IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2021

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CRL.O.P. NO.444 OF 2016

1. Anubhav Bhatter
2. Avinash Agarwala

...Petitioners

Vs.

1. State Rep. by
The Inspector of Police,
City Crime Branch,
Cyber Crime Cell, Coimbatore.

2. R.Jagadeesh

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in C.C. No.13 of 2015 pending before the learned Judicial Magistrate-I, Coimbatore and quash the same.

For Petitioner	:	Mr.R.Alvin Manoj Raj for M/s.RRN Legal
For Respondent-1	:	Mr.E.Rajthilak Govt. Advocate (Crl. Side)
For Respondent-2	:	Mr.C.Veeraraghavan

ORDER

This Criminal Original petition has been filed under Section 482 Cr.P.C. seeking for to call for the record in C.C. No.13 of 2015 pending before the learned Judicial Magistrate-I, Coimbatore and quash the same.

2. The case of the prosecution is that the Defacto-complainant desired to do on-line trading and approached one of the branches of the accused company in Coimbatore, he was guided by the 1st accused namely Bharani Kumar, who was the Manager of the accused company in Coimbatore and thereafter the Defacto-complainant had opened account and started to trade, with an intention to gain more. Believing the words of the 1st accused, the Defacto-complainant gave an amount of Rs.15,00,000/- (Fifteen Lakhs Only) both via Demand Draft and Cash to the 1st accused to deposit on his trading account for trading purpose, but the 1st accused had deposited the funds in trading accounts of the various other persons having trading accounts in the accused company and later a complaint was also sent by the De-facto complainant to the accused company against the 1st accused Bharani Kumar, the accused company after obtaining the available materials on record, found the above facts to be true and promised to return the amount of the Defacto-complainant but the accused company failed to return the amount. Being aggrieved over the same, the Defacto-complainant had lodged the complaint. The 1st respondent investigated the case and registered in Crime No.77 of 2011 on 16.07.2011 for alleged offence under Sections 120(B), 406, and 420 of I.P.C. Thereafter, the 1st respondent filed a final report before the learned Judicial Magistrate-I, Coimbatore in C.C. No.13 of 2015 on 31.12.214 for offences under Section 120(B), 406 and 420 of I.P.C against the petitioners. Hence, the petitioners have filed the present Criminal Original Petition seeking for to quash the aforesaid Criminal Proceedings initiated against them.

3.The learned counsel for the petitioners would submit that the final report filed by the 2nd respondent does not disclose any prima facie case against the petitioners. The petitioners have been arrayed as accused in this case for the only reason that they are the Directors of the alleged Company drawing vicarious liability in spite of they being innocent of the above offence. Neither witnesses talk about the involvement of the petitioners nor specific allegations have been stated against them. The investigation conducted by the 1st respondent herein was not done in a proper and fair manner and the final report was filed without considering the evidences supporting the ignorance of the petitioners herein.

4. The learned counsel for the petitioner has relied upon the Section 405 of IPC which reads as follows:

> 405. Any other person so to do commits "Criminal breach of trust". Criminal breach of trust. -- Whoever, being in any manner entrusted with property, or with any domination over the property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers."

The final report has been filed without considering the above provision of law to the facts of the case that the petitioners had not been entrusted with any property and neither they had dishonest intention or misappropriated the property which are essential ingredients to prove criminal breach of trust. The Final report does not disclose an offence under Section 120(B) of I.P.C. and the same has been filed without considering the fact that the company of the petitioner has suffered monetary losses as a result of the acts of the 1st accused. Without considering the aforesaid aspects, the petitioners have been registered the case in C.C. No.13 of 2015 on the file of the learned Judicial Magistrate-I, Coimbatore. Hence, the petitioners have no other alternative remedy except by invoking under Section 482 Cr.P.C. praying this Court to call for the records of the aforesaid case and quash the same.

5. The learned Government Advocate (Crl. Side) for the 1st respondent would submit that the de-facto complainant has opened an account for on-line trading for which he has invested a sum of Rs.15,00,000/- thereon believing the words of the 1st accused who was the Manger of the petitioners' company. After registration of the complaint, Crime No.77 of 2011 was registered against the petitioners and after investigation final report filed against the petitioners in C.C. No.13 of 2015 against the petitioners on the file of the learned Judicial Magistrate-I, Coimbatore. Even though the de-facto complainant has invested a sum of Rs.15,00,000/- in the petitioners' company

having faith with words of the 1st accused namely Mr. T.J. Bharani Kumar, the said amount was not returned to the defacto complainant. Hence, the petitioners are to be tried before the Trial Court to disclose the factual of the case.

6. The learned counsel for the 2nd respondent would submit that the 2nd respondent has opened a trading account in the group of BMA Wealth Creators Ltd for on-line trading. The de-facto complainant has opened an account in one of the group of main company namely BMA Commodities Pvt. Ltd. to make transaction for on-line trading for which purpose he has paid a sum of Rs.15,00,000/- towards trading account to get profits through on-line trading having faith on utterance of the 1st accused who was working as manager in the said Trading Company. After receiving the said amount from the 2nd respondent/de-facto complainant, the accused 1 has not done trading transaction into the account of the 2nd respondent and the same has been used to another account holders who are having account in the same Trading company for trading purpose in which company the accused 2 and 3 being directors are involved in the said transaction. Hence , the accused have been lodged complaint by the 2nd respondent herein before the 1st respondent police for cheating the amount.

7. Heard, the learned counsel appearing for the petitioners, the learned Government Advocate (Crl. Side) for the 1st respondent and the learned counsel for the 2nd respondent as well as perused the materials available on record.

8. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in Crl.A.No.579 of 2019 dated 02.04.2019 in the case of Devendra Prasad Singh Vs. State of Bihar & Anr., as follows:-

> " 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial

while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13.In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

9.Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in Crl.A.No.1572 of 2019 dated 17.10.2019 in the case of Central Bureau of Invstigation Vs. Arvind Khanna, wherein, it has been held as follows:

“19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20.In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for.”

10.Further the Hon'ble Supreme Court of India also held in the order dated 02.12.2019 in Crl.A.No.1817 of 2019 in the case of M.Jayanthi Vs. K.R.Meenakshi & anr, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage...................."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioners cannot be considered by this Court under Section 482 Cr.P.C.

11. It is admitted fact that the amount paid by the petitoner for trading purpose was misappropriated by the Accused No.1 working as a Manager in the Company. It has been stated that the Accused No.1 namely T.J. Bharani Kumar having colluded with the petitioners herein who are directors of the company cheated the 2nd respondent herein. While the Accused No.1 was working for the gain at the branch and was having authority to look after the trading account of the Client, the 2nd respondent is one of the Client in the Company and had invested a sum of Rs.15,00,000/- in his trading account opened in the Company. While so, the said amount has not been used in the trading account of the petitioner instead, the amount has been used in another client's trading account having trading account

in the said Company. Further, on the side of the petitioners, it has been stated that the Accused No.1 has colluded with the 2nd respondent and cheated the said Company as a result of their Act, the said Company incurred losses. Whether the petitioners who are Directors of the Company are liable to be responsible for the said transaction held in the company and the 2nd respondent has colluded with the Accused No.1 would be decided only after Trial.

12. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.13 of 2015 in Crime No.77 of 2011 on the file of the learned Judicial Magistrate-I, Coimbatore. The petitioners are at liberty to raise all the grounds before the trial Court. The trial Court is directed to complete the trial within a period of six months from the date of receipt of copy of this Order.

13. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed if any.

Sd/-
Assistant Registrar(L.A)

// True Copy //

Sub Assistant Registrar

lbm

To:
1. The Inspector of Police,
   City Crime Branch,
   Cyber Crime Cell, Coimbatore.
2. The Additional Public Prosecutor,
   High Court of Madras,
   Chennai.

+1cc to M/s.RRN Legal, Advocate, S.R.No.41121

Crl.O.P. No.444 of 2016

PM(CO)
RLP(02/11/2021)