IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2019

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.OP No.2343 of 2014
and
M.P.No.1 of 2014

M.Balaji .. Petitioner

.Vs.

1.The State of Tamil Nadu,
Rep.by the Sub Inspector of Police,
Central Crime Branch,
Chennai.

(Cr.No.470 of 2007)

2.P.janardhan Rao ..Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.221 of 2012 on the file of the Judicial Magistrate I, Alandur, and to quash the same.

For Petitioners: Mr.Sarath Chander
for Mr.v.Raghavachari

For R-1 : Mr.C.Raghavan,
Government Advocate

For R-2 : Mr.V.Balasubramanian
Mr.S.Anandaraj

ORDER

This Criminal Original Petition has been filed challenging the proceedings in C.C.No.221 of 2012, pending on the file of the learned Judicial Magistrate, Alandur.

2. The de facto complainant had given a complaint before the respondent Police on the ground that he had engaged one Krishnamoorthy (A1) as the working partner in M/s.K.V.L.Associates, Chennai. The said Krishnamoorthy had

persuaded the complainant to invest a sum of Rs.50 lakhs to purchase lands at Athiballi, Bangalore. The transactions went through and the de facto complainant had also paid the commission to the said Krishnamoorthy. Subsequently, there was yet another transaction wherein, a sum of Rs.65 lakhs is said to have been handed over to the said Krishnamoorthy for dealing with the property at Bangalore and the said transaction also went through.

3. Ultimately, there was a 3rd transaction wherein the said Krishnamoorthy had informed the de facto complainant about the availability of the property at Sarjapur Road, Bangalore and the de facto complainant had also invested a sum of Rs. 2.55 crores to purchase the said property. Sale Deeds were also executed and it was handed over to the de facto complainant. At that point of time, the de facto complainant

came to know that the said Krishnamoorthy had mis appropriated a sum of Rs.1.05 crores and in one of the transaction the present petitioner (A-2) is also involved.

4. The respondent Police based on the complaint, registered an FIR in Cr.No.470 of 2007 against both Krishnamoorthy and the petitioner for an offence under section 420 & 406 IPC r/w Section 34 IPC. The investigation was completed and the Final Report has also been filed before the learned Judicial Magistrate, Alandur and the same is pending in C.C.No.221 of 2012.

5. It is brought to the notice of this Court that Krishnamoorthy (A1) had already expired.

6. The learned counsel for the petitioner submitted that insofar as the petitioner is concerned, there was absolutely no privity of contract between the parties and the petitioner has been falsely roped in this case. The learned counsel further submitted that no offence of criminal breach of trust or cheating has been made out against the petitioner.

7.The learned counsel for the petitioner further submitted that the de facto complainant had purchased certain properties from the petitioner and in the course of the said transaction, the de facto complainant had defaulted in payment to the tune of Rs.79 lakhs. A cheque was issued in favour of the petitioner and the same got dishonored which resulted in a 138 complaint. Initially, the de facto complainant was convicted for the offence under Section 138 of the Negotiable Instruments Act. On appeal, the order of conviction was set aside and presently the case is pending by way of a Revision Petition before the High Court of Karnataka. The learned counsel further submitted that the petitioner has also filed a suit in C.S.No.941 of 2010 before this Court and by way of an interim order, the property of the 2nd respondent was also attached and the same was confirmed in appeal in OSA No.74 of 2011.

8. By pointing out the above proceedings, the learned counsel submitted that this the present criminal proceedings is a counter blast for the proceedings initiated by the petitioner against the 2nd respondent and it is tainted with malafides.

9. The learned counsel appearing on behalf of the 2nd respondent submitted that the petitioner along with A-1 had cheated the 2nd respondent to the tune of Rs.1.05 crores and there are prima facie materials against the petitioner and the proceedings cannot be stalled at this stage and the petitioner has to establish his defence only in the course of trial before the Court below. The learned counsel further submitted that the other proceedings which has been referred by the learned counsel for the petitioner, will not have any bearing in the present case.

10. The learned Government Advocate appearing on behalf of the 1st respondent submitted that there are prima facie materials against the petitioner and the case has been pending before the Court below from the year 2012 onwards and therefore a direction can be given to the Court below to complete the proceedings within a time fixed by this Court.

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

12. It is an admitted case that the 2nd respondent had all his dealings with one Krishnamoorthy. The said Krishnamoorthy admittedly was the working partner of M/s.K.V.L.Associates, Chennai, run by the 2nd respondent. There were totally three transactions between the 2nd respondent and A-1. There was no dispute with regard to the first two transactions and the real dispute started only in the 3rd transaction wherein the 2nd respondent claims that A-1 along with A-2 had purchased the property only for a sum of Rs.1.50 crores and have swindled the balance sum of Rs.1.05 crores. This allegation was made on the ground that the lands at Sarjapur were purchased at a lower rate and the 2nd respondent was made to believe that it was purchased for Rs.2.55 crores. This fact came to the knowledge of the 2nd respondent only after he verified the sale deeds given to him.

13. The 2nd respondent had roped in the present petitioner only on the ground that this petitioner was also a Vendor along with A-1 when they purchased property valued at Rs.1.50 crores and had swindled the balance sum of Rs. 1.05 crores.

14. In the considered view of this Court, no offence has been made out under Section 406 of IPC. To constitute an offence of criminal breach of trust, there must be entrustment of property in favour of the accused person. Admittedly nothing was entrusted by the 2nd respondent in favour of the petitioner and the petitioner infact was a total stranger to the dealing that happened between the de facto complainant and A-1.

15. Insofar as the offence of cheating is concerned, there has to be an intention to cheat right from the inception. In the present case, the petitioner is sought to be roped in only on the ground that he is a friend of A-1 and he had joined A-1 in purchase of the property which is valued only a sum of Rs.1.50 crores. Based on this allegation, the petitioner is sought to be roped in for an offence of cheating under Section 420 of IPC. Except for this material, there is no other material available against the petitioner and the petitioner was no where in the scene when the actual dealing took place between the 2nd respondent and A-1.

16. This Court is also able to see malafides on the part of the 2nd respondent to rope in the petitioner as an accused person. The 2nd respondent had independent dealings with the petitioner and in the course of the said transaction there was also a cheque dishonor case filed by the petitioner against the 2nd respondent. That apart, the 2nd respondent had also instituted a suit in O.S.No.107 of 2017 against the petitioner and his wife. In both the proceedings, the 2nd respondent who was examined as a witness has taken a categorical stand that he did not have any direct dealing in any transaction with the petitioner. The 2nd respondent has also proceeded to state that he has not paid any money to the petitioner directly or personally. That apart, the 138 proceedings is now pending at the stage of revision before the High Court of Karnataka and the suit for recovery of money filed by the petitioner against the 2nd respondent is pending before this Court in C.S.No.941 of 2010.

17. The facts narrated above clearly shows that the 2nd respondent had an axe to grind against the petitioner and therefore this case will directly come within the parameters prescribed by the Hon'ble Supreme Court in State of Haryana And Ors .Vs. Ch.Bhajan Lal And Ors. reported in 1992 Sup.1 SCC P 335. One of the criteria that was stated by the Hon'ble Supreme

Court for quashing the proceedings is where the criminal proceedings is manifestly tainted with malafides and it has been instituted with an ulterior motive for wrecking vengeance on the accused person and with a view to spite him due to private and personal grudge.

18. This guideline will directly apply to the facts of the present case. The petitioner has been falsely roped in this case by the 2nd respondent as a counter blast to the other proceedings that are pending between the petitioner and the 2nd respondent. A person who had nothing to do with the dealings between the 2nd respondent and A-1 and who was no where present in the entire transaction, was made as an accused in this case merely on the ground that the petitioner is the friend of A-1.

19. In the result, the proceedings against the petitioner pending before the Court below in C.C.No.221 of 2012, is an abuse of process of Court and it requires interference by this Court in exercise of its jurisdiction under Section 482 of Cr.P.C. The proceedings in C.C.No.221 of 2012, on the file of the learned Judicial Magistrate at Alandur is quashed insofar as this petitioner is concerned.

Accordingly, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

KP

To

1. The Sub Inspector of Police,
   Central Crime Branch,
   Chennai.

2. Judicial Magistrate,
   Judicial Magistrate Court, Alandur.

3.The Chief Judicial Magistrate,
Chengalpattu.

4.The Public Prosecutor,
High Court, Madras.

+1cc to M/s.V.Balasubramanian, Advocate Sr.54283
+1cc to M/s.V.Raghavachari, Advocate Sr.54307

Crl.OP No.2343 of 2014

vsn II[co]
srg 06/08/2019