



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

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Date : 06.03.2020

PRESENT

THE HON`BLE **MR.JUSTICE G.R.SWAMINATHAN**

Crl.O.P(MD) .No.3749 of 2020

and

Crl.M.P(MD) .No.2044 of 2020

S.Raja ... Petitioner/Accused
Vs

1.State rep by
Inspector of Police,
District Crime Branch,
Kanyakumari. ... 1st Respondent/Complainant

2.Y.Godson Vimal
Branch Manager,
State Bank of India,
Thingal Nagar Branch,
Nagercoil. ... 2nd Respondents/Defacto complainant

PRAYER : Petition is filed under Section 482 of Cr.P.C to call for the records pertaining to the proceedings in Crime No.38 of 2019 dated 16.12.2019 pending before the first respondent and quash the same.

For Petitioner : Mr.S.Suresh

For Respondents : Mr.A.Robinson
Government Advocate
(Crl.side) (for R1)
Mr.S.Sethuraman (for R2)

ORDER

Heard the learned counsel on either side.

2.This original petition has been filed for quashing the FIR in Crime No.38 of 2019 registered on the file of the Inspector of Police, District Crime Branch, Kanyakumari for the offences under Sections 409 and 420 of IPC.



3.The case of the defacto complainant is that the petitioner was employed as Cashier in Thingal Nagar Branch of State Bank of India and he was incharge of replenish the Bank ATM. On 31.07.2015, the ATM should have been replenished to the tune of Rs.33,00,000/- (Rupees Thirty Three Lakhs only). When the amounts were later checked, it was found that there was shortfall to the tune of Rs.2,50,000/- (Rupees Two Lakhs and Fifty Thousand only). This was discovered on 14.08.2015. On examining the CCTV footage it was revealed that one Jayachandran (Messenger) accompanied the petitioner. One Ms.K.Vanitha, who was also responsible for the operation, did not accompany the petitioner. The specific allegation of the defacto complainant is that the petitioner had misappropriated a sum of Rs.2,50,000/-. When the shortfall was discovered, the petitioner had remitted the said sum of Rs.2,50,000/- on 27.08.2015. Based on this complaint, the impugned FIR came to be registered. To quash the same, this original petition has been filed.

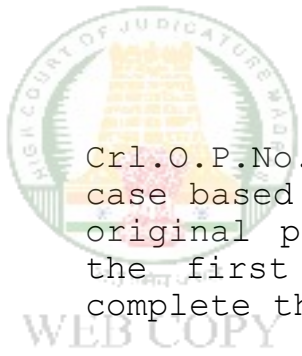
4.The learned counsel appearing for the petitioner reiterated the contentions set out in the memorandum of grounds.

5.The learned Government Advocate (Crl.side) as well as the learned counsel appearing for the defacto complainant submitted that when *prima facie* materials are available to fasten penal liability on the petitioner, this Court ought not to interfere at the threshold stage and this Court ought to allow the investigation to proceed. Both the learned counsel representing the respondents wanted this Court to dismiss this original petition.

6.I carefully considered the rival contentions and went through the materials on record.

7.It is seen that the petitioner was working as Cash Incharge of Thingal Nagar Branch of State Bank of India from 30.06.2010 till 20.10.2015. The shortfall in question occurred on 31.07.2015. This is characterised as misappropriation by the second respondent. In this regard, the Regional Manager of State Bank of India, Tirunelveli, lodged a complaint on 09.03.2016 before the Superintendent of Police, Kanyakumari District, Nagercoil. It is relevant to mention here that the petitioner had been suspended in the month of February 2016 itself. He continues to be under suspension till date and disciplinary proceedings are pending against him.

8.The Inspector of Police, District Crime Branch, Nagercoil temporarily dropped further action in the matter. This evident from his report dated 16.04.2016. This report was produced when the petitioner filed Crl.O.P.No.4900 of 2016. Thereupon, the Bank filed



Crl.O.P.No.10630 of 2016 and prayed for a direction to register a case based upon their criminal complaint dated 09.03.2016. The said original petition was disposed of vide order dated 05.07.2016 and the first respondent was directed to expedite the enquiry and complete the same within one month.

9.It was further observed in the said order that incase of closure of complaint, the closure report is to be furnished to the Bank and on receipt of the same, Bank was entitled to work out its remedy.

10.The learned counsel on either side are not quite sure as to what happened to the said direction given by this Court vide order dated 05.07.2016. The petitioner's counsel states that he has oral information to the effect that it was closed.

11.In the meanwhile, the petitioner was hotly contesting that the disciplinary action initiated against him by the employer. The petitioner wanted the assistance of an Advocate to effectively defend the charge levelled against him in the domestic enquiry. Since the said request was denied, the petitioner filed W.P.(MD). No.19413 of 2018. By order dated 04.11.2019, the said writ petition was allowed. The same was challenged by the employer, who filed W.A (MD).No.1268 of 2019. By order dated 25.11.2019, the Hon'ble Division Bench even while confirming the order passed by the learned Single Judge, permitted the presenting Officer also to have the assistance of an Advocate. The impugned FIR came to be registered on 16.12.2019. The registration of the case was also prominently published in the vernacular media.

12.The petitioner's counsel's pointed contention is that the impugned FIR deserves to be quashed for more than one reason. He would contend that the cause of action arose way back in Aug-2015. But, the FIR came to be registered only on 16.12.2019. There is absolutely no justification or explanation for this delay. Infact, the petitioner would come out an explanation that since the Bank took the issue raised by the petitioner in the writ proceedings personally, the impugned FIR came to be registered more as a counterblast and to wreck vengeance on him. Otherwise according to the petitioner, there is absolutely no justification in causing an adverse media publication.

13.I find considerable force in the said submission made by the petitioner's counsel. More than anything else, the complaint filed by the employer was temporarily closed on 16.04.2016. The closure report dated 16.04.2016 temporarily dropping action was put to challenge by the employer in Crl.O.P(MD).No.10630 of 2016. This Court vide order dated 05.07.2016 had passed the following directions:



'It is an application seeking a direction to the third respondent to register a case based on the complaint of the petitioner dated 09.03.2016.

2.No representation for the petitioner. Heard the learned Government Advocate (Crl. Side) for the respondents.

3.According to the learned Government Advocate (Crl. Side), petition enquiry is pending before the third respondent.

4.In view of the above submission, the third respondent is directed to expedite the enquiry and complete the same within a period of one month from the date of receipt of a copy of this order. During the course of enquiry, if any cognizable offence is made out, the third respondent police shall take action in accordance with the law laid down by the Hon'ble Apex Court in **Lalitha Kumari vs. Govt. of U.P & others [2013 (4) Crimes 243 (SC)]**. In case of closure of the complaint, a copy of the closure report be furnished to the petitioner within a week of such closure. On receipt of the same, it is open to the petitioner to work out his remedy in the manner known to law.

5.With the above direction, this Criminal Original Petition is disposed of. '

14.When this Court had passed a particular direction, further course of action will have to be tailored only in terms thereof. The employer having given a complaint on 09.03.2016 and having got a Court direction with regard to the same cannot abruptly change course of action. It is not open to the second respondent herein to file a fresh complaint on 16.12.2019 asking for registration of a fresh FIR. The law having been set in motion by the second respondent, he must travel on that road; he cannot jump the median and take the other line. If according to the employer, the Police did not obey the direction of this Court, they could have definitely filed a petition for contempt. They have not done so. I am clearly of the view that filing a fresh complaint was clearly not a course of action open to the second respondent.

15.In this view of the matter, the impugned FIR in Crime No.38 of 2019 on the file of the first respondent herein stands quashed. The second respondent is ofcourse at liberty to workout their rights in terms of the order dated 05.07.2016 made in Crl.O.P(MD).No.10630 of 2016.



16. With the aforesaid liberty to the second respondent, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1. The Inspector of Police,
District Crime Branch,
Kanyakumari.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.S.SURESH, Advocate (SR-10507[F] dated 06/03/2020)

+1 CC to Mr.S.SETHURAMAN, Advocate (SR-10509[F] dated 06/03/2020)

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