IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2020

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1004 of 2020

S.Sivaraman ... Petitioner

Vs.

State Represented by,
Inspector of Police,
District Crime Branch,
Salem District. ... Respondent

PRAYER: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set-aside the order dated 01.07.2020 made in C.M.P.No.880 of 2019 on the file of the Judicial Magistrate No.6, Salem and to allow the above Criminal Revision Petition.

For Petitioner : Mr.C.Ramkumar

For Respondent : Mr.C.Iyyappa Raj,
Additional Public Prosecutor

ORDER

The petitioner, who is facing trial in C.C.No.205 of 2018, for offence under Sections 468, 471 and 477(A) IPC before the learned Judicial Magistrate No.VI, Salem, has filed a petition under Section 190(1)(2)(c) of Cr.P.C., to implead four persons as accused. The learned Judicial Magistrate No.VI, Salem, by order, dated 01.07.2020 in C.M.P.No.880 of 2019 in C.C.No.205 of 2018, negatived in the prayer of the petitioner and dismissed the petition, against which the present revision.

2.The case of the prosecution is that the petitioner, who was working as Deputy Head Assistant in State Bank of India, Attayampatti Branch, misappropriated a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) by falsification of account, fabrication of documents and got illegal benefit from the customer account. The bank authorities lodged a complaint, based on which, an FIR in Crime No.68 of 2005 came to be registered on 15.06.2005 against the petitioner. On completion of investigation, charge sheet was filed on 21.09.2007. During pendency of the trial, the petitioner had filed the above petition under Section 190(1)

(2)(c) of Cr.P.C., to implead four persons as accused and the same was dismissed by the trial Court, against which the present revision.

3.The learned counsel for the petitioner submitted that the petitioner while working as Deputy Head Assistant in State Bank of India, Attayampatti Branch, he was alloted the work of counting all denomination of currency notes and recounting of funds upto Rs.50/- denomination only. It is the Senior Assistant called as Single Window Operator (hereinafter called as 'SWO') has to make payment to the customers. The power given to SWO was to make payment upto Rs.10,000/-, for which he need not get approval from the higher officials namely Accountant or Manager, who using their password, passing the referrals through the system. If the Deputy Head Assistant is sitting as SWO, there should be a prior written order to act as Single Window Operator by the Accountant and Manager. As per the guidelines given under "Single Window Delivery System".

4.The learned counsel for the petitioner further submitted that the proposed accused viz., Mohan, Damodaran, Rajaram and Padmanaban are higher officials, who approved and checked using their password in system after scrutinizing the account of the customers during withdrawal. They are not shown as accused, instead shown as witnesses. The contention of the petitioner is that without the knowledge and approval of the above said persons, no withdrawal and payment could be made. The allegation against the petitioner is that the petitioner operated the account of one Marimuthu (deceased) and withdrew the cash. Likewise, the petitioner identified the inoperative accounts, verified the specimen signature of the account and signed as those persons and withdrew huge sums of money and thereby, misappropriated the bank public funds, for which the petitioner is facing prosecution.

5.The contention of the petitioner is that as per the procedure of the bank, the petitioner cannot independently withdraw such amount, without authentication and approval of higher officials such as Branch Manager, Accountant and Head Cashier. The prosecution for obvious reasons had not conducted investigation in this regard, made the petitioner a scape goat. Hence, to bring out the truth, the petitioner had filed the petition before the trial Court.

6.Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that the FIR came to be registered on 15.06.2005, on the complaint of the bank officials. On completion of investigation, charge sheet was filed on 21.09.2007. During investigation, it was found that the petitioner while acting as SWO used the account of one

Marimuthu (deceased) and withdrew huge sums of money. Further, from the customers account, by accessing the customer details and their bank account. The petitioner had identified inoperative account, gained access to the specimen signature and signed as of those persons and withdrew huge sums of money over a period of time to the tune of Rs.10 lakhs. On completion of investigation, charge sheet came to be filed. On filing of the charge sheet, the petitioner immediately filed a discharge petition and dragged the case for five years. The discharge petition was dismissed on 02.02.2012, charges were framed on 30.12.2013, PW1-Mohan was examined on 24.05.2013 and Exs.P1 to P14 were marked and the case was posted on 02.06.2017 for further examination. After three years, the petitioner on 31.07.2019 had filed the above petition before the trial Court, which is not maintainable in law and facts.

7.He further submitted that the petitioner has been filing one petition or other to drag on the proceedings by adopting dilatory tactics. The recording of evidence, in this case, is said to have taken place in the year 2005 and for the past 15 years, the trial is kept pending. This Court on earlier occasion in Crl.O.P.No.4916 of 2018, dated 04.09.2020 had issued a direction to complete the trial within a period of six months. The trial Court, by well reasoned order, had dismissed the petition, which need not be interfered.

8.This Court considered the rival submissions and the materials available on record.

9.The petitioner has filed the petition under Section 190(1)(2)(c) of Cr.P.C., before the trial Court, stating that his higher officials namely Mohan, Damadaran, Rajaram and Padmanaban authorized and approved withdrawal and payments. Further, SWO can deal only upto the amount of Rs.10,000/-. The petitioner was posted as SWO. From the evidence of PW1 and Ex.P4, it is seen that the SWO can receive or make payment only up to 10,000/- and over and above and it has to be approved by his officials Accountant, Branch Manager and Head Cashier, by scrutinizing the account and verifying the signature of the customers. The above mentioned persons are higher officials who have passed and approved the cheque using their secret password in system. For acting as SWO, there should be a prior written order by the Accountant or Branch Manager.

10.It is also seen that in this case, the FIR registered in the year 2005, charge sheet filed in the year 2007, discharge petition dismissed in the year 2012, charges framed against the petitioner in the year 2013 and PW1 was examined in the year 2017. Three years thereafter, the petition under Section 190(1)(2)(c) came to be filed on 31.07.2019, which clearly shows the attitude and intention of the petitioner, which is nothing but to delay and protract the trial, by any means. Hence, the petition filed by the petitioner is nothing but a malice.

11.On plain reading of Section 190(1)(2)(c) of Cr.P.C., it is seen that the Magistrate upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed to take cognizance. In this Section, any person does not include accused. The contention of the is a fallacy.

12.The trial Court by discussing all these aspects, had rightly dismissed the petition by a detailed order. This Court does not finds any illegality or infirmity in the order of the trial Court and finds no merits in the submission of the learned counsel for the petitioner. Hence, the order dated 01.07.2020 in C.M.P.No.880 of 2019 in C.C.No.205 of 2018 passed by the learned Judicial Magistrate No.VI, Salem is, hereby, upheld and the revision is, accordingly, dismissed, with a direction to the trial Court to take action against the petitioner, if he fails to cooperate with the trial and also to complete the trial within a period of 6 months as directed in Crl.O.P.No.4916 of 2018. It is made clear that the six month for completion of trial commences from the date of receipt of a copy of this order. The six month time limit is only an outer limit. All endeavour to be made by the trial Court in completing the trial within the stipulated time.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate Court No.VI,
Salem.

2.The Inspector of Police,
District Crime Branch,
Salem District.

3.The Public Prosecutor,
High Court, Madras.

Crl.R.C.No.1004 of 2020

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