IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2019

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THE HONOURABLE MR. JUSTICE M.S. RAMESH

Crl.O.P.No.2456 of 2018
and
Crl.M.P.Nos.1006 and 1007 of 2018

K.Muruganandam ...Petitioner

Vs

S.Gajapathy ...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records in the complaint in C.C.No.646 of 2007, pending on the file of the IX Metropolitan Magistrate, Saidapet, Chennai and quash the same.

For Petitioner : Mr.S.Prabakaran, Senior Counsel for Mr.MA.Gouthaman

For Respondent : No appearance

O R D E R

Heard Mr.S.Prabakaran, learned Senior Counsel appearing for the petitioner/first accused. Though notice has been served on the respondent and his name is also printed in the cause list none appears on his behalf.

2. The brief facts of the case, set forth by the de-facto complainant, are as follows :-

The de-facto complainant's wife, Mrs.Geetha Gajapathy is an employee of Bank of India. Both the de-facto complainant and his wife are joint account holders of Saving Bank Account No.8595 with Bank of India, Adyar Branch, Chennai. The complainant's wife also holds an Over Draft Account No.10233 in the same bank with a sanctioned over due limit of Rs.2,35,000/- and the respondent herein is the guarantor for the said Over Draft Account. On 31.03.2005, the respondent's wife had credit balance of Rs.2118.69 in the Over Draft Account. On 01.04.2005, one Mr. Muruganandam, Senior Manager, Bank of India had informed the de-facto complainant's wife that on 31.03.2005, the officer in-charge of advances, had withdrawn a sum of Rs.2,35,000/- including credit balance of Rs.2118.69 from the Over Draft Account and deposited the same into her joint Saving Bank Account bearing No.8559. However on 02.04.2005, the said sum of Rs.2,35,000/- was again withdrawn from the Saving Bank Account and re-deposited into the Over Draft Account together with a sum of Rs.138/- as interest to the Over Draft Account. Since the withdrawal was done without any valid instrument, the de-facto complainant has preferred a complaint before the J2 Police Station, Adyar (Crimes), on 31.01.2006, after lapse of nine months alleging breach of contract. Since the police complaint came to be closed, the respondent herein had filed a private complaint against the petitioner and other officers of the branch of the said Bank for the offences under Sections 408, 409, 120-B, 116, 465, 467 IPC. Challenging the same, the petitioner herein, who has been arrayed as first accused in the private complaint has filed the present quash petition.

3. A perusal of the averments made in the complaint shows that there is no overt act attributed against the petitioner/first accused herein as that of the other accused namely, A2 to A4.

4. Earlier, when A2 to A4 namely T.K.Krishnamurthy, C.S.Kumar and R.Thangamani, had challenged the private complaint proceedings in C.C.No.646 of 2007, insofar as their involvement are concerned, this Court had entertained the petition and quashed the proceedings on 23.10.2017 in Crl.O.P.No.3435 of 2017. The observations made in the said order read as follows :

> "5.The respondent has raised various grounds by relying upon the provisions of the Bank Regulations Act, 1949 and the provisions of Indian Penal Code with regard to criminal breach of trust and submitted that the offence under Sections 408, 409, 120-B, 116, 465 and 467 IPC has been clearly made out and hence, sought for dismissal of the present Criminal Original Petition.
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> 6.I am of the view that the impugned complaint is liable to be dismissed on the sole ground that the offences of Section 408, 409, 120-B, 116, 465 and 467 IPC have not been made out from a bare perusal of the averments made in the said private complaint. For the sake of convenience, the relevant provisions are extracted. Section 409 IPC reads as follows:
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>> "409.Criminal breach of trust by public servant, or by banker, merchant or agent.- Whoever, being in any manner entrusted with

property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with [imprisonment for life (substituted by Act 26 of 1955, S.117 and Sch., for "transportation for life" (w.e.f. 01.01.1956))], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

Section 405 reads as follows:

"Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust"."

7.The two main ingredients of Section 405 is that:

a) the accused should be a person who has been entrusted with a property or with any domain over property.

b) such person should have dishonestly misappropriated or converted the property to his own use.

8.In the present case in hand, though the petitioners who are the bank employees were entrusted with the property, it is no body's case that the petitioners had dishonestly misappropriated the funds or converted the same to their own use and even as per the case of the respondent, the funds were withdrawn from the Over Draft Account of the respondent's wife and deposited into the joint saving bank account of the respondent's wife on 31.03.2005. Subsequently on 02.04.2005 itself the amount was redeposited into their earlier account when the mistake was noticed. Since the bank officials felt that it was an error, action was also initiated against the erring official, apart from awarding interest on the amount in favour of the

> respondent's wife. In view of the fact that the petitioners had not, admittedly, misappropriated or converted the money for their own use, the offence of criminal breach of trust has not been made out.
>
> 9.In view of the fact that the respondent's complaint does not make out an offence of criminal breach of trust, the other provisions of criminal conspiracy, abetment or forgery cannot be made out. Since none of the averments in the private complaint has made out any criminal offence against the petitioners, it would not be appropriate to permit the trial court to proceed with the same and subject the petitioner to the ordeal of a trial.
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> 10.In the result, the Criminal Original Petition stands allowed. Consequently, the proceedings in C.C.No.646 of 2007 pending on the file of the learned IX Metropolitan Magistrate, Saidapet, Chennai is quashed. Connected Miscellaneous Petition is also closed.”
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> 5. As observed earlier, the overt act against the petitioner/first accused is identical to that of A2 to A4. When this Court has chosen to quash the proceedings insofar as those petitioners/A2 to A4 are concerned on the ground that ingredients of Sections 405 and 409 IPC had not been made out in the complaint, it would not be appropriate to permit the trial Court to proceed with the complaint insofar as the petitioner is concerned. As such, I do not find any reason as to why the complaint against the petitioner should also be quashed, in view of the earlier order of this Court, quashing the proceedings insofar as A2 to A4 are concerned.

6. In the result, the Criminal Original Petition stands allowed. Consequently, the proceedings in C.C.No.646 of 2007, pending on the file of the IX Metropolitan Magistrate, Saidapet, Chennai, is quashed insofar as the petitioner/first accused also. Connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CJ Conf.)

//True Copy//

Sub Assistant Registrar

To

1.The IX Metropolitan Magistrate,
Saidapet,
Chennai.

2. -Do- Thro' The Chief Judicial Magistrate,
Egmore, Chennai.

+1cc to Mr.MA.Gouthaman, Advocate, SR.No.81329

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Kak(21/10/2019)
Kak(08/11/2019)