



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.8965 of 2021 and
CrI.M.P.Nos.5831 & 5832 of 2021

R.Parthasarathy

... Petitioner/Accused

Vs.

1.The State: Rep. By,
Inspector of Police,
F-2, Egmore Police Station,
Chennai-600 008.

.. 1st Respondent/Complainant

2.P.Thirumalaiselvan,
Senior Manager (Finance),
M/s.Lakshmi Cargo Company,
(A division of M/s.Chakradhara Aerospace & Cargo Pvt., Ltd.).
Unit No.5, III Floor, Raja Annamalai Building,
72, Rukmani Lakshmipathy Road,
Egmore, Chennai-600 008.

.. 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to C.C.No.5443 of 2020 on the file of XIV Metropolitan Magistrate Court, Egmore, Chennai and quash the same.

For Petitioner : Mr.S.Baskaran

For R1 : Mr.A.Damodaran,
Additional Public Prosecutor

For R2 : Mr.R.Bala Ramesh



ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.5443 of 2020, on the file of XIV Metropolitan Magistrate Court, Egmore, Chennai.

2.The learned counsel for the petitioner submitted that the petitioner/A2 is the brother of A1 and he is nothing to do with the 2nd respondent company. The petitioner's brother/A1 was terminated from the 2nd respondent's company in the year 2013 and thereafter, with the delay of six years, a complaint was lodged to the 1st respondent. The allegation against the petitioner is that the petitioner in collusion with other two accused persons mobilized the funds in the name of the 2nd respondent and siphoned out. The petitioner is an agriculturist, the only sin is that he is the brother of A1. The learned counsel further submitted that the case of the prosecution is demolished by the statement of one Narasiman, Director of M/s.Sattva CFS and Logistics Private Limited, Chennai who admitted that the 2nd respondent company during the year 2013-2014 had due to the tune of Rs.33,94,848/- towards rent. If that being so, the allegation against the petitioner is false.

3.The learned Additional Public Prosecutor appearing for the 1st respondent Police submitted that the trial Court finding prima facie material against the petitioner, had taken the case on file as C.C.No.5443 of 2020 and issued summons to the witnesses. Now, the trial is progressing and the points raised by the petitioner are to be decided during the trial. Hence, he prayed for dismissal of this petition.

4.The learned counsel for the 2nd respondent submitted that in this case, the trial commenced, PW1 and PW2 examined so far and the case is posted for further examination of other witnesses. The statement of the witnesses clearly indicated that the petitioner in collusion with the other accused had mobilized funds and transferred the same to his bank account. Hence, he prayed for dismissal of this petition.

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



6. On perusal of the records, there are prima facie materials to proceed the case against the petitioner and the points raised by the petitioner are factual in nature which have 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.

7. At this stage, the learned counsel for the petitioners seeks dispensed with for the appearance 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., or 205 Cr.P.C., before the trial Court and also affidavit stating that he would not dispute his identity during trial; cooperate with 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 petitioner, the trial Court is to take coercive action against the petitioner.

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

Sd/-
Assistant Registrar (CS-CCC)

// True Copy //

Sub Assistant Registrar

vv2

To

1. The XIV Metropolitan Magistrate Court,
Egmore, Chennai.



2.The Inspector of Police,
F-2, Egmore Police Station,
Chennai-600 008.

3.The Public Prosecutor,
High Court, Madras.

+1CC to Mr.S.Baskaran, Advocate, SR.No. 52574

+1CC to Mr.R.Bala Ramesh, Advocate, SR.No. 52189

Cr1.0.P.No.8965 of 2021

AK II(CO)

B.VC (08/11/2021)