IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2019

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.No.25055 of 2014
and
M.P.No.1 of 2014 & M.P.No.2 of 2015

S.Sivanagaraj ... Petitioner/Accused No.3

Vs.

1. State through
The Sub-Inspector of Police,
Central Crime Branch,
Egmore,
Chennai - 600 008.
(Crime No.261 of 2011) ..Respondent/Claimant

2. Mrs.Prabavathi @ Prabha

[R2 impleaded as per the order
dated 10.06.2015 made in M.P.No.1 of 2015] ... Respondents

Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.6122 of 2012 pending on the file of the Learned Chief Metropolitan Magistrate, Egmore, Chennai and quash the same.

For Petitioner : R.Ganesh Kumar

For R1 : M.Mohamed Riyaz
Additional Public Prosecutor

For R2 : Dr.C.Ravichandran

ORDER

This petition has been filed seeking to quash the proceedings in C.C.No.6122 of 2012 pending on the file of the Learned Chief Metropolitan Magistrate, Egmore, Chennai.

2. The respondent police have filed a final report before the Court below against 3 accused persons and the petitioner has been ranked as A3.

3. The case of the prosecution is that the second respondent had close connection with A1 and she was a family friend. A2 is the husband of A1. It is further alleged that A1 had informed the defacto complainant that they had investment with JBJ City Developers and they were earing a lot of money and thereby, induced the defacto complainant to invest money in the said company. Believing the words of A1, the defacto complainant is said to have given money during various periods total of amounting to a sum of Rs.93 lakhs. This money is said to have been misappropriated and also not repaid back to the defacto complainant, and therefore, a complaint came to be given before the respondent police which resulted in a final report after investigation for an offence under Section 420 read with Section 34 of IPC.

4. The learned counsel for the petitioner submitted that even if the statements made by the witnesses and recorded by the Investigating Officer under Section 161 of Cr.P.C. are taken as it as, no offence of cheating is made out against the petitioner since admittedly the entire transaction was between the defacto complainant and A1.

5. The learned counsel further submitted that the petitioner cannot be arrayed as an accused only on the ground that some cheque payments were also made to the petitioner.

6. The learned counsel also submitted that the petitioner who was not involved in the transaction right from the inception cannot be arrayed as an accused by virtue of a transaction that took place on one occasion and therefore, the ingredients of Section 420 of IPC is not satisfied as against the petitioner. The learned counsel further submitted that the entire proceeding is an abuse of process of Court, so far as the petitioner is concerned.

7. Dr.C.Ravichandran, learned counsel appearing on behalf of the second respondent submitted that the petitioner filed a petition for discharge before the Court below and while the same was pending, has come forward to file this quash petition and therefore, the present petition is not maintainable.

8. The learned counsel further submitted that the petitioner was also involved in the transaction and for the purpose of framing of charges, there are sufficient materials against the petitioner and therefore, this Court should not interfere with the proceedings at this stage. In order to substantiate the same, the learned counsel brought to the notice of this Court the HDFC cheque that was given in the name of the petitioner

which is said to have been encashed by the petitioner.

9. The learned counsel also submitted that the defacto complainant had lost nearly 93 lakhs in the entire transaction and there is absolutely no progress in the proceedings pending before the Court below.

10. The learned Additional Public Prosecutor submitted that there are materials available against all the accused persons and a strong suspicion is enough for the purpose of framing charges and all the grounds raised by the petitioner can be taken into consideration in the course of the trial.

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

12. It is important to consider the statement given by the defacto complainant to the Investigating Officer. The entire statement shows that the defacto complainant had dealings with A1 since both of them are known to each other for a long period of time. In the said statement, she explained the manner in which the A1 had approached her and induced her to make investment at JBJ City Developers and thereby, had collected various amounts in instalments. The defacto complainant has also specifically stated that both A1 and A2 had given various cheques towards the repayment of the amount and all those cheques were dishonored for insufficient funds.

13. In the entire statement, except for making a vague allegation against the petitioner, there is nothing specific against the petitioner and the defacto complainant has mentioned about the fact that a cheque was given in favour of the petitioner.

14. The person who can explain the entire transaction is the second respondent who had direct dealings with A1.

15. The defacto complainant except for making a general allegation against the petitioner, does not make any specific allegation against the petitioner with regard to the investment that was made in the company called as JBJ City Developers. In other words, there is absolutely no material to show that this petitioner was also involved in the transaction that took place between A1 and the defacto complainant.

16. A reading of the 161 statement recorded from the other witnesses also do not pin point any specific allegation as against this petitioner, in order to attract the offence of cheating.

17. In the considered view of this Court, this petitioner has been unnecessarily arrayed as an accused in the final report and he has been roped in for the only reason that he is the son of A1. The continuation of the proceedings as against this petitioner is an abuse of process of Court and the same needs interference of this Court in exercise of its Jurisdiction under Section 482 of Cr.P.C.

18. In the result, the proceedings in C.C.No.6122 of 2012 on the file of Learned Chief Metropolitan Magistrate, Egmore, Chennai, is quashed insofar as the petitioner is concerned. Insofar as the other accused persons are concerned, the Court below is directed to proceed further with the case in C.C.No.6122 of 2012 and complete the proceedings within a period of four months from the date of receipt of a copy of this order.

19.This Criminal Original Petition is disposed of with the above direction.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

raja
To
1. The Sub-Inspector of Police,
Central Crime Branch,
Egmore, Chennai - 600 008.

2. The Public Prosecutor,
High Court, Madras.

3.The Chief Metropolitan Magistrate
Egmore, Chennai

+1 CC to Mr.R.Ganesh Kumar, Advocate sr 54762.

CRL.O.P.No.25055 of 2014
and
M.P.No.1 of 2014 & M.P.No.2 of 2015

VBA(CO)
SP(26/07/2019)