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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 07.09.2021

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

CrI.O.P.No.16859 of 2015

and

M.P.No.1 of 2015

Mr.J.Ram Kumar

...Petitioner

VS.

1. State represented by
Inspector of Police,
Central Crime Branch,
Chennai - 600 007.
(Crime No.188/2007)

2. Nadarajan

...Respondents

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in pertaining to the Final Report filed in C.C.No.38 of 2013 on the file of the Learned Judicial Magistrate at Alandur, Kanchipuram District and quash the same as far as the petitioner is concerned.

For Petitioner : Mr.S.Diwakar

For R1 : Mr.E.Raj Thilak
Govt. Advocate

ORDER

Sixth Accused in C.C.No.38 of 2013, now pending on the file of the Judicial Magistrate, Alandur is the petitioner herein, who seeks to quash the proceedings in the said Calendar Case under Section 482 of the Code of Criminal Procedure.

2. It is to be mentioned that among the accused in the



said Calendar Case, A1 and A3 have died and A4 and A5 are absconding. The present petitioner is arrayed as A6 and another accused is A2. They both alone are appearing before the Court.

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3. The entire issue revolves around the property of one Vijayaraghavan, who died without leaving any legal heirs. Taking advantage of that particular aspect, the facts reveal that, A4 and A5 had impersonated as the legal heirs of the said Vijayaraghavan. In this, A1 appears to have played a major role and the petitioner herein obtained documents relating to the property from A1 and also paid Rs.11,00,000/- by way of cheque. Copy of that particular cheque has been submitted as document to the present proceedings.

4. Thereafter, the de facto complainant, alongwith his friends, has given an offer to purchase the said property and the petitioner is said to have received a sum of Rs.3,00,000/- being one half of the value of the property, after taking into consideration the stamp duty payable from the de facto complainant. The de facto complainant then found that he would never get valid title over the property. In those circumstances, he had given a complaint which led to filing of First Information Report in Crime No.188 of 2007 on 24.4.2007 by the Central Crime Branch, Chennai under Sections 465, 467, 468, 477 and 420 IPC read with Section 120(b) read with Section 34 IPC.

5. Mr.S.Diwakar, learned counsel for the petitioner very strenuously argued that there is no mens rea for the petitioner and he has not committed any offence under Sections 468 and 477 IPC. He also submitted that the petitioner also had bona fide belief that the property had a valid title and had received documents from A1 and paid Rs.11,00,000/- to A1. It is, therefore, submitted that his role was very minimal and not that of creating any document and he was merely in possession of the documents of the property offered for sale and in that course of his offer, he had received a sum of Rs.3.67 lakhs as the consideration towards one half of the value of the property. It is therefore, contended that he has been made use of by the other accused, who actually conspired to commit the offences attracting Sections 465, 467, 468, 477 and 420 IPC read with Section 120(b) read with Section 34 IPC.

6. In the meantime, it is also seen that the de facto



complainant had also expired.

7. The statement of the de facto complainant had been read over to me and it is stressed by Mr. Diwakar, learned counsel for the petitioner that the role of the petitioner herein is very minimal and he had nothing to do with fabrication or forgery of documents and he had only received the documents from A1 and handed over to the de facto complainant.

8. These are all issues of fact which the present petitioner can very well establish during the course of trial. The prosecution alleges that he is also involved in the said conspiracy and therefore, invoked Section 120B IPC and Section 34 IPC as against the petitioner herein. Therefore, to deviate himself from the charges levelled against other accused, he will necessarily have to test the statements of the witnesses during the course of cross-examination and that evidence, after being tested by the petitioner, will have to be analysed and judgment will have to be passed by the Judicial Magistrate Alandur. A prima facie opinion on this aspect cannot be given.

9. The de facto complainant had mentioned the name of the petitioner in the course of his statement. Though he is not alive today, to substantiate his statement, the prosecution has to still establish that the petitioner herein was directly involved in all the charges. That burden can never shift from the prosecution. That can be determined only during the course of trial. Sufficient opportunity would be given to the petitioner, who can put forward his defence that he had no role in the entire transaction and also impress upon the learned Judicial Magistrate that he has been unnecessarily implicated in the entire sequence of events. These are, again, aspects which can be decided only on conclusion of trial and not on perusal of the 161 Statement as presented by the investigating officer. It was only for the purpose of taking cognizance of final report presented before the court.

10. Therefore, let the trial proceed and the petitioner/A6 may cross-examine the witnesses, put their statements to test and impress upon the learned Judicial Magistrate as to his lack of mens rea role in the entire transaction.

11. With the above observation, the Criminal Original



Petition is dismissed, giving liberty to the petitioner/A6 to put forth his case during the course of trial. It is hoped that the Judicial Magistrate, Alandur would take necessary steps with respect to the abscondence of A4 and A5 and if possible, commence the trial against A2 and A6 on the basis of the available materials on record. The connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssk

To

1. The Judicial Magistrate,
Alandur,
Kanchipuram District.
2. The Inspector of Police,
Central Crime Branch,
Chennai - 600 007.

+1cc to Mr.J.Ramesh, Advocate, S.R.No.45385

Cr1.0.P.No.16859 of 2015
and
M.P.No.1 of 2015

PL(CO)
SB(23/09/2021)