

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.08.2020

PRONOUNCED ON : 03.09.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.3891 of 2017 and
Crl.M.P.Nos.2887 & 2888 of 2017

Balasubramanian

... Petitioner

.Vs.

1. State,
Rep. by the Inspector of Police,
District Crime Branch,
District Police Officer,
Satuvachari, Chennai-9.

2. A.Athavan

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to C.C.No.188 of 2016 pending on the file of Judicial Magistrate Court No.II, Vellore and quash the same as illegal, incompetent and ultravires by allowing the present Criminal Original Petition.

For Petitioner : Mr.T.N.Rangesh Kanna

For R1 : Mr.C.Iyyappa Raj,
Additional Public Prosecutor

ORDER

The petitioner/A5, who is facing trial in C.C.No.188 of 2016, pending before the learned Judicial Magistrate No.II, Vellore, for offence under Section 406, 420 @ 406, 420 r/w 34 IPC, has filed this quash petition.

2.The gist of the case is that the 2nd respondent was residing in Chennai and running a small industry. The daughter of the 2nd respondent completed 12th standard during April 2013 and he was interested to join her daughter in medical college. At that time, Al-John Peter, who was known to him through his business for more than 13 years, informed the 2nd respondent that

he knew A3-James at Katpadi, A4-Mohanraj and the petitioner/A5 in Salem and they knew A2-Jai Singh, who was working in Christian Medical College, Vellore. A1 further informed that A2 was got medical seat for several persons, likewise he would also get medical seat to his daughter and asked the 2nd respondent to pay Rs.35,00,000/- for getting medical seat.

3.The 2nd respondent agreed for payment of the said amount and on 03.05.2013, he paid Rs.15,00,000/- to A1 near the car park of Christian Medical College, Vellore. At that time, the friend of A1, Sathurakh/LW8 and his Driver/LW9 were along with him. The details of the 2nd respondent's daughter was received by them and A1 asked the 2nd respondent to bring the balance amount. On 16.05.2013, the balance amount of Rs.15,00,000/- was handed over to A1 in the same place. On receipt of the amount, A1 informed that he would soon get admission and asked the 2nd respondent to check the result in Internet. Since the result was not found in Internet, the 2nd respondent enquired with A1. A1 had given one reason or other and finally, the 2nd respondent asked A1 to come to car park of Christian Medical College on 29.08.2013. When the 2nd respondent had gone there, A1 was not available and he came to know that A1 and other accused with common intention cheated several persons as that of the 2nd respondent. Hence, the 2nd respondent lodged a complaint to the 1st respondent. The FIR was registered in Crime No.51 of 2013, for offence under Sections 406, 420 @ 406, 420 r/w 34 IPC on 29.09.2013. On completion of investigation, charge sheet was filed before the learned Judicial Magistrate No.IV, Vellore and thereafter, it was forwarded to the file of the Judicial Magistrate Court No.II, Vellore and taken on file as C.C.No.188 of 2016, against which, the present petition.

4.The learned counsel for the petitioner submitted that the petitioner is no way connected with the offence as alleged by the prosecution and none of the parents, who have lost money stated the money was entrusted to the petitioner for getting admission. In view of the same, the offence of cheating and misappropriation would not arise. He further submitted that the petitioner has not made any promise to the 2nd respondent and others and deceived them. It is admitted by all the witnesses that the money for procuring medical seat was handed over to A1 and it was the other accused namely A2 and A3, who assured to get seat. The petitioner not even met the 2nd respondent and he was not aware of any such transaction and hence, he falsely implicated in this case.

5.The learned counsel for the petitioner further submitted that the only one witness stated about the petitioner is LW7-Vasanthakumari, Doctor. LW7 in 161(3) Cr.P.C statement has stated that she knew A6-Elango, Doctor, through whom, she

approached the other accused for getting medical seat and the other accused were projected as friend of the petitioner and through A1, the amount has been paid. The other witnesses LW8 and LW9 are none other than the friend and driver of LW1. When LW1 stated that he has not paid money to the petitioner, 161(3) Cr.P.C statements of LW8 and LW9 are of no consequences. The only other circumstances projected against the petitioner is that the petitioner was arrested in this case on 02.09.2013 near Vellore bus stand along with A1, A4 and A6. At that time, Rs.1,20,000/- was shown recovery from the petitioner. The amount of Rs.1,20,000/- is projected, as though the commission amount received from A1, who is said to have received Rs.76 lakhs from LW7 during January 2012. Thus, nearly after one year, three months, same amount is said to have been recovered from the petitioner. He further submitted that A1 in this case has to pay Rs.2 lakhs to the petitioner for professional work done by him and they are known to each other for more than 10 years. A1 asked the petitioner to come to the car park of Christian Medical College, Vellore to settle his dues after some reduction. In settlement of arrears, the amount of Rs.1,20,000/- had been paid to the petitioner. When the petitioner had gone to car park of Christian Medical College, Vellore, the A1 was discussing with five other persons. Later, he came to know that they were discussing medical seat for LW7's daughters. Hence, the petitioner neither has commercial transaction with LW7 nor received any amount.

6.He further submitted that the amount of Rs.1,20,000/- was seized from the petitioner was withdrawn from his wife's bank account and he has proof for the same. Resisting the counter filed by the learned Additional Public Prosecutor, the learned counsel for the petitioner filed rejoinder, reiterating earlier submissions.

7.In order to substantiate his arguments, the learned counsel for the petitioner relied upon the citation in the case of "Mustkeem @ Sirajudeen Versus State of Rajasthan reported in (2011) 11 SCC 724".

8.The learned Additional Public Prosecutor appearing for the 1st respondent filed counter and submitted that the 2nd respondent lodged a complaint against the accused and stated about the role played each of them. In furtherance to the common intention of the accused, A1 demanded a sum of Rs.35 lakhs from the 2nd respondent. The 2nd respondent agreed and paid the amount on two instalments on 03.05.2016 and 16.05.2016, which was witnessed by LW8 and LW9. To gain confidence in deception, the parents of the wards were asked to come to car park of Christian Medical College, where the money was received. He further submitted that A2 was projected as Auditor. Both A2 and A3 hails from

Vellore and they are well known to the board members of Christian Medical College, Vellore. The seat allotted to North-East State normally not filled. Those seats can be purchased by payment of money. On this representation, all the accused colluded together and cheated LW1, LW3, LW5, LW6 and LW7 and received totally a sum of Rs.1,98,50,000/-. Out of the total amount, only Rs.1,20,000/- could be recovered from the petitioner. During investigation, A2 died on 29.08.2013.

9.The learned Additional Public Prosecutor further submitted that all the accused with common intention and taking advantage of anxiety and necessity of the parents/victims, who wanted to get medical seat for their wards, had received huge sums of money through cash as well as bank transaction. The accused, on arrest confessed and admitted their offence. Further, e-mail copies and the bank statements have been seized in this case, which conclusively proved the complicity and the role played by each of the accused. On completion of investigation, charge sheet was filed before the learned Judicial Magistrate No.IV, Vellore and later, got transferred to the file of the Judicial Magistrate Court No.II, Vellore. In this case, PW1 has been examined in chief and the case was posted for cross examination of PW1. At that stage, the petitioner filed the above petition. Due to pendency of the above petition, the trial before the lower Court could not be progressed. In charge sheet, totally 13 witnesses were listed and several documents were enclosed. Further, the points raised by the petitioner are to be decided during the trial. Since the lower Court had already commenced the trial, the quash petition not to be entertained and same is liable to be dismissed.

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

11.It is seen that several parents/victims, who wanted to secure medical seat for their wards, in a deceitful manner have been cheated by the accused persons. In this case, it was projected that A2 is an Auditor and A2 & A3 are known to the board members of Christian Medical College, Vellore, through them medical seats, which have been allotted to North-Eastern State can be purchased. On believing such representation, the 2nd respondent and other paid huge sums of money to the accused and the accused persons failed to fulfil such representation and thereby, cheated them. To gain confidence and to show authenticity, the payment was done through cash as well as bank transaction. From the petitioner, a sum of Rs.1,20,000/- has been recovered. Hence, all the accused in common intention, cheated the 2nd respondent and other and thereby, committed cheating and misappropriation.

12.In this case, now on completion of investigation, charge sheet has been filed before the lower Court and trial is commenced and PW1 was examined in chief. Hence, the points raised by the learned counsel for the petitioner are to be decided only during the trial.

13.In view of the same, this Court is not inclined to quash the proceedings in C.C.No.188 of 2016 and the petition is, accordingly, dismissed.

14.Taking into consideration of the offence has taken place in the year 2013 and due to pendency of the above petition, the trial in the lower court is without any progress, this Court directs the learned Judicial Magistrate No.II, Vellore to complete the trial, within a period of six months, from the date of lifting of lock down and normal functioning of Court below. Consequently, the connected Criminal Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate No.II, Vellore.
2. Do thro The Judicial Magistrate No.II, Vellore.
3. The Inspector of Police,
District Crime Branch,
District Police Officer,
Satuvachari, Chennai-9.
4. The Public Prosecutor,
High Court, Madras.
5. The Judicial Magistrate IV, Vellore.

PRE-DELIVERY ORDER IN
CrI.O.P.No.3891 of 2017

vsn ii (co)
rr ii (11/11/2020)