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Crl.O.P. No.13190 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2021

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No.13190 of 2017
and Crl.M.P.No.8569 & 8570 of 2017

A.Velkumar

...Petitioner

Vs.

1.The State rep by Inspector of Police,
Central Crime Branch, Salem City, salem.

2.T.K.Duraisamy

...Respondents

PRAYER :Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records of impugned charge sheet in C.C.No.99 of 2016 pending on the file of the Judicial Magistrate Court No.5, Salem and quash the same.

For Petitioner

: Mr.N.Kolandaivelu

For Respondents

: Mr.S.Vinoth Kumar
Government Advocate for R1

Mr.G.Saravanan for R2

ORDER



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This Criminal Original Petition has been filed to call for the records of impugned charge sheet in C.C.No.99 of 2016 pending on the file of the Judicial Magistrate Court No.5, Salem and quash the same.

2.It is the contention of the learned counsel for the petitioner that as there were business transactions between the accused and the defacto complainant, the cheques were issued by the defacto complainant as a part of business transaction and it has nothing to do with the loan repayment by the accused. All the accused never had the intention to sell the Mill either to the defacto complainant or anyone. He further submitted that as against the dishonour of cheques issued by all the accused, the defacto complainant had already filed a complaint under Section 138 of Negotiable Instrument Act which is pending against the petitioner for similar nature of allegation and final report is also filed. Therefore, he prays to quash the final report.

3. Learned Government Advocate(Crl.Side) appearing for the first respondent submitted that the accused has induced the defacto complainant to borrow huge amount of Rs.1,30,00,000/- in order to clear the loan amount. Only on the inducement and promise, the amount has been borrowed on the



ground that the property will be sold. The moment the amount is borrowed, the accused did not execute the document as promised. Therefore, it is a clear case of cheating and prayed for dismissal of this petition.

4. On perusal of the entire final report, the entire allegations of the final report indicate that the accused induced the defacto complainant to borrow huge sum of Rs.1,30,00,000/-. On payment of such amount, they promised to sell the Mill after clearing the loan. Only based on the promise and inducement, the accused appears to have paid the amount. Thereafter, they did not kept up their promise. The *prima facie* allegation indicates that there is deception from the very inception. Whether those allegations constitute an offence or not is required to be seen in the evidence and the same cannot be gone into this stage. Therefore, this Court is of the view that merely because similar complaint filed under Section 138 cannot be a ground to quash the final report. The final report has been filed against the cheating which is distinct offence which has to be seen at the time of trial. Accordingly, I do not find any merits to quash this petition.

5. Accordingly, this Criminal Original Petition is disposed of with a



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direction to the Court below to complete the proceedings in C.C.No.99 of 2016

within a period of six months from the date of receipt of a copy of this order.

The accused is directed to appear before the trial Court within two weeks from the date of receipt of a copy of this order and file an application under Section 436 of Code of Criminal Procedure. On such filing of the application, trial Court is directed to release the petitioner on bail on the same day on executing a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) each with two sureties. If thereafter, he absconds, a fresh FIR can be registered under Section 229 A of the Indian Penal Code. Consequently, connected Criminal Miscellaneous Petition is closed.

15.11.2021

Index: Yes/No
Internet: Yes/No
msv

To



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1. The Inspector of Police,
Central Crime Branch,
Salem City, salem

2.The Public Prosecutor,
High Court,
Madras.



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N. SATHISH KUMAR, J.

msv

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