

Reserved on: 21.02.2020

Delivered on: 28.02.2020

Crl.M.P.No.1332 of 2020
in
Crl.O.P.No.31722 of 2019

P.RAJAMANICKAM.J.,

This petition has been filed to permit the petitioner to implead him as a party in Crl.O.P.No.31722 of 2019.

2. The first respondent herein has filed Crl.O.P.No.31722 of 2019 stating that, he was working as Chief Manager at Dharmapuri Repco bank, during the period from 14.03.2014 to 02.05.2017. Due to some misunderstanding with the Managing Director Mrs.Isabella, she hated him and tried to take actions against him and to settle her vengeance, she instigated the Chief Vigilance Officer to submit a false complaint against him, as if the he has committed misappropriation of Bank's fund to the tune of Rs.6.77 Crores. Based on the said complaint, District Crime Branch, Dharmapuri has registered a case in Cr.No.9 of 2017 under Sections 409, 420, 467, 468 and 477(A) of IPC. The first respondent herein has filed a petition under Section 156(3) Cr.P.C., before the Judicial Magistrate No.I, Dharmapuri requesting to direct the third respondent to register a case against the culprits. The learned Judicial Magistrate No.I, Dharmapuri has forwarded the said

complaint to the third respondent with a direction to register an FIR but, sofar, the third respondent has not registered an FIR. Hence, the first respondent has filed a petition under Section 482 of Cr.P.C., in Crl.O.P.No.31722 of 2019 to transfer the investigation from the file of the third respondent to the CBI.

3. During pendency of the said Criminal Original Petition, the present petition has been filed by the Chief Vigilance Officer, Repco Bank to implead him as a party.

4. The first respondent has filed a counter opposing the said petition.

5. The learned counsel for the petitioner has submitted that when the first respondent was working as Chief Manager in Repco Bank, Dharmapuri Branch, he has committed so many irregularities and misappropriated a huge amount of Rs.6.77 Crores and hence, an FIR has been registered against him in Cr.No.9 of 2017 under Sections 409, 420, 467, 468 and 477(A) IPC. He further submitted that the first respondent has filed an anticipatory bail application in Crl.O.P.No.23165 of 2017 in which the petitioner herein has filed a impleading petition. The said anticipatory bail application was

dismissed as withdrawn on 06.03.2018. He further submitted that the first respondent has filed Crl.O.P.No.25763 of 2017 to register a complaint dated 16.11.2017 in which also the petitioner herein has filed intervener application vide Crl.M.P.No.54654 of 2017. This Court after hearing both sides has dismissed Crl.O.P.No.25763 of 2017. He further submitted that the first respondent has filed another application in Crl.O.P.No.12473 of 2018 seeking anticipatory bail. In that petition also, the petitioner herein has filed an intervener application vide Crl.M.P.No.7284 of 2018. This Court after considering both sides arguments has dismissed the said petition.

6. He further submitted that suppressing the aforesaid facts, the petitioner has filed the present petition to transfer the investigation to the CBI with regard to his complaint dated 22.08.2017 which was enquired and closed by the fourth respondent on 22.08.2017 itself. He further submitted that without pursuing the matter as contemplated under Cr.P.C., the first respondent has filed a petition under Section 156(3) of Cr.P.C., which is against the principles laid down by the Courts in various cases. He further submitted that in order to assist this Court for taking a proper decision, the petitioner may be permitted to implead himself as a party in Crl.O.P.No.31722 of 2019.

7. Per contra, the learned counsel for the second respondent has submitted that since the petitioner is the proposed accused, he is not entitled to participate in this proceedings. He further submitted that only based on the petition filed by the first respondent herein, this Court has transferred the investigation to the CBI in Cr.No.9 of 2017. He further submitted that since Mrs.Ishbella has committed the offence of misappropriation of funds, the first respondent has lodged a complaint before the fourth respondent dated 22.08.2017 but, he has not taken any action on the said complaint and hence, the first respondent has filed a petition under Section 156(3) Cr.P.C., to direct the fourth respondent to register the case, the learned Judicial Magistrate No.I, Dharmapuri also has forwarded the said complaint to the fourth respondent to register an FIR but the fourth respondent has not registered the case and hence, the first respondent has filed a petition in Crl.O.P.No.31722 of 2019 to transfer the investigation to the CBI and in the said proceedings, the petitioner is not entitled to participate and therefore, he prayed to dismiss the petition.

8. The learned Additional Public Prosecutor appearing for the fourth respondent has submitted that he is leaving it to the discretion of this Court.

9. In the normal course, this Court would not permit the proposed accused to implead himself as a party in the petition filed by the complainant seeking direction to register an FIR but in this case, the first respondent has filed Crl.O.P.No.31722 of 2019 to transfer the investigation and in such a case, this Court is of the view that the petitioner can be permitted to implead himself as a party.

10. It is also to be pointed out that already the first respondent herein has filed Crl.O.P.No.25763 of 2017 before this Court to register an FIR based on the complaint dated 16.11.2017. In the said petition, the petitioner herein has filed intervener application vide Crl.M.P.No.54654 of 2017 and at that time, it appears that the first respondent herein has not raised any objection. This Court after hearing both sides including the intervener (petitioner herein), has dismissed the said Crl.O.P.No.25763 of 2017 on 13.03.2018. Under the said circumstances, this Court is of the view that the petitioner herein can be permitted to implead himself as a party in Crl.O.P.No.31722 of 2019.

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11. For the aforesaid reasons, this petition is allowed. The petitioner is permitted to implead himself as a party in Crl.O.P.No.31722 of 2019.

28.02.2020

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Note: Issue order copy on 02.03.2020.



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**Pre-Delivery Judgment in
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in
Crl.O.P.No.31722 of 2019**