IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.02.2020

PRONOUNCED ON : 06.03.2020

CORAM:
THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM
Crl.OP.No.16669 of 2019
and Crl.OP.SR.No.53654 of 2019
and
Crl.MP.Nos.8378 and 16472 of 2019

K.Sudhakar ... Petitioner/Accused

Vs.

N.Balaji ... Respondent/Complainant

PRAYER in Crl.OP.No.16669 of 2019:Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records concerned with C.C.No.108 of 2018 on the file of the Judicial Magistrate II , Thiruvallur and quash the same.

Prayer in Crl.OP.Sr.No.53654 of 2019:Petition filed under section 482 of CRPC to direct the Branch Manager HDFC Bank, Thillai Nagar Branch Thiruchirapalli to deposit the documents, materials, both manual and electronic which are in the possession of the aforesaid Bank relating to the issuance of the bank statement of the petitioner/Respondent/complainant to the Respondent /Petitioner/Accused before the Judicial Magistrate II Thiruvallur pertaining to the CC.No.108 of 2018 within a time frame fixed by this Court pending disposal of above Crl.OP.No.16669 of 2019.

For Petitioner : Mr.B.Srinivasan
(Crl.OP.No.16669 of 2019)
Mr.N.Ganesh
(Crl.OP.Sr.No.53654 of 2019)

For Respondent : Mr.N.Ganesh
(Crl.OP.No.16669 of 2019)

COMMON ORDER

Crl.OP.No.16669 of 2019 has been filed by the accused to quash the proceedings against him in C.C.No.108 of 2018 on the file of the Judicial Magistrate No.II, Thiruvallur.

Crl.OP.SR.No.53654 of 2019 has been filed by the respondent in Crl.OP.No.16669 of 2019 to direct the Branch Manager, HDFC Bank, Thillai Nagar Branch, Tiruchirapalli to deposit all the documents, materials, both manual and electronic which are in the possession of the aforesaid bank, relating to the issuance of his bank statement to the petitioner in Crl.OP.No.16669 of 2019/accused before the Judicial Magistrate-II, Thiruvallur in C.C.No.108 of 2018.

2. Since both the parties have filed petitions, for the sake of convenience, the parties are referred to as per the rank described in Crl.OP.No.16669 of 2019.

3. The petitioner viz., K.Sudhakar is the Father-in-law of the respondent Viz., N.Balaji. The respondent has filed a private complaint stating that he is having a savings account in HDFC Bank, Thillai Nagar Branch, Tiruchirapalli. His father-in-law has obtained his accounts statement from the said bank without his consent and hence, the petitioner has committed offences punishable under Section 66-B and 66-C of Information Technology Act, 2000 r/w Sections 406 and 416 of IPC. Based on the said complaint, the learned Judicial Magistrate II, Thiruvallur has taken the case on file in C.C.No.108 of 2018 under Sections 66-B and 66-C of the Information Technology Act, 2000 r/w under Sections 406 and 417 of IPC and issued summons to the petitioner. After receipt of summons, the petitioner has filed the present petition to quash the proceedings against him in C.C.No.108 of 2018 on the file of the Judicial Magistrate No.2, Thiruvallur.

4. The learned counsel for the petitioner has submitted that the petitioner's daughter Mrs.Sahana filed an application under the Domestic Violence Act in DVC.No.18 of 2018 against the respondent and his family members before the Additional Mahila Court, Tiruchi seeking certain reliefs and the said case is still pending. Subsequently, the respondent has filed HMOP.No.46 of 2018 on the file of the Sub Court, Thiruvallur against the petitioner's daughter for restitutiion of conjugal rights. He further submitted that the petitioner's daughter has filed Tr.C.M.P.(MD) No.309 of 2018 before the Madurai Bench of this Court to transfer the said case to the Court of Additional

Mahila Court, Trichy and accordingly, the Madurai Bench of this Court has allowed the said Tr. CMP and transferred the HMOP.No.46 of 2018 to the file of the Additional Mahila Court, Trichy and as a counter blast the respondent has filed a private complaint on the file of the Judicial Magistrate No.2, Thiruvallur. He further submitted that the petitioner and his wife are having bank accounts in the HDFC Bank, Thillai Nagar Branch, Trichy and only for the purpose of operating their accounts, the petitioner went to the said Bank, but the respondent has filed a private complaint stating that the petitioner has misused the respondent's identity obtained his bank statement. He further submitted that even if the allegations made in the complaint are taken as true at the face value, the petitioner cannot be convicted under Sections 65-B and 65-C of the Information Technology Act,2000 and under Sections 406 and 417 of IPC. He further submitted that even as per the allegations made in the complaint, the alleged occurrence took place at Trichy and in such a case, the Judicial Magistrate No.2, Thiruvallur is not having jurisdiction, but, only with a view to harass the petitioner, the respondent has purposefully filed a private complaint before the Judicial Magistrate No.2, Thiruvallur and therefore, he prayed to quash the proceedings in C.C.No.108 on the file of the Judicial Magistrate No.2, Thiruvallur.

5. Per contra, the learned counsel for the respondent has submitted that the marriage between the respondent and the petitioner's daughter was solemnized on 16.02.2017 and subsequently, the petitioner's daughter left the matrimonial home and permanently settled at her parents house at Srirangam, Trichy District and filed Domestic Violence Case against the respondent and his family members. He further submitted that on 02.11.2017, the respondent, on perusal of his bank account statement, he found that a sum of Rs.118/- has been debited from his bank account for issuance of physical account statement and thereafter, the respondent has made an enquiry with the bank officials, but, they did not respond properly and hence, the respondent has sent complaints through e-mail on 04.11.2017 to the bank authorities. On 17.11.2017, after a gap of 13 days and after continuous efforts, the bank authorities gave a vague reply stating that someone had applied for the account statement of the respondent at HDFC Bank, Thillai Nagar Branch, Trichy and received the same, eventhough the respondent had not authorized any one to apply and receive his bank statement. The respondent immediately rushed to the bank, Thillai Nagar Branch, Trichy, to ascertain as to who had applied and obtained his bank statement. The bank Manager of the said branch assured that he would inform the person who obtained the respondent's bank

statement within a week, but, he did not inform as assured by him and hence, the respondent has lodged a complaint before the Inspector of Police, Thillai Nagar, Trichy regarding the activities of the bank Manager. The Inspector of Police, Thillai Nagar, Trichy after receipt of respondent's complaint, issued CSR.No.316 of 2017 dated 21.11.2017. Thereafter, the said Inspector called the bank officials and enquired them and during the said enquiry also the bank officials have assured that they will furnish full details, but, they have not disclosed the person who obtained the bank statement of the respondent fraudulently.

6. The learned counsel for the respondent further submitted that the respondent has sent a lawyer's notice to the bank authorities on 18.11.2017, requesting them to give the CCTV footage and records,so that any clue can be obtained from it. Only thereafter, the bank authorities sent a reply through their counsel stating that the account statements were collected by the petitioner herein. He further submitted that the petitioner herein with a criminal intention misrepresented before the bank authorities and obtained the respondent's personal bank account statement and the illegal act of the petitioner is punishable under Sections 66-B and 66-C of the Information Technology Act, 2000 r/w 406 and 416 of IPC and accordingly, the respondent has filed a private complaint before the Judicial Magistrate No.2, Thiruvallur and the learned Judicial Magistrate after considering the available materials, conducting enquiry under Section 202 of Cr.P.C, has taken the case on file and issued summons to the petitioner herein. He further submitted that there are materials to show that the petitioner has committed offences under the aforesaid provisions of law and therefore he prayed to dismiss the petition.

7. Admittedly, the respondent is having an account in HDFC bank, Thillai Nagar Branch at Trichy. According to the respondent, on 21.01.2017, on perusal of his bank accounts statement, he came to know that a sum of Rs.118/- was debited from his bank account for issuance of physical account statement. His further case is that he has not applied for issuing bank statement and hence, he approached the concerned bank and enquired, but they did not furnish any particulars as to the person who obtained the said statement and hence he lodged a complaint before the Inspector of Police, Thillai Nagar at Trichy. So, it is clear that the alleged occurrence took place only at Trichy, but, the respondent has filed a private complaint before the Judicial Magistrate No.2, Thiruvallur. It is not known how the said Magistrate has taken cognizance of the aforesaid offence which was said to have been committed at

Trichy.

8. A perusal of the complaint filed by the respondent before the Judicial Magistrate No.2, Thiruvallur shows that he has issued a lawyer's notice to the bank authorities on 18.11.2017 requesting them to give CCTV footages and records, so that any clue can be obtained from it and only after the receipt of the said notice , the bank authorities sent a reply through their counsel stating that the accounts statements were collected by the petitioner herein and based on the same, he filed the private complaint against the petitioner herein. The petitioner herein denied the allegations that he received the respondent's bank statement.

9. Even assuming that the petitioner has obtained the respondent's accounts statement from the bank, the said act would not attract any of the provisions of Sections 66-B and 66-C of Information Technology Act, 2002 r/w Sections 406 and 417 of IPC.

10. Section 66-B of the Information Technology Act, 2002 reads thus:

> "66-B.Punishment for dishonestly receiving stolen computer resource or communication device - Whoever, dishonestly receives or retains any stolen computer resource or communication device knowing or having reason to believe the same to be stolen computer resource or communication device, shall be punished with imprisonment of either description for a term which may extend to three years or with fine which may extend to rupees one lakh or with both."

11. A reading of the aforesaid provision would show that who ever dishonestly received or retains any stolen computer resource or communication device knowing or having reason to believe the same to be stolen computer resource or communication device, shall be punished. In this case, it is not the case of the respondent that the petitioner has received or retained any stolen computer resource or communication device. Therefore, the aforesaid provision will not attract to the facts of this case.

12. Section 66-C of the Information Technology Act, 2002 reads thus:

> "66-C.Punishment for identity theft -- Whoever, fraudulently or dishonestly make use of the electronic signature, password or any other unique identification feature of any other person, shall be

punished with imprisonment of either description for a term which may be extend to three years and shall also be liable to fine with may extend to rupees one lakh. "

13. A reading of the aforesaid provision shows that whoever fraudulently or dishonestly make use of the electronic signature, password or any other unique identification feature of any other person is punishable under the said section. In this case, it is not the case of the petitioner that the petitioner fraudulently or dishonestly used the electronic signature or password or any other unique identification feature of the respondent. Therefore, the aforesaid provision also would not attract to the facts of this case.

14. Section 406 of IPC is the penal provision for the offence of criminal breach of trust. Section 405 of IPC defines Criminal Breach of Trust which reads thus:-

" 405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust"

15. A reading of the aforesaid provision shows that for attracting the said Section, the accused must have been entrusted with property or dominion over it and that the accused must have misappropriated the property or disposed it that property in violation of such trust. In this case, it is not the case of the respondent that he entrusted any property with the petitioner herein and under the said circumstances, the aforesaid Section also would not attract.

16. Section 416 of IPC reads thus:

"416. Cheating by personation- A person is said to " cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is. "

17. 'Cheating' is defined under Section 415 IPC which reads thus:-

> "415.Cheating - Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to contest that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"
>
> Explanation-- A dishonest concealment of facts is a deception within the meaning of this section."

18. For attracting the aforesaid provisions, there must be an inducement with fraudulent or dishonest intention and in pursuance of the said inducement the aggrieved person should deliver some property. In this case, it is not the case of the respondent that the petitioner has induced him and in pursuance of the said inducement he delivered any property to the petitioner. Further, it is not the case of the respondent that the petitioner pretended himself as respondent and obtained his bank statement from him. Therefore, the aforesaid provision also would not attract.

19. If the bank has issued Statement to the petitioner without consent of the respondent, utmost he can ask any relief which is available under the law against the bank authorities. Instead of that, he cannot prosecute the petitioner. Therefore, this court is of the view that continuance of the proceedings against the petitioner in CC.No.108/2018 on the file of the Judicial Magistrate No.2, Thiruvallur would amount to abuse of process of court and hence, the said proceedings are liable to be quashed.

20. The respondent herein has filed Crl.MP.Sr.No.53654 of 2019 to direct the Branch Manager, HDFC Bank, Thillai Nagar, Trichy to produce the documents relating to the issuance of his bank statement to the petitioner herein before the Judicial Magistrate No2, Thiruvallur in CC.No.108 of 2018 on the file of the Judicial Magistrate No.2 Thiruvallur. Sine the proceedings against the petitioner in CC.No.108 of 2018 on the file of the Judicial Magistrate, No.2, Thiruvallur itself quashed, the aforesaid petition is liable to be dismissed.

21. In the result, the Crl.OP.No.16669 of 2019 is allowed. The proceedings against the petitioner in CC.No.108 of 2018 on

the file of the Judicial Magistrate No.2 Thiruvallur are quashed. Hence, the petition in Crl.OP.SR.No.53654 of 2019 is dismissed. Consequently, the other connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

Vv
To

1. The Judicial Magistrate II , Thiruvallur.

+2 cc to Mr.N.Ganesh Advocate sr20962

Pre-delivery Order made in

Crl.OP.No.16669 of 2019
and Crl.OP.SR.No.53654 of 2019
and
Crl.MP.Nos.8378 and 16472 of 2019

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