

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2019

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.OP No.27011 of 2016
and
Crl.M.P.No.13626 of 2016

R.Balakrishnan ...Petitioner/Accused No.1

..Vs..

State rep.by,
Inspector of Police,
Team - III,
Central Crime Branch,
Egmore,
Chennai 600 008. ...Respondent /Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records and set aside the order dated 26.04.2016, passed in Crl.R.C.No.16 of 2015 by the Hon'ble XVI Additional City Civil Court, Chennai, confirming the order dated 09.02.2015 passed in Crl.M.P.No.3504 of 2014 in C.C.No.4133 of 2004, on the file of XI Metropolitan Magistrate Court, Saidapet.

For Petitioner : Mr.Nithyaesh & Vaibhav
Mr.Nithyaesh Natraj

For Respondent : Mr.Mohamed Riyaz, APP

ORDER

This Criminal Original Petition has been filed challenging the order passed by the Courts below dismissing the discharge petition filed by the petitioner and the same being confirmed in revision by the Sessions Court.

2. The respondent Police registered an FIR in Cr.No.719 of 2001, against the petitioner for the alleged offences under Sections 406, 409 and 120(b) IPC, based on the complaint given by one Damodaran Chettiar, who is the Secretary of the Baliya Chetti Association. The allegation made in the complaint is that the petitioner has misappropriated the funds belonging to

the Trust. This FIR was investigated, and a final report was also filed against the petitioner and the same was taken on file in C.C.No.4133 of 2004, by the learned XI Metropolitan Magistrate, Saidapet, Chennai. The petitioner filed a petition for discharge and the same was dismissed by the learned Magistrate by an order dated 09.02.2015. This order was confirmed in revision by the XVI Additional City Civil Court, Chennai, by an order dated 26.04.2016.

3. The learned counsel for the petitioner would submit that similar complaints were filed earlier by three persons viz; Jayaraman, Parthasarathy and Damodaran and based on all the complaints, cases in Cr.Nos.435/2003, 656/2007 and Cr.No.96/2004 were registered against the petitioner. All these cases ended by filing of the closure report by the Police, as mistake of fact and that the cases are Civil in nature. A protest petition was filed by the de facto complainant and the same was dismissed, and subsequently it was confirmed by this Court in Crl.R.C.Nos.447/2007, 360/2006 and Crl.R.C.No.913 of 2011. Therefore, the learned counsel would submit that the present proceedings based on the very same set of facts, cannot be permitted to be prosecuted and the same will amount to an abuse of process of Court.

4. The learned Additional Public Prosecutor on instructions would submit that the respondent Police have thoroughly investigated the case and have filed a final report against the petitioner for misappropriation. The learned Additional Public Prosecutor would further submit that the closure report filed in the earlier three complaints, will not have a bearing in the present case. The learned Additional Public Prosecutor also submitted that the case is at the stage of trial, and therefore, this Court should not interfere with the proceedings at this stage.

5. This Court has carefully considered the submissions made on either side and also the materials placed on record.

6. The undisputed fact in this case is that the earlier three complaints filed by various other office bearers of the very same Trust by making similar allegations against the petitioner, came to be closed as mistake of fact and civil in nature by the police. The protest petition filed against the same was also dismissed, and the same was also confirmed by this Court in the revision filed by the de facto complainant. Therefore, the respondent Police cannot come to a different conclusion in this case and prosecute the petitioner before the Court below. The courts below failed to take note of this vital fact while deciding the discharge petition.

7. In the considered view of this Court, the continuation of the proceedings against the petitioner will amount to abuse of process of Court, and the same requires to be interfered with by this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

In the result, the proceedings in C.C.No.4133/2004, on the file of the learned XI Metropolitan Magistrate Court, Saidapet, is hereby quashed. Accordingly, this criminal original petition is allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KP
To

1. Inspector of Police,
Team - III,
Central Crime Branch,
Egmore,
Chennai 600 008.

2. The XVI Judge,
XVI Additional City Civil Court,
Chennai.

3. XI Metropolitan Magistrate,
Saidapet.

4. The Chief Metropolitan Magistrate,
Egmore, Chennai.

5. The Public Prosecutor,
High Court of Madras,
Madras.

+2cc to Mr.Nithyaesh S.Vaibhav, Advocate Sr.1514

Cr1.OP No.27011 of 2016

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