

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.7556 of 2021 and
Crl.M.P.Nos.4996 & 4998 of 2021

K.Mohamed Hassain

... Petitioner

Versus

1.The State,

Rep by Inspector of Police,
District Crime Branch (DCB),
Udhgamandalam,
Nilgiris District.

2.K.Moorthy

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the entire records pertaining to the C.C.No.83 of 2017 pending on the file of the Judicial Magistrate, Udhagamandalam and quash the same by allowing the Criminal Original Petition against the petitioner concerned.

For Petitioner : Mr.S.Saravanan

For R1 : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.83 of 2017 pending on the file of the Judicial Magistrate Court, Udhagamandalam.

2.The case of the prosecution is that the petitioner/A2 being the Manager of the Sterling Biotech Staff Cooperative Thrift and Credit Society Limited, misappropriated the amount of two employees Kavitha and Thiyagarajan. They have clearly stated about the signature obtained by the petitioner in the guise of getting loan to them. On the other hand, the loan amount has been created to the account of the petitioner and he misappropriated the amount along with other accused/A1 and A3. Hence, the respondent Police has registered an FIR in Crime No.1 of 2016, for offence under Section 420, 409, 468, 471 and 120(b)

IPC and on completion of investigation, filed the charge sheet against the accused.

3.The learned counsel for the petitioner submitted that the petitioner/A2 is only Manager of the Society and other accused who are the Secretary and Chairman of the Society were taken part in the activities of the society. On the orders of A1 and A3, the petitioner/A2 used to issue cheque and process the loan application. Further, during the relevant point of time, the petitioner is not empowered to deal with any financial matter and he is not entrusted with money and also he is not responsible for the maintenance of the documents and accounts. Hence, he prayed for quashing of the proceedings.

4.The learned Additional Public Prosecutor appearing for the respondent Police submitted that on completion of investigation, the respondent Police filed the charge sheet before the trial Court, citing 18 witnesses and documents. He further submitted that there are prima facie materials against the petitioner and other accused and the witnesses have clearly spoken about the role played by the petitioner in the commission of the offence.

5.This Court considered the rival submissions and perused the materials available on record.

6.It is seen that the witnesses LW4-Kavitha and LW11-Thiyagarajan have clearly stated about the role of the petitioner in this case. Therefore, the grounds that have been raised by the learned counsel for the petitioner is purely factual in nature and it has to be decided only during the trial and this Court cannot go into the same in exercise of its jurisdiction under Section 482 of Cr.P.C. It is left open to the petitioner to raise these grounds before the trial Court and the trial Court shall consider the same on its own merits and in accordance with law. Hence, this Court is not inclined to quash the proceedings against the petitioner.

7.At this stage, the learned counsel for the petitioner seeks dispensed with of the petitioner before the trial Court and the petitioner may be permitted to appear before the trial Court as and when required.

8.On the plea of the learned counsel for the petitioner, it is made clear that the petitioner is to file a petition under Section 317 Cr.P.C., before the trial Court and also affidavit stating that he would not dispute his identity during the trial; cooperate with the trial; cross examine the witnesses then and there without seeking any unnecessary adjournments and he would not be cause for delay of the trial. The trial Court is to consider the petition under Section 317 Cr.P.C., liberally. If

the above undertaking is not followed by the petitioners, the trial Court is directed to take coercive action against the petitioner including the cancellation of bail.

9.In the result, this Criminal Original Petition stands dismissed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

vv2
To

1.The Judicial Magistrate Court,
Udhagamandalam.

2.The Inspector of Police,
District Crime Branch (DCB),
Udhgamandalam,
Nilgiris District.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Saravanan, Advocate Sr.25451

CRL.O.P.No.7556 of 2021

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srg 18/06/2021

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