



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.O.P.NO.18368 OF 2018

AND

CRL.M.P.NO.9838 AND 9658 OF 2018 & 5175 OF 2021

Siva Sakthivel

... Petitioner/Accused

Vs.

D.S.Mani

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.9 of 2018 pending on the file of the District Munsif cum Judicial Magistrate Court, Vaniyambadi and quash the same.

For Petitioner : Mr.N.Baaskaran

For Respondent : Mr.R.Sankarasubbu

ORDER

The present petition has been filed to call for the records in C.C.No.9 of 2018 pending on the file of the District Munsif cum Judicial Magistrate Court, Vaniyambadi and quash the same.

2. Facts leading to the present round of litigation is that the petitioner filed a complaint against the respondent herein and two others, viz., Sivakumar and one Vijay on 22.03.2012 for cheating the petitioner by getting an lump sum amount of Rs.27,25,600/-, which was paid by the petitioner by obtaining a bank loan, to deliver machineries for the petitioner's packaging industry. However, the accused persons neither delivered the same nor returned the money. Therefore, the petitioner has filed the complaint against the accused



persons. Based on the complaint, charges were framed against the respondent and other accused persons by the learned District Munsif cum Judicial Magistrate, Vaniyambadi in C.C.NO.15 of 2015 under Section 409, 419, 420 and 506(ii) IPC r/w.34 of IPC and 420, 465, 468, 471, 120(b) r/w 109 IPC. Subsequently, two of the accused persons A4 and A5 preferred a Discharge Petition in CrI.M.P.No.4220 of 2015 in C.C.No.15 of 2015 before the learned Magistrate and the above said Discharge Petition was dismissed by the learned Magistrate. Against the dismissal order, A3 and A4 preferred a Criminal Revision before this Court in CrI.R.C.No.717 of 2017, wherein initially interim stay was granted on 07.06.2017 till 27.06.2017 and subsequent thereafter, on 27.06.2017, it was extended until further orders. At the instance of the accused persons, the matter was adjourned several times and hence, the counsel for the petitioner herein mentioned before this Court for early hearing of the matter and therefore, this Court has passed the following order:

''He would also state that the trial has been commenced in the lower Court and in view of the interim stay the trial court is not able to proceed further. Hence he seeks early hearing of this matter and hence, he wants to postpone the matter by 1 week instead of 2 weeks.

Considering the said submissions made by the learned counsel for the respondent, the matter was posted on 19.09.2017.''

On 15.09.2017, the petitioner appeared before the Trial Court in C.C.No.15 of 2015 and filed an affidavit stating that there was no stay before this Court to proceed the trial in C.C.No.15 of 2015. Aggrieved over the same, the respondent herein filed a private complaint before the Trial Court in C.C.No.9 of 2018, against the petitioner under Section 191 and 193 IPC for giving false evidence in judicial proceedings by filing the said affidavit as if there is no stay before this Court. Challenging the complaint in C.C.No.9 of 2018, the petitioner is before this Court.

3. The learned counsel appearing for the petitioner submitted that the petitioner is not aware of the fact of stay extended by this Court and he filed the affidavit without any malafide intention. Further during the entire proceedings before this Court, no order was passed on extension of stay. On the said date of hearing, even the trial has not commenced, it is



only pending before the Trial Court. The learned counsel appearing for the petitioner further submitted that if at all there is any grievance for the respondent, he has to file an application under Section 340 Cr.P.C. and not under Section 200 Cr.P.C and if the offence is proved, the accused persons may be prosecuted for the crime of perjury. Therefore, the complaint filed under Section 200 Cr.P.C. is not maintainable and the petitioner prays for quashment of the said complaint.

4. The learned counsel appearing for the respondent submitted that the respondent is not interested to pursue the impugned complaint before the Trial Court and this Court may permit the respondent to file a fresh complaint under appropriate provision of law.

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

6. In view of the submission made by the learned counsel for the respondent, this Court, without going into the merits of the matter, while allows the petition and quashes C.C.No.9 of 2018, pending on the file of the District Munsif Cum Judicial Magistrate Court, Vaniyambadi, grants liberty to the respondent, if so advised, to file a fresh complaint under appropriate provision of law before the competent forum. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

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To

The District Munsif cum Judicial Magistrate,
Vaniyambadi.

+1cc to Mr.N.Baaskaran, Advocate, S.R.No.42145

Cr1.O.P.No.18368 of 2018 and
Cr1.M.P.No.9838, 9658 and 5175 of 2018

GPL(CO)

RLP(07/10/2021)