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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2021

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.10400 of 2021
and Crl.M.P.Nos.6270 & 6271 of 2021

P.Kulanthaivel

... Petitioner

Vs.

1.The State rep. by
The Inspector of Police,
Puduchathiram Police Station,
Namakkal District.
(Cr.No.295/2015)

2.Lakshmi

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the C.C.No.93 of 2018 on the file of the Judicial Magistrate II at Namakkal quash the same as illegal.

For Petitioner : Mr.G.Muniraj

For R1 : Mr.A.Damodaran
Government Advocate (Crl. Side)

O R D E R

The Criminal Original Petition has been filed to call for the records relating to the C.C.No.93 of 2018 on the file of the Judicial Magistrate No.II, and to quash the same as illegal.

2.The petitioner is A1 in C.C.No.93 of 2018 facing trial for the offence under Section 420 IPC before the Judicial Magistrate No.II, Namakkal had filed this quash petition.

3.The gist of the case is that the defacto complainant had lodged a complaint stating that two years prior to 21.10.2015, the petitioner as well as his Son Saravanan, the other accused had enticed the defacto complainant that if she would pay the money demanded by them, she would get her old age pension, a beneficial pension scheme of the Government till her death. The defacto complainant is a daily wage earning person, out of her old age ailment she was unable to do work and hence she was in need of pension.



4.The petitioner's son Saravanan was acting as a middle man and he was canvassing on behalf of his father A1, who was the Panchayat President and his mother viz., Madheshwari is the Member of Ward No.2. Believing the representation enticed by him the defacto complainant had given Rs.4,000/-. Likewise, LW2 Paapu had also given Rs.4,000/- to the petitioner. Likewise from several persons in the village the amounts were received by the petitioner and the other accused on the premise that they would get their old age pension.

5.On the complaint given by the defacto complainant, FIR came to be registered on 21.10.2015 and thereafter investigation commenced, witnesses examined, investigation completed and charge sheet filed listing LW1 to LW10 and filed the final report on 04.12.2017 and thereafter the same was taken on the file of the Judicial Magistrate No.II, Namakkal on 19.07.2018 and summons were issued. Now PW1 was also examined as witness on 14.05.2019. At this stage, this quash petition has been filed.

6.The contention of the petitioner is that there is a delay of five days in lodging the FIR. Further in this case investigation is said to have been completed on 04.12.2017 and the same was filed before this Court on 19.07.2018 with seven months delay. In the complaint Ex.P1, the defacto complainant has been shown a witness. But her husband viz., Manickam, who stands as a witness for the thumb impression of the defacto complainant in the complaint has not been cited as a witness and no statement was recorded from him. The Observation Mahazar and the Rough Sketch annexed in the final report does not pertaining to the above case. They are the documents pertaining to Crime No.41 of 2018. The first respondent/police has not conducted the investigation in a proper manner and the Lower Court had also not independently gone through the materials in the charge sheet and had mechanically taken cognizable of the offence and it is bad in law and hence liable to be quashed.

7.It is seen from the additional typed set of papers that the son of the petitioner had appeared before this Court on 10.06.2015 in CrI.O.P.No.13070 of 2017 as party in person seeking a direction, directing the Deputy Superintendent of Police, Namakkal District to register a case on the complaint of the said Saravanan, the son of the petitioner dated 09.04.2015. During hearing it was found that a case in Crime No.279 of 2015 has been registered on his complaint and thereafter the case was closed as "Mistake of Fact" and the RCS notice has been filed before the Judicial Magistrate Court No.II, Namakkal on 01.06.2015. Since A2 had appeared in person, the fresh copy of RCS notice and closer report have been served on A2 and he was given liberty to workout his remedy in the manner known to law. Thereafter nothing is happened. Referring these points the petitioner prayed for quashing of the charge sheet.



8.The learned Government Advocate (Crl. Side) appearing for the first respondent strongly opposed the quash petition on the ground that innocent poor people have been exploited by the petitioner and his son Saravanan-A2. Not only the defacto complainant the other persons who have been cheated or parted with money to the petitioner are listed as LW2 to LW5 viz., Pappu - LW2, Janaki - LW3, Manikalam - LW4, Kathamuthu - LW5, Chinnathambi - LW6 and Mani - LW7 are the witnesses for observation mahazar. All these above said innocent ladies have been exploited and the amount have been received by the petitioner and the other accused on the premise that old age pensions have been given. The then President of the Panchayat and the other accused i.e. his son viz., Saravanan involved in exploiting, deceiving the innocent villagers and thereby cheated them. After investigation statement of the witnesses have been recorded. LW1 to LW10 have been listed and documents collected and charge sheet has been filed before the lower court. The Lower court on perusal of the materials finds that prima facie case made against the petitioner and other accused in C.C.No.93 of 2018 and has issued summons to the petitioner as well as the other accused and they have appeared before the lower court and charges have been framed and PW1 has been examined in chief and cross examination have not been conducted and now filed this quash petition stating that there is a delay in conducting trial before the lower court. Further submitted that within a stipulated time the trial in this case would be completed, since the offence is of the year 2015 and charge sheet was filed in the year 2017 and taken on file in the year 2018 and PW1 could be examined on 14.05.2019 and thereafter the trial has been kept on hold.

9.Considering the submission and on perusal of the materials, it is seen that the defacto complainant had lodged the complaint before the respondent police on 21.10.2015. The case has been registered for the offence under Section 420 IPC. In the complaint, the defacto complainant had accompanied with her husband viz., Manickam and lodged the complaint, since she was an un-educated lady. The victim/defacto complainant has been exploited and cheated by the petitioner and the other accused. There is a delay in taking the case, FIR and the complaint had reached the court on 21.10.2015. Investigation has been completed and the charge sheet has been prepared and filed on 04.12.2017 and all the witnesses have been examined immediately with the delay in taking the complaint on the file for the reason that there is no 161 statement of Manickam, who is none other than the husband of the defacto complainant found in the final report.

10.It is seen from the records that there is no prejudice caused to the petitioner and it is only a technical delay. This court has brushed aside that there is enough materials are produced as against the petitioner. Further the charges have been framed and LW1 has been examined as PW1 and trial is on the progress. The Observation Mahazar and the Rough Sketch



annexed in the final report does not pertaining to the above case. They are the documents pertaining to Crime No.41 of 2018 and it is a mistake committed by the Investigation Officer and the victim/defacto complainant cannot be a sufferer for the above said mistake committed by the Investigation Officer.

11.In view of the same, this Court is not inclined to entertain this Criminal Original Petition, since the offence is of the year 2015, C.C.No.93 of 2018 is pending from the year 2018, PW1 has been examined during May, 2018 and the case has been pending with a considerable delay. Hence, the respondent police is directed to produce the witnesses without any further delay. In view of the same, the trial Court is directed to complete the trial, within a period of three months, after commencement of normal court proceedings.

12.Accordingly, this Criminal Original Petition stands dismissed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-IV)

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Sub Assistant Registrar

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To

1.The Judicial Magistrate No.II,
Namakkal.

2.The Inspector of Police,
Puduchathiram Police Station,
Namakkal District.

3.The Public Prosecutor,
High Court,
Madras.

Crl.O.P.No.10400 of 2021
and Crl.M.P.Nos.6270 & 6271 of 2021

PCH(CO)
GN(16/07/2021)