IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2021

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THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.NO.19675 OF 2017
AND
CRL.M.P.NOS.11866 & 11867 OF 2017

Iyyanar ... Petitioner

.Vs.

1. The Inspector of Police,
   Town(L&O) Police Station,
   Tiruvannamalai.

2. Balaji ... Respondents

PRAYER:-

Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records in C.C.No.23 of 2015 pending on the file of the Judicial Magistrate No.1, Tiruvannamalai and quash the same.

For Petitioner : Mr.P.Sesubalan Raja

For Respondents : Mr.R.Kishore Kumar
Government Advocate(Crl.side)
For R1

Mr.G.Saravanan for R2

ORDER

This criminal Original Petition has been filed to call for the records in C.C.No.23 of 2015 pending on the file of the Judicial Magistrate No.1, Tiruvannamalai and quash the same.

2. The crux of the allegation is that A1 is the Father of A2 and defacto complainant met A1 in a shop, where A1 has promised the defacto complainant by stating that he will get a job for the nephew of defacto complainant through his son who was

working as an officer in Indian Military. In this regard, the defacto complainant also spoke to A2 over phone and he has demanded a sum of Rs.2,00,000/-(Two Lakhs Only). Thereafter, the job has not been assured when demanded. When the same was questioned, A1 abused the defacto complainant and thereby, the prosecution has been launched.

3. The learned counsel for the petitioner submitted that A2 was implicated only on the basis of the petition filed by the defacto complainant before this Court. Previously, investigation has been completed and final report has been filed by the Investigating Agency specifically indicating that there is no incriminating materials available to proceed against A2 and the final report has been filed by the Investigating Agency only against A1 for the offences punishable under Sections 420, 294 (b),506(i) of IPC whereas, after suppressing this, the petition has been filed before this Court seeking for direction of further investigation. This Court vide order dated 14.02.2016 has directed the learned Government Advocate to file Additional charge sheet.

4. The learned Government Advocate (Criminal Side) submitted that they filed Additional charge sheet merely based on order has been passed based on the admission. Now, additional charge sheet has been filed implicating A2 without any materials. Hence, he further submitted this final report filed as against A2 is nothing but abuse of process of law. He has been implicated mainly on the ground of some previous motive. At any event, even there is no materials available against A2 for prosecuting the offence under Section 420 of IPC, at the instigation, A2 has received money from defacto complainant. Hence, he submitted that there is materials available to proceed against them.

5. At the outset, it is well settled that when the materials are unearthed by the prosecution agency shows that there are prima facie materials to proceed against accused, this Court cannot exercise its power under Section 482 of Cr.P.C to interfere with the final report and at the same time when the entire materials unearthed by the prosecution taken in the face value do not constitute any offence and still forcing the party to face the ordeal of the trial is nothing but abuse process of law. Similarly, if there is materials to indicate that A2 has been implicated for some other reasons at the instance of the complainant and the Court can very well interfere and quash the the proceedings.

6. The crux of the allegation of the defacto complainant is that when searching job for his nephew, he met A1 and A1 has assured job to his nephew with the help of his son(A2) who was

working as an officer in the Indian Military services. Accordingly, A1 has demanded a sum of Rs.2,00,000/. On the date of occurrence, A1 spoke to A2 over the phone and A2 also spoke to defacto complainant and they asked him to pay the money. Based on the above complaint, thorough investigation was conducted by the prosecution. On earlier occasion, the Investigating Officer has filed Final Report as against A1 for the receipt of money and in his Final report, he specifically stated that there are no materials available on record that A2 spoke to A1 over phone on the date of occurrence and Final report was filed against A1. Thereafter, the petition has been filed before the Trial Court for further investigation. The Court in Crl.M.P.No.2863 of 2015 ordered further investigation for filing Additional Final Report. Thereafter, again Additional final report has been filed by the Investigation Agency changing their earlier stand that there was no documents available on record to show that A2 had a phone conversation with the accused on the date of occurrence or later and filed Additional final report only against A1. Not stopping with that Crl.O.P.No.26386 of 2016 was filed before this Court for direction to file Additional charge sheet. Suppressing the fact that the Additional final report has already been filed in pursuant to the orders of the learned Judicial Magistrate-I, Thiruvannamalai, the above Crl.O.P came before this Court for hearing.

7. The learned Government Advocate(Crl.side) submitted in the above O.P that the Investigating Agency has sought two weeks time to file an Additional charge sheet, therefore, the Court has granted two weeks time to file an Additional charge sheet. Only on the basis of such order, again the additional final report has been filed implicating A2 as accused. This fact itself indicate that the prosecution agency has casually filed final report without any materials. When the final report already filed, they found that there was no materials to proceed against A2. However, pursuant to the time granted by this Court and orders obtained, suppressing the earlier final report, the prosecution agency has filed additional final report only to comply the orders of this Court without unearthing any materials or evidence as against A2. In such view of the matter, this Court is of the view that the continuation of the prosecution against A2 is nothing but abuse process of law and there is no materials against him to connect the offence under Section 420 of I.P.C and there is no materials to indicate that he has ever played fraudulent or dishonest act or played deception from the inception.

8. Even when entire materials are taken as proof, even then, they do not constitute any offence against A2. Accordingly, this Criminal Original Petition is allowed and prosecution against A2

cannot be maintained and the same is quashed. The Court below is directed to complete the proceedings as against A1 and dispose the main case as expeditiously as possible. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

msv/nr

To

1. The Judicial Magistrate No.1,
   Tiruvannamalai.

2. The Inspector of Police,
   Town(L&O) Police Station,
   Tiruvannamalai.

3. The Public Prosecutor,
   High Court, Madras.

+1cc to Mr.P.Sesubalan Raja, Advocate, S.R.No.61426

CRL.O.P.NO.19675 OF 2017 AND
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PMK(CO)
PBS/14/12/2021