BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2019

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Crl.O.P.(MD).No.5137 of 2017
and Crl.M.P.(MD).No.3643 of 2017

S.Rajasekar .... Petitioner/Accused No.4

Vs.

1.The State through
The Inspector of Police,
Thilagar Thidal Police Station,
Madurai City. .... Respondent/Complainant

2.Ganesan .. Respondent/Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating in Cr.No.773 of 2017 on the file of the 1st respondent and quash the same as illegal as against the petitioner.

For Petitioner : Mr.R.Murugan

For Respondents : Mr.R.Anandharaj for R1
Additional Public Prosecutor

No Appearance for R2

ORDER

This Criminal Original Petition has been filed by the petitioner / fourth accused to quash the proceedings pending as against him in Crime No.773 of 2017 on the file of the Thilagar Thidal Police Station, Madurai City.

2. According to the defacto complainant, he purchased the land in D.No.17/26, North Krishnan Kovil Street, to an extent of 738 Sq.ft., from one Sasikala, on 06.02.1995 and registered the same in the State of Kerala. The said document was subsequently missing and he re-registered the same in Tamil Nadu by making necessary fee on 13.12.2000 before the District Registrar, Madurai North. He has also executed a settlement deed in favour of his son, namely, Vijayasundarapandiyan on 24.03.2004 in Doc.No.561 of 2004. The case of the defacto complainant is that his son-in-law, one Sadasivam, had stolen the document in the year 1995, which was registered in Kerala from his House and with that stolen document and with the connivance of the Manager of State Bank of India, Tharapuram Branch, the said Sadasivam has availed cash credit facility to develop his business in the year 2005. Based on the complaint lodged by the defacto complainant, the present case came to be registered as against the petitioner and three others.

3. The learned Counsel for the petitioner would submit that the petitioner took charge as Manager in the Bank only in the year 2016, whereas, even according to the complainant, the alleged transaction took place in the year 2005, ie., much prior to the date of joining of the petitioner as Manager in the Bank. In fact, the learned Counsel for the petitioner has produced a document showing that the entire transaction of pleading and availing of loan took place in the year 1995, as such, he has no role, whatsoever, in the commission of offence and therefore, he prays for allowing the present petition.

4. While admitting this petition on 27.04.2017, this Court, considering the facts and circumstances of the case, has granted an order of interim stay of all further proceedings in Crime No.773 of 2016, since, even according to the complainant, the document has been stolen by one Sadasivam in the year 2005 and with that, he has pledged the same before State Bank of India, Tharapuram and has availed some monetary benefit out of it.

5. Since the petitioner has made a specific plea that he has not even joined the Bank as on the date of commission of offence, this Court, in the earlier occasions, has directed the respondent police, through the learned Additional Public Prosecutor, to produce documents as to how this petitioner has been roped-in as an accused.

6. The learned Additional Public Prosecutor, on the other hand, submitted that the Bank is not co-operating and the entire documents are lying with the Debts Recovery Tribunal. Moreover, in view of the interim stay granted by this Court, they are not in a position to proceed further.

7. The learned Additional Public Prosecutor has also circulated the copy of the complaint filed before the Judicial Magistrate Court under Section 156 (3) Cr.P.C. and the order passed by the learned Magistrate in Cr.M.P.No.2359 of 2016.

8. It appears that the defacto complainant had filed the complaint under Section 156(3) Cr.P.C before the learned Judicial Magistrate No.II, Madurai, on 24.05.2016. Even before that, a complaint was lodged before the Commissioner of Police on 03.07.2015, which was numbered in C.No.479 Camp/PS/COP/MC/2015 and an enquiry was conducted on 10.08.2015 in C.No.102/C4 Crime/PS/MC/15. For the said enquiry, the petitioner, who is the present Manager of the State Bank of India, Tarapuram Branch, has appeared and had given an undertaking that he would produce the relevant documents for the enquiry on 04.09.2015. But, he failed to do that and in view of the same, further investigation in C.No.102/C4/Crime PS/MC/15 could not be proceeded with and therefore, the complainant was constrained to file the complaint before the Judicial Magistrate under Section 156 (3) as against the petitioner / the present Manager also. The learned Magistrate by his order, dated 09.06.2016 in Cr.M.P.No.2359 of 2016, satisfied with the *prima facie* materials as against the petitioner, had forwarded the complaint for registering the case. Pursuant to the directions of the learned Magistrate in Cr.M.P.No.2359 of 2016, dated 09.06.2016, the present case in Crime Number 773 of 2017 was registered.

9. In fact, the allegation made as against this petitioner is that he has not co-operated for the investigation and has failed to produce the relevant documents and therefore the investigation could not be proceeded further. If the allegations are true, the case would registered for the offence under Section 201 IPC. Therefore, at the threshold of the investigation, this court is not inclined to quash the petition. However, taking into account this petitioner is the present Manager and also the documents are lying with the DRT, the petitioner cannot be fastened with the criminal liability. The counsel for the petitioner would submit that he is ready to co-operate with the investigation and also ready to produce the relevant documents for investigation. However the documents are lying with the DRT and therefore he is not in position to produce the documents at the time of enquiry.

10. In view of the submissions made on either side, this petition is disposed of with a direction to the petitioner to co-operate with the investigation by producing the relevant documents and the investigating Agency shall collect the documents from the DRT by applying for certified copies for the relevant documents and the petitioner shall co-operate for the same. Considering the averments made as against the petitioner, the petitioner need not be harassed during the investigation. Taking into account of the age of the complaint, the investigating agency shall complete the investigation and file the final report within a period of two months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/ True Copy /

Sub Assistant Registrar(CS)

TM

To

1.The Inspector of Police,
   Thilagar Thidal Police Station,
   Madurai City.

2.The Additional Public Prosecutor,
   Madurai Bench of Madras High Court,
   Madurai.

+1 CC to M/s.R.MURUGAN, Advocate (SR-59611[F] dated 08/04/2019)

Crl.O.P.(MD).No.5137 of 2017
08.04.2019

ES/07.06.2019/4P/4C