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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2021

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.No.28258 of 2017
and
CRL.M.P.No.16049 of 2017

V.Balakrishnan

...Petitioner

Vs

1. State rep. by
The Inspector of police,
District Crime Branch,
kancheepuram,
Kancheepuram District.
(Crime No.43 of 2017)

2. P.Sivakumar

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to Crime No.43 of 2017 on the file of the Inspector of Police, District Crime Branch, Kancheepuram, Kancheepuram District and quash the same.

For Petitioner : Mr.P.Kalimuthu

For Respondents : Mr.S.Vinoth Kumar
Government Advocate
for R.1

Mr.L.Rajasekar
for R2

O R D E R

This Criminal Original Petition has been filed to quash the F.I.R in Crime No.43 of 2017, pending on the file of the Inspector of Police, District Crime Branch, Kancheepuram, Kancheepuram District.

2. The case of the prosecution is that one Sun Metal was engaged by the second respondent Company to remove the scrap generated for the month of April to June 2016. The petitioner



in collusion with Azerra Steela, swindled the company amount to the tune of Rs.35,00,000/-. Hence, a case was registered in Crime No.43 of 2017 for the offence punishable under Sections 408 and 420 of the Indian Penal Code.

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3. Heard the learned counsel appearing for the petitioner, Mr.Vinoth Kumar, learned Government Advocate (Crl.side) the first respondent and the learned counsel appearing for the second respondent and perused the materials available on record.

4. The learned counsel appearing for the petitioner submitted that on an earlier occasion, Managing Director of the second respondent Company preferred a complaint against the petitioner before the Inspector of Police, Sriperumbudur Police Station, on the same set of facts in Crime No.494 of 2017 for the alleged offences punishable under Sections 408 and 420 of the Indian Penal Code, but it was closed as 'Action dropped' and the same has been accepted by the learned District Munsif-cum-Judicial Magistrate, Sriperumbudur, on 7/7/2017 in the presence of the second respondent.

5. It is specifically contended by the learned counsel for the petitioner that in order to extract the money, the defacto complainant preferred complaints before various authorities. Hence the petitioner had filed a writ petition in W.P.No.11507 of 2017, in which the second respondent Company has been arrayed as third respondent.

6. The learned counsel appearing for the petitioner further submitted that there cannot be two First Information Reports on the same set of facts, which is nothing but an abuse of process of law.

7. The learned Government Advocate (Crl.side) appearing for the first respondent contended that final report was filed by the learned District Munsif-cum-Judicial Magistrate, Sriperumbudur and the same has been closed only on the undertaking given by the petitioner. But, the petitioner had failed to pay the amount. Hence the present FIR.

8. I have perused the materials available on record.

9. It appears that before the trial Court, defacto complainant had made an endorsement to the effect that he has no objection in closing the complaint. As per the undertaking, he has not paid the money. Therefore the present FIR has been filed once again on the same set of offence.

10. It is relevant to note that earlier complaint was closed only on the undertaking given by the petitioner. Now, he



has taken advantage of the same and filed this application to quash the FIR. It is to be noted that the very conduct of the petitioner indicate that he has given such an undertaking only to avoid criminal prosecution.

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11. Though it is the submission of the learned counsel appearing for the petitioner that the said undertaking is given under coercion that cannot be gone into at this stage. But the fact remains that earlier closure report indicate that the same has been closed only on the basis of the undertaking given by the petitioner. Mere closure of the earlier FIR cannot be a ground to stop the reinvestigation of the allegation, which is serious in nature. In such a view of the matter, this Court is not inclined to quash the First Information Report.

12. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

shk/mvs.

To

1. The Inspector of police,
District Crime Branch,
kancheepuram,
Kancheepuram District.
(Crime No.43 of 2017)

2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.L.Rajasekar, Advocate, S.R.No.60241

CRL.O.P.No.28258 of 2017

RSV[co]
NSK 10/12/2021