IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2021

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No.23398 of 2017
and CRL.M.P.No.13623 & 13624 of 2017

Srinivasu ...Petitioner/Accused

Vs.

1.State rep by the
Inspector of Police,
CCB, Unit-9, Veppary, Chennai-7

2.D.Jayasankar, Protector of Emigrants,
Ministry of Overseas Indian Affairs,
Government of India,
TNHB complex, Ashok Nagar, Chennai-83.
(R2 is impleaded as per the order of this
Hon'ble Court dated 22.11.2017 made in
Crl.O.P.No.14418/2017 in Crl.O.P.No.23398/2017) ..Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records in C.C.No.2086 of 2017 pending on the file of the XI Metropolitan Magistrate Court, Saidapet, Chennai and quash the same.

For Petitioner : Mr.K.P.Anantha Krishna

For Respondents : Mr.R.Kishore Kumar
Govt.Advocate(crl.side) for R1
Mr.D.Simon for R2
Central Govt. Standing Counsel

ORDER

This Criminal Original Petition has been filed to call for the records in C.C.No.2086 of 2017 pending on the file of the XI Metropolitan Magistrate Court, Saidapet, Chennai and quash the same.

2. The case of the prosecution is that the petitioner was illegally inviting various persons by calling for an interview and promising them that he will secure jobs in the United States of America, without obtaining proper license or registration from the concerned authorities. The FIR was registered in the year 2010 for an offence under Section 24(1)(e) of the Emigration Act ,1983.

3. The investigation officer thereafter proceeded to record the statements of the witnesses under Section 161 of the Code of Criminal Procedure and the Final Report was laid before the Court below and the Court below took cognizance of the same in CC No.2086 of 2017 for an offence under Section 420 of IPC r/w 511 of I.P.C and Section 10 and 24(1)(3) of the Emigration Act.

4. Heard Mr.K.P.Anantha Krishna, learned counsel appearing for the petitioner, Mr.R.Kishore Kumar, learned Government Advocate(Crl.Side) appearing for the first respondent and Mr.D.Simon, learned Central Govt. Standing Counsel for the second respondent.

5. This Court has carefully considered the submissions made by the learned counsel on either side and the materials available on record.

6. The main ground that was urged before this Court was that the FIR was registered in the year 2010 for an offence under Section 24(1)(e) of the Emigration Act. This offence is punishable for a maximum imprisonment of two years. However, the Final Report itself came to be filed only in the year 2017. Since taking cognizance was barred by limitation under Section 468 of the Code of Criminal Procedure, the respondent Police had intentionally added Section 420 of IPC in order to give an impression that the Final Report is not barred by limitation.

7. The statements collected from the witnesses were also brought to the notice of this Court and there is not a single witness who has spoken about collection of any money from them by the accused person. Therefore, according to the petitioner, there was neither a wrongful gain to the petitioner nor was there a wrongful loss suffered by the witnesses, who are alleged to have been invited for the interview. This Court on carefully going through the statements recorded from the witnesses also found that there was no money transaction involved with any of the witnesses and therefore the charge under Section 420 of IPC is totally unsustainable.

8. The only other charge that remains against the petitioner is under Section 10 and Section 24 of the Emigration Act. This charge is attempted to be sustained on the ground that the petitioner had invited applications and interviewed candidates by promising them to secure jobs in United States of America and this was done by the petitioner without a valid license.

9. Even if the allegation made in the Final Report is taken to be true, the Final Report ought to have been filed within a period of three years as per Section 468 (2) (c) of

the Code of Criminal Procedure. This provision makes it clear that no Court shall take cognizance of an offence after the expiry of three years, if the offence is punishable with imprisonment for a term exceeding one year, but not exceeding three years.

10. In the present case, it is very clear that the respondent Police after realising that they will not be able to file a Final Report, since it was much beyond the period of limitation, had chosen to add Section 420 IPC to the Final Report justify the delay. This method adopted by the respondent Police was to clearly circumvent the bar created under Section 468 of the Code of Criminal Procedure. Considering the fact that the FIR was registered in the year 2010 and the Final Report was filed in 2017 and also considering the fact that a long time has lapsed since the alleged incident had taken place, there is no compelling reason to extend the period of limitation under Section 473 of the Code of Criminal Procedure. The continuation of the proceedings against the petitioner at this length of time will only be an abuse of process of Court.

11. In the result, the proceedings in CC No. 2086 of 2017 on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai, is hereby quashed, and the Criminal Original Petition is allowed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-CCC)

//True copy//

Sub Assistant Registrar

msv/nr

To

1. The Inspector of Police,
   CCB, Unit-9, Veppary, Chennai-7

2. XI Metropolitan Magistrate Court,
   Saidapet, Chennai

3. The Public Prosecutor,
   High Court, Madras.

+1cc to Mr.K.P.Anantha Krishna, Advocate SR.No.69454
+1cc to Mr.D.Simon, Advocate SR.No.68970

Crl. O.P. No.23398 of 2017
and CRL.M.P.No.13623 & 13624 of 2017

PVS(CO)
GM (20/01/2022)