BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **07.01.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

Crl.O.P.[MD].No.19809 of 2015
and
M.P.[MD].No.1 of 2015

M.Kiran Kumar : Petitioner / Accused-2

Vs.

1.State Rep. by
The Inspector of Police,
District Crime Branch,
Tirunelveli District. : 1st Respondent / Complainant

2.Gladwin : 2nd Respondent / Defacto Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records relating to the proceedings in C.C.No.1 of 2015, on the file of the learned Judicial Magistrate No.I, Tirunelveli, and quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.T.Antony Arul Raj

For R-1 : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl. side)

For R-2 : Mr.K.Sivabalan

ORDER

The petitioner is shown as A-2 facing trial in C.C.No.1 of 2015, pending on the file of the learned Judicial Magistrate No.I, Tirunelveli.

2.The case of the prosecution is that the de-facto complainant, namely, S.J.V.Sathiyanesan, who is the husband of the second respondent herein, had lodged a complaint before the respondent police and a case in Crime No.27 of 2014 had been registered for the offences punishable under Sections 406 and 420 r/w 120(b) of IPC. After completion of investigation, the respondent police filed a charge sheet and the same was taken on file in C.C.No.1 of 2015 by the learned Judicial Magistrate No.I, Tirunelveli, against one Sundar @ Sundaresan/ A1 and the petitioner/A-2.

3.The contention of the learned counsel for the petitioner is that A-1 is the Manager and the petitioner/A-2 is the proprietor of Lalithaa Jewellery, which is having 24 branches all over South India. The Branch Manager independently deal with the customers and he is not involved in day to day affairs of the branches, further submitted that he had been falsely implicated in this case. Hence, he prayed for quashing the charge sheet.

4.The learned counsel appearing for the second respondent would submit that the de-facto complainant, S.J.V.Sathiyanesan had visited the Lalitha Jewellery Mart on 16.03.2013, at Madurai Branch. At that time, the Manager/A-1 took him to the petitioner/A-2. The petitioner/A-2 is said to have informed de-facto complainant that the gold coins sold by them is without any wastage and they can be sell the gold coins which would be repurchased by them at the market rate prevailing on the date of purchase. Further, the first accused/Manager visited the house of the de-facto complainant collected the money. On 18.03.2013, the first accused/Manager had gone to the house of the de-facto complainant and fixed the price for 500 grams of gold coins as Rs.12.5 lakhs and thereafter, a sum of Rs.8,00,000/- was paid as advance. On 28.03.2013, the first accused along with L.W.5-Ramkumar had come again to the house of the de-facto complainant and received a sum of Rs.7, 50,000/- for further order of 500 grams of gold coins. Thereafter, the first accused on 28.03.2013, supplied gold coins only for the first advance amount of Rs.8 lakhs. He did not hand over the gold coins in respect of second advance amount of Rs.7, 50,000/-. Despite several requests, neither gold nor cash was given, hence the case came to be lodged. On receipt of the complaint, the first respondent had completed the investigation examined witnesses and filed the charge sheet. Citing L.Ws.1 to 6 and L.Ds.1 to 6 documents. The charge sheet for the offences under Sections 406 and 420 of IPC has been filed. Against which, the present quash petition is filed before this Court.

5.The contention of the learned counsel for the petitioner is that the petitioner being the Managing Director of Lalitha Jewelry, which is having more than 24 branches all over South India. The petitioner has to travel and visit all the show rooms and he does not take put in day to day affairs of the show-rooms and the petitioner visit the show room on occasion, petitioner normally functions from the Head Office and monitor his business, he had never met the de-facto complainant. Further, the petitioner lodged a complaint against A-1/Manager who had committed misappropriation to the tune of 1 kg and 700 grms Gold from the show room. In this regard, a case in Crime No.255 of 2013 was registered by the B5 South Gate Police Station, (Crime), Madurai, during the same time. The petitioner was never present along with A-1/Manager met de-facto complainant as alleged in the complaint.

6.According to the de-facto complainant, A-1 received a sum of Rs.8,00,000/- as advance amount on 18.03.2013 for 500gm gold coins stating that the gold coins will be given on or before 22.04.2013. On 11.04.2013, the gold jewels for the first order were handed over the balance amount of Rs.4,50,000/- was received by the first accused. Hence, the transaction to the tune of Rs.12,50,000/- was completed only on 11.04.2013. When such being the case, before completion of first order on 28.03.2013, the second order was placed and the advance amount of Rs.7,50,000/- paid, as per the contention of the de-facto complainant is highly impossible.

7.According to the petitioner, the de-facto complainant knowing well that the petitioner is no way connected with the transaction, is attempting to recover the money paid to A-1/Manager, who had independently acted on his own accord. Further, for the purpose of extracting money from the petitioner, petitioner has been implicated as an accused in this case.

8.It is also submitted that A-1/Manager had given an undertaking letter to the de-facto complainant that he would settle a sum of Rs.7,50,000/- as individual capacity and thereby, the petitioner is no way connected in the transaction and settle the amount of Rs.7,50,000/-.

9.It is now represented that A-1 as well as the de-facto complainant are no more. Be that as it may, despite the petitioner being no way involved in this case, in all fairness, he has good chance in succeeding in this case. As a goodwill gesture, he was willing to settle the issue so that he can concentrate in his business and other progressive activities.

10.The de-facto complainant's wife-Gladwin, W/o S.J.V.Sathiyanesan is present before this Court today and she received a sum of Rs.7,50,000/- by way of demand draft in D.D.No.985432, dated 02.01.2020 and she has no objection for quashing the entire proceedings.

11.In view of the same, the proceedings in C.C.No.1 of 2015, on the file of the learned Judicial Magistrate No.I, Tirunelveli, is quashed and this petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1.The Judicial Magistrate No.I, Tirunelveli.

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

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.DEIVANANDAM, Advocate (SR-607[F] dated 07/01/2020)

+1 CC to M/s.K.SIVABALAN, Advocate (SR-792[F] dated 08/01/2020)

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