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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2021

CORAM

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

CrI.O.P.No.25123 of 2016

Primo Automation System (P) Ltd.,
Rep. By P.Rajagopalan,
Managing Director .. Petitioner / Defacto Complainant

Vs.

1.State rep.by
The Inspector of Police,
Central Crime Branch,
Chennai - 600 116. .. Respondent-1 / Complainant

2.Sukash Chandrasekhar alais Balaji .. Respondent-2 / Accused

Prayer: Criminal Original Petition filed under Section 439 (2) Cr.P.C, to call for records in CrI.M.P.No.2357 of 2016 and set aside the bail granted on 30.08.2016 in result remand the 2nd respondent / Accused and commit him to custody.

For Petitioner	.. Mr.K.P.Anantha Krishna
For R1	.. Mr.E.Raj Thilak, Govt. Advocate (Criminal Side)
For R2	.. Mr.P.Shiva for M/s.Ojas Law Firm

ORDER

This Criminal Original Petition has been filed seeking to cancel the bail granted to the 2nd respondent who is an accused in Crime No.122 of 2013 registered by the Inspector of Police, Central Crime Branch, Chennai, under Sections 406, 419 and 420 of IPC r/w Section 66 (d) of the Information Technologies (Amendment) Act, 2008.

2.The grievance of the present petitioner / de-facto complainant is that not only was the de-facto complainant the only victim of the nefarious activities of the 2nd respondent, but the 2nd respondent is also the accused in a string of other cases. It is also stated by Mr.K.P.Anantha Krishna, learned counsel for the petitioner herein that bail had been granted by the learned Principal Sessions Judge, Chengalpet, in the teeth of an order of a learned Single Judge of this Court,



who by a detailed order, had actually directed that the 2nd respondent herein should necessarily appear before the Investigation Officer and should co-operate during the course of the investigation. Grant of bail was never contemplated by the learned Single Judge.

3.To enter into the facts, in a more detailed manner, the 2nd respondent as aforesaid, quite apart from the various cases in which he had been charged had also found himself in the wrong end of a complaint given by the petitioner and registered as First Information Report in Crime No.122 of 2013 by the 1st respondent police under Sections 406, 419 and 420 of IPC r/w Section 66 (d) of the Information Technologies (Amendment) Act, 2008.

4.The petitioner herein claims that he had been the victim of an elaborate fraud committed by the 2nd respondent whereby, the 2nd respondent projected himself as a Karnataka State Government Servant and extracted money from the petitioner herein promising to obtain grant of a tender. He had also gained the confidence of various victims by promising that he would be able to obtain loan from the Government in aid of their business activities.

5.It is pointed out by Mr.K.P.Anantha Krishna, learned counsel for the petitioner, that originally the 2nd respondent was arrested on 09.01.2014 and was however released on the very next day, 10.01.2014. Though it was claimed by the 2nd respondent that he was not able to satisfy the conditions of the bail owing to the fact that he felt sick, that particular explanation did not cut ice with the learned Single Judge who cancelled the bail and directed the 2nd respondent to report before the Investigating Officer. Subsequently, the 2nd respondent was again arrested on 29.04.2016. Thereafter, he moved an application seeking bail under Section 167 of C.P.C., normally called as default bail and was also granted bail. That order came into forceful scrutiny by the learned Single Judge of this Court who observed that the petitioner had not been arrested during the course of investigation, but rather his bail had been cancelled by the High Court, and if ever any such order is to be revisited, it was the prerogative of the High Court to examine that particular issue and that the petitioner could not have been granted bail. Therefore, the bail was again cancelled by an elaborate order dated 13.07.2016 in CrI.O.P.No.11867 of 2016.

6.The 2nd respondent was then again arrested.

7.It must be kept in mind that the 2nd respondent herein had acquired the habit of leading a very colourful life and quite



apart from engaging himself in an unlawful activities and as a result coming within the scanner of various Investigating Authorities, complaints had also been lodged against him by various victims. This led to his arrest once again and he was released within a period of ten days by an order dated 30.08.2016 by the learned Principal Sessions Judge, Chengalpattu in CrI.M.P.No2357 of 2016, which order has necessitated filing of the present Criminal Original Petition seeking cancellation of that order.

8.I am informed by the learned counsel for the 2nd respondent that he could not get instructions from the 2nd respondent as on date, because the 2nd respondent has been again arrested in yet another different case. But however, the present petition has been pending from the year 2016 onwards and it defies logic that the counsel can claim innocence of information from the 2nd respondent when the matter has been pending for the past five years. Even though the learned counsel says that he entered appearance on change of vakalat, a duty is cast on the counsel to obtain instructions at the time when papers are handed over and therefore, the plea seeking indulgence is rejected by me.

9.Yet another aspect pointed out by the learned counsel for the 2nd respondent is that the 2nd respondent is actually willing to settle the issues with the petitioner herein and this matter has actually been posted today under the caption 'for reporting settlement'.

10.Entering into a settlement of non-compoundable offences have come under the scrutiny of not only the High Courts but also of the Hon'ble Supreme Court, wherein, guidelines have been given setting out the parameters which the High Court should examine before acceding to such terms of settlement.

11.In Parbatbhai Aahir Alias Parbatbhai Bhimsinhhbhai Karmur and others V. State of Gujarat and Another reported in (2017) 9 SCC 641, the Hon'ble Supreme Court examined the powers of any High Court to examine a settlement put forth which is alleged to have been entered into between the de-facto complainant and the accused and applications are filed under Section 482 of Cr.P.C before the High Court to quash the criminal proceedings, in view of such settlement reached between the parties. Broad principles had been given and they had been enumerated under ten separate categories and it would only be appropriate that they are all extracted.

"1).Section 482 Cr.P.C preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers.



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It only recognises and preserves powers which inhere in the High Court.

2).The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 Cr.P.C. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

3).In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

4).While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.

5)The decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.

6).In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.

7).As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. The stand on a distinct footing insofar as the exercise of the inherent power of quash is concerned.



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8).Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

9).In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

10).There is yet an exception to the principle set out in Propositions (8) and (9) above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

12.In clause 6 and 7 of the above, the Hon'ble Supreme Court, had laid down a caution that the High Court should have due regard to the nature and gravity of the offence. It is also seen that as distinguished from serious offences, there could be criminal cases which have an overwhelming or predominant element of a civil dispute. Those category of cases have been set aside.

13.But here is a case where the petitioner herein has been charged with impersonation which as a fact cannot be compromised by the parties. May be the money which had been advanced by the de-facto complainant / petitioner herein could be repaid by the 2nd respondent / accused, but that cannot tide over the charge of impersonation for which the 2nd respondent will have to face necessary trial and will have to clear himself during the course of trial. It is not a simple issue of money being handed over and therefore, the 2nd respondent, has purged himself the cloak which he is alleged to have worn by impersonation. That particular fact or offence needs to be investigated, needs to be tried and has to be put forth during the course of trial and that particular charge will have to be either proved or disproved in manner known to law on the basis of the materials available with the Court and materials produced by the Investigating Agency. It is not an issue which can be brushed away by the petitioner herein / de-facto complainant. The very fact that the 2nd respondent had come forward to return the money



shows that owing to the act of duplicity, the 2nd respondent had induced the petitioner herein to pay the money to him. That establishes prima facie, the further charge laid against the 2nd respondent. Therefore, even though both the learned counsels have stated that there is a possibility of settlement and that settlement can be reached, I reject such contention put forth and I hold that the 2nd respondent has to face trial on the charges laid against him.

14. Insofar as the investigation is concerned, I am informed by Mr. E. Raj Thilak, learned Government Advocate (Criminal Side) that consequent to investigation being completed, final report had been filed before the Judicial Magistrate No. 1, Kancheepuram, who had taken cognizance of the same in C.C. No. 28 of 2021. It is therefore imperative that the 2nd respondent answers the summons, appears before the Court and faces trial.

15. The role of the petitioner herein has also to be scanned by the Court, primarily because he had given a complaint leading to registration of a First Information Report. The criminal proceedings had been set in motion. The petitioner cannot simply brush away to an end such criminal proceedings at their whims and fancies. Therefore, the proposition put forth by the learned counsels regarding compromise are again rejected by me.

16. The issue of compromise has also been discussed in the judgment of the Hon'ble Supreme Court in State of Madhya Pradesh V. Dhruv Gurjar and another along with State of Madhya Pradesh V. Tinku Sharma and others reported in (2019) 5 SCC 570. Again the principles have been summarized. It had been stated that quash of non-compoundable offences can be entertained by the High Court only when they are permissible. The Hon'ble Supreme Court had once again relied on (2017) 9 SCC 641, Parbatbhai Aahir Alias Parbatbhai Bhimsinhbhai Karmur, referred supra and had once again reiterated the principles which had been extracted above.

17. I am therefore reinforced by this Judgment of the Hon'ble Supreme Court also to reject any contention regarding possible compromise being entered into between the petitioner herein and the 2nd respondent.

18. Now coming to the aspect whether bail granted by the learned Principal Sessions Judge, Chengalpet, had to be cancelled or not, my attention has been drawn to the earlier order of the learned Single Judge of this Court in CrI.O.P. No. 11867 of 2016 dated 13.07.2016. The respondent therein was also the present petitioner herein. The learned Single Judge had examined the case as against the present 2nd respondent in detail and had come to the conclusion that bail granted should be cancelled.



19. When the High Court had thought it necessary to cancel the bail, and thereafter the accused had been subsequently arrested, it defies the Rule of Law if bail is granted once again. I would give some concession to the learned Principal Sessions Judge, Chengalpet, that he had not been made aware of the said order passed by the learned Single Judge of this Court or even if his attention had been drawn, he had not examined it in proper manner. But whatever be the circumstances, the 2nd respondent, having impersonated a public servant and having induced the petitioner herein to deposit more than a crore of rupees in the name of a particular individual and promising that if that is done, a tender would be obtained from the Karnataka Government and had misappropriated or taken away such amount, then the offences attracted certainly are cognizable offences, which have to be investigated. Investigation has been done and final report has been filed and taken cognizance by the learned Judicial Magistrate No.I, Kancheepuram.

20. I would therefore interfere with the order granting bail by the Principal Sessions Judge, Chengalpet. The 1st respondent is directed to take into custody the 2nd respondent forthwith. If at all the 2nd respondent is of the opinion that he is entitled for bail, it is entirely to the wisdom of the learned Judicial Magistrate No.I, Kancheepuram, who has to examine all the surrounding circumstances of the further facts and first determine whether he/she is competent to grant bail in the face of the order in Crl.O.P.No.11867 of 2016 dated 13.07.2016, take a considered decision on the aspect of competency to enter into any discretion to grant bail and thereafter exercise discretion in manner known to law. I would state that it is advisable to err on the side of caution in such matters.

21. With the above observations, the petition stands allowed and even though the 2nd respondent has been arrested in yet another case, I would direct the Investigation Officer to arrest the 2nd respondent with respect to Crime No.122 of 2013 and inform such fact to the competent jurisdictional Magistrate Court, namely, Judicial Magistrate No.I, Kancheepuram.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar

smv



To

1.The Judicial Magistrate NO.I,
Kancheepuram.

2.The Inspector of Police,
Central Crime Branch,
Chennai - 600 116.

3.The Public Prosecutor,
High Court of Madras.

+1cc to Mr.K.P.Anantha Krishna, Advocate, S.R.No. 46022

Cr1.O.P.No.25123 of 2016

RR(CO)
GN(16/09/2021)