

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 04.09.2020

Pronounced On : 15.09.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.21391 of 2015
and M.P.No.1 of 2015

Jothi Kannan,
S/o.PEriyasamy,

... Petitioner

Versus

1.The State represented by its
The Inspector of Police,
J3 Guindy Police Station (Crime)
Guindy,
Chennai - 600 032.

2.K.Loganathan,
S/o.C.Kaaliyaperumal,

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for records and quash the FIR in Crime No.2561 of 2015 dated 08.07.2015 pending investigation on the file of the first respondent Police.

For Petitioner : No Appearance

For R1 : Mr.K.Prabakar,
Additional Public Prosecutor

For R2 : Mr.Ashwin Kumar,
Legal Aid Counsel

O R D E R

The petitioner, who is an accused in Crime No.2561 of 2015 for an offence under Section 406, 420, 506(ii) has filed this Quash Petition.

2. No representation on behalf of the petitioner either in person or by his respective counsel.

3. The second respondent has been served with the notice. Despite the same, there is no representation for the second respondent. Hence, this Court considering that the Criminal Original Petition is pending from the year 2015 and the

investigation was also hampered due to the pendency of the above Criminal Original Petition, proposed to dispose the case on merits. Hence appointed Mr.Ashwin Kumar, learned counsel as legal aid counsel for the second respondent.

4. This Court on perusal of materials and submission, dispose of this Original Petition on merits.

5. The gist of the case is that on 31.03.2015, the second respondent had lodged a complaint with the first respondent stating that from the year 2009 he knew the petitioner, the petitioner and his friend both of them were running a business establishment in the name and style of M/s.Isha Heights and Silos Private Limited at Ekkatuthangal, Chennai from the year 2014. The petitioner approached the second respondent and asked him to become a partner in his business, assured him to pay Rs.1,50,000/- per month as salary, to give 50% share of the Company and asked him invest a sum of Rs.10,00,000/- to join as a partner. Since the petitioner being second respondent's friend, he accepted the offer and resigned his job in Siddath Construction, where he was working as the Senior Manager and joined the petitioner. From June 2014 to February 2015 on various occasions, the second respondent had invested an amount of Rs.14,00,000/- in the petitioner's company. From May 2014 onwards, the second respondent started working for the firm. On 25.07.2014, the firm was registered in the name of the petitioner and Balasubramaian, thereafter on 10.12.2014, the second respondent was made as a Director. Since the registration of the company got delayed the petitioner firm took work from his friend Eyalvendan's Company named M/s.Ishan Builders and planned to merge with his Company later, but the petitioner's friend Eyalvendan has not joined as a partner. After getting registration for the petitioner's firm, the second respondent taken up the work at Chathisgraph, Karnataka, Raichur and Odisha on behalf of the firm. Thereafter, when the second respondent insisted for 50% share of the firm on the investment made by him the petitioner refused to give a share and stated that the second respondent is not an investor or shareholder and also refused to give the property document given by the second respondent for availing loan for the petitioner's firm. Earlier petitioner agreed to pay a sum of Rs.1,50,000/- per month as salary but only a sum of Rs.50,000/- was paid as salary for one month alone. The petitioner and his friend Balasubramanian activities slowly changed against the second respondent, the photos and the identity of the second respondent was removed from the Company's website, when the same was questioned by the second respondent, the petitioner stated that the second respondent has never been a Director of the firm and he was only an employee. Hence the second respondent lodged a complaint.

6. The contention of the petitioner is that the business transaction which is civil in nature is given criminal colour. On a bare reading of the complaint would reveal that it is purely a civil transaction and no criminality could be attached. Further the petitioner filed a Civil Suit in O.S.No.113 of 2015, before the learned District Munsif, Erode, wherein the respondent is described as staff of the Company. During March 2015, the petitioner removed the second respondent from the Company since the second respondent was indulged in activities against the interest of the Company. The dispute between the petitioner and the second respondent is only a money dispute with regard to making investment and allocation of shares and for non-payment of salary. The respondent is only a staff in the petitioner Company, the petitioner had paid salary regularly through Bank. The continuation of criminal investigation against the petitioner is unwarranted and hence sought for quashing of the complaint.

7. The learned Additional Public Prosecutor for the first respondent submitted that in this case FIR was registered on 03.07.2015, immediately thereafter on 21.08.2015 the quash petition came to be filed and due to the pendency of the above quash petition the investigation has been stalled.

8. The Legal Aid Counsel for the second respondent submitted that the contention of the petitioner is unsustainable. The second respondent was made Director of M/s.Isha Heights and Silos Private Limited and he made payment of Rs.14,00,000/- over a period of time. He fairly submitted that from the website of the Ministry of Corporate Affairs, it is seen that the second respondent was appointed as Director in M/s.Isha Heights and Silos Private Limited on 10.12.2014, with DIN No.07101249. Hence, opposed for quashing of the FIR in Crime No.2561 of 2015 dated 08.07.2015. Further submitted that the petitioner has not come with clean hands, the Civil Suit in O.S.No.113 of 2015 was filed on 19.05.2015, in which he portrays the second respondent as employee who was removed from service during March 2015. The complaint was lodged in this case on 30.07.2015 and only during investigation the petitioner contention can be verified.

9. Considering the rival submission and perusal of the materials, it is seen that the primary grievance of the second respondent is the second respondent was promised to be made as Director in M/s.Isha Heights and Silos Private Limited for which he had made payment to the tune of Rs.14,00,000/-, he was not made as Director and his photos, identification and his other particulars were removed from the website of the Company. When the same was questioned with the petitioner, he informed that second respondent was not a Director but only a staff Hence, he lodged complaint. From the Ministry of Corporate Affairs Website, it is seen that M/s.Isha Heights

and Silos Private Limited was incorporated on 25.07.2017, in which Jothikannan, Manickam, Balasubramanian are the Directors and thereafter the second respondent and Kaliyaperumal had become Directors from 10.12.2014 and also given a DIN No.07010249. This being the case of the petitioner had filed a plaint with false particulars before the Civil Court in O.S.No.113 of 2015, portray the second respondent as staff and not as Director but in the Ministry of Corporate Affairs's website it is found otherwise. The petitioner has conceded the facts and suppressed the materials and approached the Civil Court as well as this Court. Suppression of truth is equivalent to the expression of falsehood. The Hon'ble Apex Court in the case of Mothilal Songara Vs. Prem Prakash Alias Pappu and Another reported in (2013) 9 Supreme Court Cases 199 has held as follows:

"Anyone who takes recourse to method of suppression in a court of law, is in actuality, playing fraud upon the court, and the maxim suppressio veri, expressio falsi i.e suppression of the truth is equivalent to the expression of falsehood, gets attracted."

10. In view of the same, this Court is not inclined to entertain this petition. The Investigating Officer to conclude the investigation and to file final report within a period of three months, this direction is necessary since Crime No.2516 of 2015 is kept pending without investigation.

11. With the above direction, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

12. This Court places its appreciations to the legal aid counsel Mr.Ashwin Kumar, for meticulous preparation by collecting materials and for making strenuous submissions.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To:

- 1.The State represented by its
The Inspector of Police,
J3 Guindy Police Station (Crime)
Guindy,
Chennai - 600 032.

2.The Additional Public Prosecutor,
High Court, Madras.

Crl.O.P.No.21391 of 2015
and M.P.No.1 of 2015

AJS (CO)
CB(18/12/2020)



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