BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Order Reserved on : **20.03.2018**
Order Pronounced on : **18.05.2018**

CORAM

THE HONOURABLE MR.JUSTICE **P. RAJAMANICKAM**

CRL.OP(MD).No.2563/2018
AND
CRL.MP.(MD)No.1182/2018

S. Babu Kumar ... Petitioner

Vs.

1.State rep. By
The Inspector of Police,
District Crime Branch,
Thoothukudi District
(Cr.No.15 of 2017)

2.A.V.M.V.Mani ...Respondents

Prayer : Criminal Original Petition is filed under Section 482 of Criminal Procedure Code to call for the entire records pertaining to the case in Cr.No.15 of 2017 on the file of the District Crime Branch, Thoothukudi District and quash the same as against the petitioner.

For Petitioner : Mr.Shanmugavelayutham
Senior Counsel
for Mr.R.Anand

For Respondents : Mr. A.P.G.Ohm Chairma Prabhu(for R1)
Government Advocate (Crl.Side)
Mr.Veerakathiravan
Senior Counsel
for Mr.K.M.Karunakaran (for R2)

O R D E R

This petition has been filed by the accused No.1 u/s.482 of Cr.P.C., to quash the FIR in Cr.No.15 of 2017 on the file of the first respondent.

2. The second respondent herein has lodged a complaint before the first respondent stating that he is the Managing Director of the M/s.Maris Associates Pvt. Ltd., having Office at

Tuticorin and doing business of import and export of multi projects. The accused No.1 was the Manager of the said Company and he was given the entire administration by reposing confidence on him. Fact remains so, the Company received an information from the Department of Employees Provident Fund stating that the said Company did not pay the contribution of the employees about Rs.1,08,00,088/-. It was subsequently found that the accused No.1 opened a separate account and transferred the Company's money to his account and misappropriated the Company's fund to the tune of Rs.6,82,51,745/-. It was also stated in the said complaint that accused No.1 diverted the aforesaid amounts and running separate institutions in the name and style of R.B.Home Bazaar, R.B.Associates and R.B. Enterprises. It was also stated that A1 conspired with his family members and friends and misappropriated the aforesaid amount. Based on the said complaint, the first respondent has registered a case against the petitioner herein and 3 others in Cr.No.15 of 2017 u/s.408, 420, 465, 468, 471 and 120 (b) IPC. Now A1 has filed the present petition u/s.482 of Cr.P.C., to quash the aforesaid FIR.

3. Heard Mr.Shanmugavelayutham, learned Senior Counsel for Mr.R.Anand, learned counsel for the petitioner and Mr.A.P.G.Ohm Chairma Prabhu, learned Government Advocate (Crl.Side) for R1 and Mr.Veerakathiravan, learned Senior Counsel for Mr.K.M.Karunakaran appearing for R2.

4. Learned Senior Counsel appearing for the petitioner has contended that during the course of business, the second respondent had utilised the petitioner as a scape goat for enriching himself and often took the money of the Company by using the petitioner's name. He further contended that after completing monetary transaction, the second respondent used to give a receipt for the money swindled. He further submitted that those receipts were sent to the handwriting expert at Bangalore along with the contemporaneous documents which are having the signatures of the second respondent. After being thoroughly inspected, enquired and examined the character of each letters with the specially designed apparatus, the handwriting expert gave a report stating that the signatures found in the said receipts were similar to the signatures found in the contemporaneous documents and it would show that with a view to escape from criminal prosecution, the second respondent gave a false complaint against the petitioner. He further contended that the e-mail conversation of the girl with whom the second respondent has got interest would also be a strong factor to come to know how the second respondent has utilised the services of the petitioner which is absolutely not connected to the administration of the Company narrating that the said communication would give a strong meaning that almost the petitioner herein was being used by the second respondent for handling the money belonging to the Company without knowledge of other Directors, in which, the poor and innocent employee viz.,

the petitioner has been made to be locked when the said subject matter came to the knowledge of other Directors of the Company. He further contended that when the petitioner's anticipatory bail application came up for hearing, this court has directed the second respondent to appear before the Mediation and Conciliation Centre, but he did not appear and that itself would show that he lodged a false complaint against the petitioner. Therefore, he requests to quash the FIR against the petitioner.

5. In support of the aforesaid contentions, the learned Senior Counsel for the petitioner has relied upon the following decisions:

1)State of Orissa Vs. Debendra Nath Padhi (2005) (1) SCC 568.
2)Rajiv Thapar and Others Vs. Madan Lal Kapoor (2013) 3 SCC 330.

6. The learned Government Advocate (Crl.Side), who is appearing for the first respondent submitted that the petitioner has created fake documents and swindled the Employees Provident Fund to the tune of Rs.1,08,00,088/- and further colluded with other accused persons and created forged documents and swindled the Company's money to the tune of Rs.7,00,81,400/-. He further contended that the investigation reveals that the petitioner forged the documents and got money for more than 283 times. He further contended that the first respondent made a request to the Manager of Indian Bank, Tuticorin Branch to handover the cheques which were used by the petitioner and other documents and after getting those documents, they have to be sent to the Forensic Lab. He further submitted that the confession statement of A4 would show that the petitioner herein and other accused have conspired and swindled the Company's funds. He further submitted that the investigation is in progress. Therefore, he prayed to dismiss the petition.

7. Learned Senior Counsel appearing for the second respondent has contended that the petitioner has filed the applications for anticipatory bail before this Court twice and those petitions were dismissed. But the petitioner is evading arrest and interrogation for the past one year and hence, the present petition to quash the FIR is not maintainable. He further contended that this court while dismissing the anticipatory bail application observed that seizure of the account books pertaining to the R.B.Home Bazaar, R.B.Associates and R.B.Enterprises is absolutely necessary and also observed that custodial interrogation is also necessary. He further contended that the petitioner has not only forged the signatures of the second respondent herein but also his Auditor. The said Auditor is one of the reputed Auditors in Tuticorin and he gave a complaint against the petitioner to take action for forging his signature and seal. The opinion given by the private handwriting expert is not having any legal sanctity. The report does not state that any

document containing the original signature was produced and compared. In the said report, it is stated that only photocopies of the documents were submitted for examination. He further contended that the petitioner was employed as Manager in the year 1997 and the Board of Directors reposed full faith upon him. However, the petitioner betrayed the said trust and misappropriated the Company's money to an extent of Rs.7,00,81,400/-. Now the Company found that the petitioner in a series of transaction numbering to 283 transferred online money from the Company's account to his personal account in M/s.Lakshmi Vilas Bank, Tuticorin. The petitioner had no such authority. Now it is found that by using that money, the petitioner has started a retail shop by name R.B.Home Bazaar, and purchased landed properties by committing conspiracy with his family members and friends. He further contended that the petitioner has made false and defamatory allegation against the second respondent by targeting the name of the lady and her college going daughter in the application. He further contended that the alleged receipts are forged documents. This Court while disposing of the application under 482 of Cr.P.C., cannot take into consideration the documents which are relied upon by the accused. In support of the said contentions, he relied on the following decisions:

1. **State of Haryana and Others Vs.Bhajan Lal and Others (1992) supp(1) SCC 335.**
2. **Dineshbhai Chandubhai Patel Vs. State of Gujarat and Others (2018) 1 MLJ (Crl) 529 (SC).**

8. It is not disputed that the petitioner was working as a Manager in the M/s. Maris Associates Pvt. Ltd., in which, the second respondent is one of the Directors. According to the second respondent, the petitioner being the Manager of the Company has created forged documents and transferred a sum of Rs.7,00,81,400/- from the Company's Bank Account to his personal bank account and thereby, he misappropriated a huge amount of Rs.7,00,81,400/-.

9. The case of the petitioner is that the aforesaid amount was taken by the second respondent and the petitioner has been made as scape goat. His further case is that the second respondent has issued receipts acknowledging the receipt of the amounts and that the said receipts were compared by an handwriting expert and gave opinion that those receipts were issued by the second respondent. His further case is that the said expert's report would show that it is only the second respondent herein who has misappropriated the Company's fund and in order to escape from prosecution, he gave a false complaint against the petitioner.

10. ***In State of Orissa Vs. Debendra Nath Padhi (supra)***, the Hon'ble Supreme Court in paragraph No.21 has held as follows:

> ***21.*** *It is evident from the above that this Court was considering the rare and exceptional cases*

where the High Court may consider unimpeachable evidence while exercising jurisdiction for quashing under Section 482 of the Code. In the present case, however, the question involved is not about the exercise of jurisdiction under Section 482 of the Code where along with the petition the accused may file unimpeachable evidence of sterling quality and on that basis seek quashing, but is about the right claimed by the accused to produce material at the stage of framing of charge."

11. In **Rajiv Thapar and Others Vs. Madan Lal Kapoor** (Supra) in paragraph No.30, the Hon'ble Supreme Court has held **as follows:**

"*23. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-*

30.1. Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

30.2. Step two: whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

30.3. Step three: whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial *(as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused."*

12. From the aforesaid decisions, it is clear that at the time of exercising jurisdiction u/s.482 of Cr.P.C., the High Court may consider unimpeachable evidence of sterling quality. In this case, the petitioner is relying upon the opinion given by the private handwriting expert. The case is at the investigation stage. At this stage, the petitioner cannot rely upon the opinion given by the private handwriting expert which was obtained by the petitioner himself. If any such report is received by the Investigating Officer, the petitioner can rely. But, here the petitioner himself took the investigation and obtained some report from the private person. The said report cannot be taken into consideration, at this stage. As already pointed out that according to the first respondent, the petitioner has transferred the money from the Company's account to his personal account by creating forged documents for more than 283 times. He has already taken steps for sending those documents to the Government Forensic Science Lab for getting expert's opinion. So, at this stage, it would not be proper to quash the FIR and the Investigating Officer should be allowed to complete the investigation.

13. In ***State of Haryana and Others Vs. Bhajan Lal and Others*** (supra), the Hon'ble Supreme Court has held that where the allegations made in the FIR, even if they are taken at the face value and accepted in their entirety, do not prima facie constitute any offence, then FIR can be quashed. In this case, the allegations made in the FIR prima facie constituted a cognizable offences.

14. In ***Dineshbhai Chandubhai Patel Vs. State of Gujarat and Others*** (supra), the Hon'ble Supreme Court has held that in order to examine as to whether the factual contents of the FIR disclose any prima facie cognizable offence or not, the High Court cannot act like the investigating agency and nor can exercise the powers like an appellate Court. It was also held that at the stage of dealing with the application u/s. 482 Cr.P.C., the High Court could not appreciate the evidence nor could draw its own inferences from the contents of the FIR and the material relied on. It was also held that once the court finds that the FIR does disclose prima facie commission of any cognizable offence, it should stay its hand and allow the investigating machinery to step in to initiate the probe to unearth the crime in accordance with the procedure prescribed in the code.

15. In the case on hand, as already pointed out that the FIR discloses a prima facie commission of various cognizable offences as alleged by the complainant / second respondent

against the accused persons and therefore, this petition has to be dismissed. The subject matter of FIR in question need to be investigated by the investigating authorities in accordance with procedures prescribed in the Code.

16. For the aforesaid reasons, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed. Since FIR is pending from 21.03.2017, the first respondent is directed to complete the investigation of the case without any bias and prejudices strictly in accordance with law and procedures ahead expeditiously. It is made clear that the first respondent would not be influenced in any manner by any of the observations made by this Court in this order while investigating the matter.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Inspector of Police,
District Crime Branch,
Thoothukudi District

2.The Additional Public prosecutor,
Madurai Bench of Madras High court,
Madurai.

+ 1 cc TO Mr.K.M.Karunakaran , Advocate in SR No. 65966

gv/vs
AE/SV MMS/SAR4/07.06.2018/7P/4C

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