



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2021

CORAM:

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

CrI.O.P. No.24169 of 2017
and
CrI.M.P. No.13980 of 2017

Mr. Chidambaram

...Petitioner/Accused

Vs.

1. Mr. Dayasagar

2. State Rep. by
The Inspector of Police,
Katpadi Police Station,
Vellore District.
(Crime No.36 of 2017)

...Respondents/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the record in F.I.R. in Crime No.36 of 2017 dated 26.01.2017 for the alleged offence under Section 408 of IPC pending investigation on the file of the 2nd respondent herein and quash the same.

For Petitioner : Mr. M. Jaikumar
For Respondent-1 : Mr. S.N. Amarnath
For Respondent-2 : Mr.E. Rajthilak
(Govt. Advocate (CrI. Side))

O R D E R

This Criminal Original petition has been filed under Section 482 Cr.P.C. seeking for to call for the record in F.I.R. in Crime No.36 of 2017 dated 26.01.2017 for the alleged offence under Section 408 of IPC pending investigation on the file of the 2nd respondent herein and quash the same.

2. The case of th prosecution is that the petitioner who was working as Supervisor and Account Manager in the Petrol Bunk of the complainant for past 8 months. On the trust on him, the complainant gave a blank Cheque with signature to the petitioner for the business transaction and the petitioner misused the same by transferring the amount in the account of the petitioner. Hence, the complainant has given the complaint against the



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petitioner and the same has been registered in Crime No.36 of 2017 for the offence under Section 408 of I.P.C. Hence, this petition has been filed by the petitioner to quash the aforesaid the Crime No.36 of 2017 on the file of the 2nd respondent herein.

3.The learned counsel for the petitioner would submit that the complainant had received several lakhs of rupees in different installments as hand loan from the petitioner herein through on-line transaction from the account of the petitioner to the account of the complainant. As on date of the complaint, the complainant is liable to pay loan amount of Rs.7,50,000/- + Rs.51,437.50/- (SBI CC Card) + 2,57,187.50/- (HDFC Credit Card) in furtherance of the same to discharge his part of the liability, he issued a cheque bearing No.626537 drawn on SBI. After petitioner deposited in his bank, the complainant requested the petitioner to purchase through the Credit Card for which the petitioner refused to do the same and hence the complainant has given false complaint against the petitioner.

4. It has been further submitted that the petitioner paid the above said loan amount as such as on the year of 2014 which was reflected in his statement of account but the complainant falsely claimed that the petitioner was working in the Petrol Bunk of the complainant for the past 8 months (Complaint date ie. 26.01.2017). After the complaint, the 2nd respondent/complainant filed Crl. O.P. No.2981 of 2017 to direct the bank to re-transfer the amount to his account on furnishing indemnity bond or bank guarantee to release the amount. This Court by its order dated 29.06.2017 directed the Manager, State Bank of India, Karaikudi, to re-transfer the amount to the petitioner's account on receipt of the necessary Indemnity Bond. According to the aforesaid directions of this Court, the said amount was re-transferred to the Complainant account.

5. The learned counsel for the petitioner relied upon the Judgement of the Hon'ble Supreme Court in the case of "State of Haryana Vs. Bhajan Lal, wherein it has been held as follows:

"1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police



officers under Section 156(1) of the Cr.P.C. Except under an order of a Magistrate within the purview of Section 155(2) of the Cr.P.C.

3. Where the un-controverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a Police Officer without an order of a Magistrate as contemplated under Section 155(2) of the Cr.P.C.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a Criminal Proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with malafide and /or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

In spite of the aforesaid observations made by the Hon'ble Supreme Court, the Criminal Proceedings have been initiated against the petitioner which amounts to the abuse of process of the Court and the complainant has initiated Criminal proceedings just to harass the petitioner with mala-fide intention and with an ulterior motive of wreaking vengeance on the petitioner herein. Hence, the petitioner prays this Court to call for the records in Crime No.36 of 2017 on the file of the 1st respondent and quash the same.

6. Per contra, the learned Government Advocate (Crl. Side) on instruction submitted that the statement of the account of Petrol Bunk along with a complaint letter issued to the Bank by the complainant has been submitted before this Court wherein



it is admitted fact that there is an financial transaction between the petitioner and the 2nd respondent. The Cheque bearing No.626537 dated 15.12.2016 has been debited in the account of the Shakthi Sree Service Station drawn on SBI Bank, Katpadi Branch. It could be found only after investigation whether the complainant has repaid the loan amount to the petitioner or the petitioner has withdrawn the said amount without consent of the complainant. After the transferring the said amount without knowledge of the complainant, he has given a letter dated 16.12.2016 time at 10.15.AM addressed to the Branch Manager, Kadpadi Branch, requesting to hold the amount to his favour since legal proceedings is being taken against the petitioner herein.

7. Heard, the learned counsel for the petitioner and the learned Government Advocate (Crl. Side) as well as perused the material available on records.

8.The contentions put forward by the learned counsel appearing on behalf of the petitioner are purely factual in nature and this Court cannot venture into conducting a mini investigation into the matter and it therefore does not fall within the ambit of its jurisdiction under Section 482 of Cr.P.C. Any finding on facts will also have a bearing on the investigation conducted by the respondent Police.

9. In the facts and circumstances of the case, this Court is not inclined to interfere with the investigation conducted by the respondent Police at this stage.

10. In the result, this Criminal Original Petition is dismissed and the respondent Police is directed to proceed further with the investigation in accordance with law and complete the investigation and file a final report or a closure report, as the case may be, within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

lbm



To:

1. The Inspector of Police,
Katpadi Police Station,
Vellore District.

2. The Public Prosecutor,
High Court of Madras,
Chennai.

Copy to

The Section Officer,
Criminal Side Record,
High Court, Madras.

Crl.O.P. No.24169 of 2017
and
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NR[co]
NSK 29/09/2021