the Court takes cognizance of a private complaint. However, in the case of FIR, the only document available is the FIR and the allegations made therein. It is only during the course of investigation, the Investigating Officer collects the materials and ultimately files the final report under Section 173(2) of Cr.P.C. At that

point of time, there is a definite advantage for the Court to not only look into the complaint but also to the materials that are collected by the police in the course of investigation. This case has not reached that stage. Therefore, in the considered view of this Court, the judgment relied upon by the learned counsel for the petitioner cannot be applied to the facts of this case.

16. This Court is of the considered view that there is a case and counter case between the parties. This Court does not want to interfere with the investigation at this stage. Both the cases are admittedly now investigated by the CCB, Chennai. It is left open to the parties to submit all the documents before the Investigating Officer and it is for the Investigating Officer to come to a final conclusion as to whether a final report or a closure report has to be filed in this case.

17. In the result, this Criminal Original Petition is dismissed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
J-8, Neelankarai Police Station,
Chennai.
2. The Public Prosecutor,
Madras High Court,
Chennai.

+1cc to Mr.D.Jayasingh, Advocate, S.R.No.81680

+1cc to Mr.A.Vijay Anand, Advocate, S.R.No.87613

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GSP(11/12/2018)