

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2019

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAYAN

Crl.O.P.No.4702 of 2019

and

Crl. MP No.2774 of 2019

M/s. Sqaure Four Asset Management Company
Rep. by its Ashok Ghose
S/o. Late Sudhir Kt. Ghose ... Petitioner

Vs

1. The Inspector of Police,
CCB, District Crime Branch,
Kanchipuram.
2. Aashish Jain ... Respondents

Prayer : Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records pertaining to Crime No.35 of 2016, on the file of the District Crime Branch, Kanchipuram and quash the same.

For Petitioner : Mr.D. Ravichander
For Respondent : Mr.M. Mohamed Riyaz
Addl. Public Prosecutor

ORDER

This Criminal Original Petition has been filed to call for the records pertaining to Crime No.35 of 2016, on the file of the District Crime Branch, Kanchipuram and quash the same.

2. The learned counsel for the petitioner submitted that the complaint lodged by the 2nd respondent was registered under Sections 465, 468, 471, 420 and 506(1) of IPC, was false one. The learned Counsel appearing for the petitioner would submit that the petitioner is an innocent person and he has not committed any offence as alleged by the prosecution. The 1st respondent has registered the complaint before ascertaining the documents and the said act is an abuse process of law. Hence, he seeks direction of this Court to quash the Crime No.35 of 2016 on the file of the District Crime Branch, Kanchipuram.

3. Further the learned counsel for the petitioner had relied upon the Judgment of the Hon'ble Apex Court, dated 15.12.2019 in Criminal Appeal No.238 of 2019, wherein paragraph No.11, reads as under :-

The High Court, in the exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, is required to examine whether the averments in the complaint constitute the ingredients necessary for an offence alleged under the Penal Code. If the averments taken on their face do not constitute the ingredients necessary for the offence, the criminal proceedings may be quashed under Section 482. A criminal proceeding can be quashed where the allegations made in the complaint do not disclose the commission of an offence under the Penal Code. The complaint must be examined as a whole, without evaluating the merits of the allegations. Though the law does not require that the complaint reproduce the legal ingredients of the offence verbatim, the complaint must contain the basic facts necessary for making out an offence under the Penal Code.

4. Further he relied on the judgment of the Hon'ble Apex Court in Mohammed Ibrahim and others vs. State of Bihar and another, reported in (2009) 8 SCC 751 and the relevant paragraph is extracted hereunder :-

16. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bonafide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of "false documents", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person,

by whom or by whose authority he knows that it was not made or executed.

17. When a document is executed by a person claiming a property which is not his, he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted.

5. The learned Additional Public Prosecutor would submit that the investigation is almost completed and the respondent police have only to file final report.

6. It is seen from the First Information Report that there is a specific allegation as against the petitioner, which has to be investigated. Further the FIR is not an encyclopedia and it need not contain all facts. Further, it cannot be quashed in the threshold. This Court finds that the FIR discloses prima facie commission of cognizable offence and as such this Court cannot interfere with the investigation. The investigating machinery has to step in to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code.

7. In view of the above discussion, this Court is not inclined to quash the FIR. However, considering the crime is of the year 2016, the 1st respondent is directed to complete the investigation in Crime No.35 of 2016 and file a final report within a period of three months from the date of receipt of copy of this Order, before the jurisdiction Magistrate, if not already filed.

8. With the above directions, this Criminal Original petition stands disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vsi2

To

The Inspector of Police,
CCB, District Crime Branch,
Kanchipuram.

+1 cc to M/s.D.Ravichander, Advocate Sr.No.16007

CrI.O.P.No.4702 of 2019

AD(CO)
CSL/10.04.2019



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