IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 21.12.2018
Pronouncing orders on :03.01.2019

CORAM

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

Crl.OP No.26326 of 2014

S.Martin ...Petitioner / Accused No.2

Versus

1. State rep. by
   Inspector of Police,
   B9, Saravanapatti Police Station,
   Coimbatore (Crime No.253 of 2012) .. Respondent

2. Ganesan .. Defacto complainant / Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr. PC to call for the records in the final report in CC No.688 of 2012 pending on the file of the Learned Judicial Magistrate No.11, Coimbatore and quash the same as illegal and abuse of process of law.

For Petitioner : Mr.K.G.Senthil Kumar

For Respondents: Mr.Mohammed Riyaz for R1
Mr.J.Rajendran for R2

ORDER

This Criminal Original petition has been filed seeking to quash the proceedings in CC No.688 of 2012, pending on the file of the Learned Judicial Magistrate II, Coimbatore.

2. The petitioner has been added as Accused No.2 in the final report. The case of the prosecution is that the defacto complainant and his friend used to purchase lottery tickets from one Mr.John Britto, who has been added as Accused No.1 in the final report. On 15.12.2011, the defacto complainant is alleged to have given a sum of Rs.1,00,000/- (Rupees one lakh only) to Accused No.1 at his residence in Saravanampatti, Coimbatore and Accused No.1 promised to send 50,000 Lottery Tickets by Courier. However, the Lottery Tickets were not sent to the defacto complainant. The Defacto complainant along with his friends repeatedly asked Accused No.1 to send the lottery tickets. But,

however it was not sent to the defacto complainant and the entire amount has been received by Accused No.1 with an intention to cheat the defacto complainant.

3. Based on the complaint given by the 2nd respondent, the respondent police registered an FIR in Crime No.253 of 2012 on 12.03.2012 only as against the said John Britto. There was neither any allegation against this petitioner nor was this petitioner added as an accused in the FIR.

4. Investigation was taken up by the respondent police and statements were recorded from witnesses. Ultimately, the final report came to be filed before the Court below on 21.07.2012 against two accused persons and this petitioner was arrayed as Accused No.2. The final report was filed for an offence under Section 406, 420, 120B of IPC. The same was taken cognizance by the Court below.

5. The learned counsel for the petitioner would submit that at the time when the complaint was given by the 2nd respondent, there was absolutely no allegation made against this petitioner and the entire dealings of the 2nd respondent was only with John Britto. The learned counsel for the petitioner would submit that the petitioner has been added as an accused only with a view to harass him and there are absolutely no materials against the petitioner. The learned counsel also brought to the notice of this Court the statements taken from the witnesses who initially have spoken only about John Britto. On subsequent statement taken from the witnesses, the name of this petitioner has been roped in by coming up with a new case of criminal conspiracy.

6. The learned counsel also submitted that the confession made by the accused before the police which is not admissible, has also been relied upon at the time of filing the final report. Therefore, the learned counsel would submit that the proceedings as against this petitioner will have to be quashed.

7. The 1st respondent has filed a counter affidavit before this Court. The learned Additional Public Prosecutor submitted that even though the name of the petitioner was not shown as an accused in the FIR, subsequently, in the course of investigation, materials were collected by the police against this petitioner who had conspired with the said John Britto and therefore, the name of this petitioner has also been added as an accused in the final report. The learned counsel would further

submit that there is a strong suspicion as against this petitioner, based on the material collected by the police in the course of investigation. These materials are enough to frame a charge against the petitioner and this Court should not interfere with the proceedings against the petitioner at this stage and the petitioner must be made to face the trial before the Court below.

8. This Court has carefully considered the rival submissions.

9. The complaint given by the 2nd respondent very clearly states that he gave a sum of Rs.1,00,000/- to Mr.John Britto, who promised to send 50,000 Lottery Tickets by Courier. The complaint does not state any interaction by the 2nd respondent with the petitioner and in fact the petitioner was nowhere involved in the transaction between the 2nd respondent and the above said John Britto. Even in the 161 statement recorded by the police, the 2nd respondent does not state anything against the petitioner in the initial statement given by him. In the subsequent statement, the 2nd respondent all of a sudden brings in the name of the petitioner on the ground that this petitioner is the Brother-in-law of the said John Britto. He states that the petitioner and John Britton are doing the Lottery business together. This is the only material available from the side of the 2nd respondent.

10. The respondent police have also relied upon the statements made by one Shankar (LW4) and states that he was a witness in the police station where the petitioner who was brought on police custody, confessed before the police that he has also taken a share of the money from John Britto. One more witness Paramasivan (LW5) was also examined, who gave a similar statement as given by Shankar.

11. The statements given by LW4 and LW5 cannot be relied upon and the so called confession given by the petitioner before the police is clearly barred from being used as a evidence under Section 25 & 26 of the Indian Evidence Act, 1872. The statement taken from the 2nd respondent does not make out a case of criminal conspiracy against the petitioner. It is clearly seen from records that this petitioner did not have any role to play in the transaction between the 2nd respondent and the above said John Britto. There are absolutely no materials against this petitioner in the final report filed by the respondent police.

12. In view of the above, this Court is of the considered opinion that the proceedings against the petitioner is an abuse of process of Court and the same requires interference by this Court in exercise of its Jurisdiction under Section 482 of Cr.P.C.

13. In the result, the proceedings in CC. No.688 of 2012, pending on the file of the Learned Judicial Magistrate II Coimbatore, is hereby quashed insofar as this petitioner is concerned. Accordingly, the Criminal Original Petition is allowed.

-s/d-
Deputy Registrar

True Copy

Sub-Assistant Registrar

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To
1. The Judicial Magistrate II
Coimbatore

2. The Inspector of police
B 9 Saravanampatti Police Station
Coimbatore

3. The Public Prosecutor,
High Court of Madras

+2 Ccs to Mr.K.G.Senthil Kumar, Advocate sr 266

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SP(07/01/2019)