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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2021

CORAM:

THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

Crl.O.P.No.3636 of 2017

and

Crl.M.P.Nos.2633 & 2634 of 2017

1.V.Adhimoolam

2.R.Siva

[PETITIONERS]

Vs

1.The State rep by
The Inspector of Police,
G-3 Melmaruvathur Police Station,
Kancheepuram District.
Cr.No.732/2016

2.A.Karthikeyan

[RESPONDENTS]

Prayer: Petition is filed under section 482 of the Code of Criminal Procedure to call for the records relating to the impugned charge sheet in C.C.No.7 of 2017 on the file of the Learned Judicial Magistrate, Madurantakam and quash the same.

For Petitioners	:	M/S.G.Magesh Kumar
For R1	:	Mr.L.Baskaran, Govt. Advocate (Crl.side)
For R2	:	No appearance, Private Notice served



ORDER

This Criminal Original Petition has been filed, seeking to quash the proceedings in C.C.No.7 of 2017 pending on the file of the Learned Judicial Magistrate, Madurantakam.

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2. The case of the prosecution is that the petitioner along with other accused had committed conspiracy and Mr.Karthikeyan, de-facto complainant who gave a complaint to the police, alleging that he has requested one Kumaravadivelu (A1) who was introduced by his friend Mr.Raghu, for providing a loan for his business. For providing the loan, on 19.12.2016, the said Kumaravadivelu requested the de-facto complainant to wait at the Sothupakkam Junction. Accordingly, the de-facto complainant along with his friend Mr.Santhosh Kumar waited at around 10.00 p.m. on 19.12.2016, where Kumaravadivelu (A1) along with another person came in a car bearing No.TN-23-BC 8631 and received a sum of Rs.5,000/- from the defacto complainant and thereafter, they took them in the said car to Reddipalayam Check Post, where the other accused were in police uniform, stopped them and proceeded with them. Thereafter, the said Kumaravadivelu (A1) told the person those who were in police dress that their work was over. Therefore, they left from that place with the car bearing No.TN-21-AD 1177. Thereafter, the defacto complainant waited for a long time to get the loan amount, but the accused persons did not turn up. Hence, the defacto complainant lodged a complaint.

3. Based on the complaint an FIR was registered on 20.12.2016. Thereafter, a charge sheet was filed before the learned Judicial Magistrate and the same was taken on file vide C.C.No.7 of 2017. Questioning the said proceedings, the petitioners who were arrayed as A5 and A7, have come forward with the present Original Petition.

4. The only main contention raised by the petitioners is that a false case was foisted against them. There were no averments made against the petitioners either in the complaint or in the said 161 Cr.P.C. statements and therefore, there is no material against the petitioners to proceed and hence, the proceedings in C.C.No.7 of 2017 are liable to be quashed.

5. Per contra, Mr.L.Baskaran, Govt. Advocate (Crl.side) who is appearing for the State would submit that this is the case of impersonation. The said Kumaravadivelu (A2) who took Rs.5,000/- from the defacto complainant, promising him to provide the loan amount for his business purpose. After the receipt of the said amount of Rs.5,000/-, Kumaravadivelu (A2) brought the defacto complainant and his friend in car to Reddipalayam Check Post where Kumaravadivelu's friends came in police uniform and



thereafter, all of them have absconded in a separate vehicle. He would point out that the defacto complainant has been cheated by the petitioners along with other accused persons by impersonation appearing in police dress and committed the offence, which is serious in nature. There is a clear averment with regard to the persons involved in the crime by way of wearing police uniform by the accused persons. Even though the names of the petitioners here were not mentioned in the complaint lodged by the defacto complainant, during the investigation, the involvement of the petitioners has been traced out and accordingly, their names have been included in the charge sheet. Therefore, he would contend that there is no merit in the petition and the same is liable to be dismissed.

6. On a perusal of the entire materials available on record and considering the submissions made by the learned Government Advocate, this Court finds that there is prima facie material available against the petitioners which would make out the ingredients of the alleged offences since both in the FIR as well as in the 161 Cr.P.C. statement made by the complainant, specific averments were made that some persons were waiting at Reddipalayam Check Post in police uniform, where Kumaravadivelu (A1) had chatted by saying that "our work was completed and that we will leave from the place in car bearing No.TN-21-AD 1177 (i.e.) from Reddipalayam Check Post". Thereafter, the accused persons have not turned up and met the de-facto complainant as promised by them. During course of the investigation, the prosecution found that the petitioners were also involved in the case and accordingly, their names were included in the charge sheet. Since prima facie it appears that the petitioners were involved in the commission of the crime, this Court is of the view that at the threshold, it would not be appropriate to quash the proceedings and the innocence pleaded by the petitioners stating that their names were falsely included in the charge sheet and they did not commit any offence, were all the subject matter for trial and it would be decided only during the full fledged trial. The statements of the witness under Section 161 Cr.P.C. relied upon by the petitioners, cannot be relied on as it is settled law that the statements of the witnesses recorded under Section 161 Cr.P.C. are wholly inadmissible in evidence and the same cannot be taken into consideration by the Court while adjudicating a petition filed under Section 482 Cr.P.C. Further, as held by the Hon'ble Supreme Court that once a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash the criminal proceedings pending against them. Moreover, the de-facto complainant has clearly stated that the friends of Kumaravadivelu (A1) came in police uniform and waited at Reddipalayam Check Post and thereby they involved in the commission of crime.



7. For the foregoing reasons, this Court does not find any merit or substance to entertain the present petition. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

jd/sd

To

- 1.The Judicial Magistrate,
Madurantakam.
- 2.The Inspector of Police,
G-3 Melmaruvathur Police Station,
Kancheepuram District.
- 3.The Public Prosecutor
High Court, Madras.

Crl.O.P.No.3636 of 2017

and

Crl.M.P.Nos.2633 & 2634 of 2017

JPL (CO)
PR (02/12/2021)