IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.02.2020

PRONOUNCED ON : 20.02.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

Crl.OP.No.18126 of 2019
and
Crl.MP.Nos.9173 and 13793 of 2019

1. Nithya Prathabchandran
2. Pradhap Chandran
3. Karthick
4. Saradha ... Petitioners /Accused

Vs.

1. State by:
Inspector of Police,
Saravanampatty Police Station,
Coimbatore City,
Crime No.594 of 2019 ... Respondent/Complainant

2. Deepa Mahendran ... Respondents/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records related to the case in Crime No.594 of 2019, on the file of the first respondent police and quash the same as against the petitioners/accused.

For Petitioners : Mr.R.Thamarai Selvan
For Respondents : Mr.M.Mohamed Riyaz
Additional Public Prosecutor for R1
Manoj Sreevalsan for R2

ORDER

This petition has been filed by the accused Nos.1 to 4 to quash the FIR in Crime No.594 of 2019 on the file of the first respondent.

2. The second respondent herein has filed a private complaint before the Judicial Magistrate No-II, Coimbatore under Section 156(3) of Cr.P.C alleging that the petitioners herein have committed the offences punishable under Sections 120-B and 420 IPC. The learned Judicial Magistrate No-II, Coimbatore has forwarded the said complaint to the first respondent directing him to register an FIR. Accordingly, the first respondent has registered an FIR against the petitioners herein in Crime No.594

of 2019 under Sections 120-B and 420 IPC.

3. According to the second respondent, herself and the first petitioner herein have entered into a partnership deed on 27.04.2018 for running a hotel business in the name of Hotel Shree Annambigaa at Coimbatore. Her further case is that herself and the first petitioner herein have invested Rs.5,00,000/- each with regard to the said partnership business and the partnership deed was executed on 27.04.2018 for running the said hotel. They took the property of one Sheiq Mohideen and K.M.M.Sideq Bhousya on lease. Her further case is that they opened a joint bank account in the name of the Hotel Shree Annambigaa in Karur Vyshya Bank, Ganapathy Branch at Coimbatore for the purpose of day to day transactions. Subsequently, a new bank account in City Union Bank, Papanayakkanpalayam Branch, Coimbatore was opened on 27.08.2018 to deposit the amounts in the said bank, but, the first petitioner instead of depositing the amounts relating to the collections in the aforesaid bank accounts, she opened a new account in some other bank and deposited the amounts in the said account and thereby cheated her to the tune of Rs.1,28,75,000/- which is the income from the hotel business. Her further case is that, the second petitioner is the husband of the first petitioner, the fourth petitioner is the mother of the second petitioner and the third petitioner is the Manager of the said hotel and all of them conspired and swindled the aforesaid amount and hence, they are liable to be punished under Sections 120-B and 420 IPC.

4. The learned counsel for the petitioners has submitted that the transaction is purely civil in nature. He further submitted that the second petitioner and the second respondent's husband are friends and that the second respondent's husband was running a private limited company in the name of M.M.Kitchen Engineering PVT Ltd., supplying of kitchen equipments. He further submitted that the second petitioner is running a company in the name of AIR Tech Consultancy Services. The second respondent's husband Mahendran has faced some financial crisis in his business and hence, the second petitioner has helped several times monetarily to lift the business of the respondent's husband. Since the said Mahendran was not running the business good condition, in order to help him, the second petitioner has planned to start a new hotel business in the name of the first petitioner and the second respondent. Since the second respondent's husband is not having money, the second petitioner alone invested the amount for running the hotel business and also paid a sum of Rs.20,00,000/- towards advance to the landlord of the building.

5. The learned counsel for the petitioners has further submitted that the second petitioner has invested a huge sum of

Rs.2,68,01,860/- for furnishing interiors and for purchasing provisions, but, neither the second respondent nor her husband paid any amount. He further submitted that since the second respondent, her husband and her daughter without paying any amount disturbed the first petitioner from running the hotel business, the first petitioner has filed a suit on 24.01.2019 in O.S.No.90 of 2019 on the file of the District Munsif, Coimbatore for the relief of permanent injunction and the same is still pending. After receipt of the summons in the said case, the second respondent has lodged a complaint before the first respondent and that the first respondent has directed the second respondent to produce the relevant documents and after getting time for producing the documents, she filed a private complaint before the Judicial Magistrate No.II, Coimbatore under Section 156(3) Cr.P.C., and the same was forwarded to the first respondent and based on the same, the first respondent has registered an FIR. He further submitted that along with the said complaint, the second respondent has filed a Special Agreement dated 10.01.2019 said to have been executed between the first petitioner and the second respondent, but, actually, the first petitioner has not signed in the said agreement and the said agreement is a forged agreement and therefore, he prayed to quash the proceedings against the petitioners.

6. Per Contra, the learned counsel for the second respondent has submitted that the rental agreement dated 19.01.2018 entered between the landlords and the first petitioner and the second respondent would show that both of them gave an advance of Rs.20,00,000/- to the landlords. He further submitted that the partnership dated 27.04.2018 also would show that the first petitioner and the second respondent contributed Rs.5,00,000/- each for running the hotel business. He further submitted that as per the agreement between the parties, the husband of the second respondent has furnished materials for civil work and vessels and to that effect, a special agreement was executed on 10.01.2019. He further submitted that the petitioners have not denied the allegations that they deposited the amount of income with a new account which was opened by them and that they not even permitted the second respondent to peruse the said accounts. He further submitted that the petitioners have conspired and cheated the second respondent to the tune of Rs.1,28,75,000/- and under the said circumstances of the case, he prayed to dismiss this petition.

7. The learned Additional Public Prosecutor who is appearing for the first respondent has adopted the arguments of the learned counsel for the second respondent. He further submitted that since the petitioners have taken a plea that the second respondent has filed a forged special agreement dated 10.01.2019 along with the complaint, only in the investigation

it can be found, whether the said document is a forged one or not. Therefore, he requests to allow the first respondent to complete the investigation and file a final report.

8. The rental agreement dated 19.01.2018 entered by the first petitioner and the second respondent with the landlords would prima facie show that they have jointly paid a sum of Rs.20,00,000/- towards advance. The partnership deed dated 24.07.2018 which was entered between the first petitioner and the second respondent also would prima facie show that each of them contributed Rs.5,00,000/- for running a hotel business. Further, according to the petitioners, the second respondent's husband has not supplied any materials to the hotel and the alleged documents produced by the second respondent and the special agreement dated 10.01.2019, all are forged documents. The said disputed facts cannot be decided by this Court by invoking the provision of Section 482 Cr.P.C. Only the investigation would find that whether the said documents are genuine documents or forged documents. Therefore, this Court is of the view that the first respondent should be allowed to complete the investigation and file a final report.

9. For the aforesaid reasons, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Vv

To

1. The Inspector of Police,
Saravanampatthy Police Station,
Coimbatore City

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

+2cc to Mr.Manoj Sreevalsan, Advocate, S.R.No.14967
+2cc to Mr.R.Thamaraiselvan, Advocate, S.R.No. 14952

Crl.O.P.No.18126 of 2019
and
Crl.MP.Nos.9173, 13793 of 2019

CA(CO)
GN(26/02/2020)