IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2019

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.1228 of 2009 and
Crl.M.P.No.1 of 2009

Mohanasundaram
S/o.Sabanayagam ... Petitioner / Respondent / Accused No.9

Versus

A.Arif
S/o.Abdul Azeez ... Respondent / Petitioner / Complainant

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order of the learned Principal District and Sessions Judge, Nagapattinam in Crl.R.C.No.14 of 2006 dated 15.02.2008 and dismiss the complaint in C.C.No.217 of 1995 dated 30.10.2005 on the file of the learned Judicial Magistrate, Sirkali, Nagapattinam District.

For Petitioner : M/s.Madhuri Donti Reddy

For Respondent : M.L.Baskaran

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ORDER

The petitioner is arrayed as A9 on the private complaint given by the respondent, which was taken on file in C.C.No.217 of 2005 by the learned Judicial Magistrate, Sirkali, Nagapattinam.

2.The gist of the case is that the complaint was given as against ten accused persons including the petitioner/Branch Manager, Indian Overseas Bank, Punganoor Branch, Nagapattinam alleging that for construction of new Pallivasal in Punganoor Village, Sirkazhi, Nagapattinam District, the Jamiya Masjid Managing Committee members joined together and collected money from the Public and deposited into the petitioner's bank. The Accused Nos.1 to 8 & 10, the members of said committee opened a savings bank account in the petitioner's bank vide Account No.1820 for the purpose of construction of new Pallivasal. In that account, only four persons in the said managing committee viz., Haji Kibayathullah, Haji Samsudeen, R.Hithayathulla and

M.Rijivanudeen were permitted to operate the account. The said four persons have drawn a cheque for a sum of Rs.7,00,000/- in favour of the accused viz., Ahamed Kabir and the amount has also been withdrawn. The respondent being a Joint operator along with said four persons were authorized for the amount transaction in the said account.

3.The contention of the petitioner is that Jamiya Masjid Managing Committee members addressed the petitioner through their letter dated 15.12.1999 and requested to open an account. Accordingly, an S.B. Account was opened in the name of Masjith Noor. As per the authorization of the committee, three persons were allowed to operate the account viz., Haji.Kibayathullah, Haji.N.M.Kamaludeen and the respondent. Then on 30.12.2003, another letter was addressed by the said committee members to the petitioner's Bank, wherein they have stated that apart from the above said three persons other persons viz., Janab R.Hidayathullah and Haji.Rijwamudeen and Haji Shamsudeen were also authorized to operate the above said account.

4.On 08.07.2004, another letter was sent to the petitioner's bank, intimating that the respondent is not interested to operate the above said account due to his own personal reasons and he wanted to delete his name from the persons having authorization to operate the account and the other remaining persons could operate the account. The respondent, who is an Auditor seems to have some misunderstanding with other members in the said Managing committee. Due to which he made allegations against the petitioner that the petitioner had colluded with the authorized persons in the Managing Committee and allowed one Ahamed Kabir to withdraw the amount of Rs.7,00,000/- from the account of the Managing Committee. He further submitted that no charges were framed against him and no disciplinary proceedings were initiated against him for dereliction of duty by his employer under the Bank Discipline and Appeal Rules and he has also retired from service.

5.It is further submitted by the learned counsel for the petitioner that the trial Court had given a finding that there is no prima facie case made out against the accused persons and dismissed the private complaint filed by the respondent in C.C.No.217 of 2005.

6.The learned counsel for the respondent submitted that the petitioner is the Branch Manager of Indian Overseas Bank, Punganoor Branch, Sirkali. The Managing Committee of the Pallivasal maintained its savings bank account in the petitioner's bank vide account No.2408. The said committee members substituted the petitioner as authorized signatory person and also deleted the respondent from the authorized persons, thereby facilitated him to operate the account. The other management committee members used to sign for the due amount of Rs.7,00,000/- from the Pallivasal committee funds using the name of Ahmed kabir and filed this the quash petition stating that this petitioner had colluded with the other accused and swindled the huge public amount of the Managing Committee.

7.Considering the rival submissions and on perusal of the materials produced before this Court, it is seen that the trial Court had dismissed the complaint of the respondent on 30.09.2005 in C.C.No.217 of 2005. Against that order, the respondent filed a Revision Petition in Crl.R.C.No.10 of 2006 before the learned Sessions Judge, Nagapattinam. The Sessions Court, Nagapattinam by its order dated 15.02.2008 set aside the order of the learned Judicial Magistrate, Sirkali and directed the learned Judicial Magistrate, Sirkazhi to take the complaint of the respondent on file. Finally, the petitioner approached this Court to quash the complaint in C.C.No.217 of 2005.

8.It is also seen that the bank account of the Jamiya Masjid Managing Committee is operated either by the authorized persons or by the Branch Manager. The petitioner being a Branch Manager of Indian Overseas Bank passed the cheque in a routine manner, therefore, a Criminal liability against him could not be fastened. There may be some misunderstanding between the said committee members and the respondent for which the petitioner could not be attributed with in the commission of the offence along with the other accused persons. The petitioner had sent a detailed reply notice for the allegations made against him. Stringently, there is nothing found in the complaint with regard to the same. It is an admitted fact that there is no specific allegations against the petitioner of having committed any dereliction of duty.

9.In view of the above, this Court is inclined to quash the proceedings in C.C.No.217 of 2005, on the file of the Judicial Magistrate, Sirkali, insofar as this petitioner is concerned.

10.Accordingly, this Criminal Original Petition stands allowed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District and Sessions Judge,
   Nagapattinam.

2. The Judicial Magistrate,
   Sirkali,
   Nagapattinam District.

Crl.O.P.No.1228 of 2009

VBA(CO)
SSM(20/05/2019).