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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2021

CORAM

The Hon'ble Mr. Justice Krishnan Ramasamy

Crl.O.P.No.12483 of 2017

and

Crl.M.P.Nos.8129 & 8130 of 2017

1. S.Radha Krishnan
2. V.Baskar
3. L.Seethapathy

...Petitioners

vs.

State by its,
Inspector of Police,
CCIWCID Police,
Chennai - 600 002.

...Respondent

Prayer: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code to call for the records relating to the case in C.C.No.8488 of 2008 pending trial on the file of the II Metropolitan Magistrate Egmore, Chennai and quash the same.

For Petitioners: M/S.K.G.Senthilkumar

For Respondent : Mr.L.Baskaran,
Government Advocate (Crl.Side)

O R D E R

This Criminal Original Petition has been filed, seeking to quash the proceedings in C.C.No.8488 of 2008 pending trial on the file of the II Metropolitan Magistrate Egmore, Chennai.

2. The case of the prosecution is that the petitioner borrowed money from the Chennai Central Co-operative Bank Ltd., towards computer loan for a sum of Rs.50,000/- by producing fake invoices. Therefore, a case was registered under Section 420, 465, 466, 471 r/w 465, 466, 468, 419 and 120(B) of IPC and the same was taken on file vide C.C.No.8488 of 2008 on the file of the learned II Metropolitan Magistrate Egmore, Chennai.



3. According to the the petitioners, subsequent to the filing of the complaint, the entire loan amount of Rs.50,000/- was settled with the defacto complainant/Co-operative Bank. In this regard, Mr.L.Baskaran, learned Government Advocate (Crl.Side) appearing for the respondent admitted the said fact and produced a letter received from the Co-operative Bank.

4. The learned counsel for the petitioners submitted that in this matter the charge sheet was filed as early as in the year of 2008 and it was taken on file vide C.C.No.8488 of 2008 and thereafter, there was no progress at all and even the petitioners/accused were not served copies of documents. Thus, the case in the above C.C., has been pending for the past 13 years without any progress.

5. Per contra, the learned Government Advocate (Crl.side) appearing for the respondent admitted that the charge sheet was filed in the year 2008, however, the presence of some of the accused could not be secured and the non-bailable warrants were issued against them and the same were pending, which only caused the delay. Further, he fairly submits that they have received a letter from the said Bank dated 22.03.2021, wherein it has been stated that as far as the petitioners are concerned, the entire amount borrowed by them, has been settled. Though the amount has been settled, still they are entitled to discharge from the prosecution for the alleged offence committed by them.

6. Heard the learned counsel for the petitioner and the respondent and perused the materials available on record.

7. One of the main allegation levelled against the petitioners by the prosecution is that they have produced fake invoices and availed computer loan. According to the prosecution, without purchase of computer, the petitioners have availed the loan. Immediately, after filing the complaint, the petitioners have repaid the entire due amount to the Co-operative Bank and the same was confirmed by the Co-operative Bank by its letter dated 22.03.2021, which was produced by the learned Government Advocate (Crl.side). A perusal of the letter shows that the entire loan amount availed by the petitioners, was settled by them.

8. No doubt, even if the amount is settled, the petitioners/accused cannot be exonerated from the criminal charge. However, it should continue without affecting the rights of the petitioners, in a fair manner.



9. In the present case, though the charge sheet was filed in the year 2008 and the same was taken on file, for the past 13 years, there was no progress and till now no charges were framed against the petitioners. The reason assigned by the prosecution was that in respect of some of the accused, non-bailable warrants were pending. Merely, the non-bailable warrants were pending against some of the accused and citing the said reason, the prosecution cannot delay the proceedings before the Court and it can very well seek the indulgence of the Court to split up the case against the accused whose presence could not be secured and NBWs were pending and proceed with the case in respect of the accused who were available for prosecution. However, no steps appear to have been taken by the prosecution to split up the case. Further, the police also has not taken any steps to execute the non-bailable warrant so far. This Court finds fault only on the part of the respondent police for not executing the NBWs and bring accused into the clutches of law.

10. Under these circumstances, this Court is of the clear view that keeping the matter pending for the last 13 years after filing the charge sheet in the year 2008 without serving the copies to the petitioners would certainly violate the rights of the petitioners guaranteed under Article 21 of the Constitution of India and no person can be prosecuted under law for unreasonably at the cost of others. There must be some progress in the case after filing of the same. The prosecutor cannot keep the matter pending for years together on the pretext of non-execution of NBWs and without even seeking to split up the case. The prosecution ought to have proceed with the case in respect of the accused who are available after getting the case split up in respect of the accused against whom, NBWs have been pending for years together. No such steps were taken and it shows that the prosecution is not interested in pursuing the matter effectively.

11. Therefore, this Court is of the view that no purpose would be served if the matter is kept without any progress citing the reason that NBWs were pending against the co-accused and thereby keeping the matter pending for years together would certainly affects petitioner's fundamental right guaranteed under Article 21 of Constitution of India and further taking note of the fact that the petitioners had already discharged the loan amount due to the defacto complainant/Bank, this Court is inclined to quash the proceedings against the petitioners.



Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.8488 of 2008 pending on the file of the learned II Metropolitan Magistrate, Egmore are hereby quashed.

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SD/-

ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

sp/jd
To

1. The II Metropolitan Magistrate,
Egmore, Chennai.
2. -Do- Thro The Chief Metropolitan Magistrate,
Egmore, Chennai-8.
3. The Inspector of Police,
CCIWCID Police,
Chennai - 600 002.
4. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.G.Senthilkumar, Advocate Sr.57254

Crl.O.P.No.12483 of 2017
and
Crl.M.P.Nos.8129 & 8130 of 2017

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srg 29/11/2021