BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 09.04.2021

PRONOUNCED ON : 19.04.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.5203 of 2021
and
Crl.MP(MD)Nos.2998 and 2999 of 2021

1.Muthkumar @ Muthukumara Samy
2.Sankar @ Sankara Narayanan
3.Subbulakshmi
4.Arunachalam
5.Kavitha
6.Solaipandi
7.Indhurani
8.Ayyapan
9.Sundari ... Petitioners/Accused Nos.1 to 9

Vs.

1.The State Rep. By
The Inspector of Police,
District Crime Branch,
Tirunelveli.
(Cr.No.22 of 2013) ...1st Respondent/Complainant

2.Rajeswari ...2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Criminal procedure code to call for the records pertaining to the case in C.C.No.362 of 2018 on the file of the Judicial Magistrate No.1, Tirunelveli and quash the same as illegal as against the petitioners.

For Petitioners : Mr.J.Jeyakumaran
For R1 : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl.side)
For R2 : No Appearance

ORDER

This petition is filed to quash the proceedings in C.C.No.362 of 2018 pending on the file of the learned Judicial Magistrate No.1, Tiruneleli.

2.Brief facts of the case:-

The second respondent herein, who is the defacto complainant, lodged a complaint before the first respondent police on 27.09.2018 with the following allegations:

The first petitioner/accused No.1 invited the defacto complainant and other persons to deposit money in his finance Company called "Green World Welfare Marketing Service Company". In pursuance of the same, the defacto complainant deposited a sum of Rs.46 lakhs on 25.02.2012 and further Rs.43 lakhs on 11.03.2012. So totally Rs.89 lakhs was deposited. Based upon the complaint given by the second respondent, a case in Crime No.22 of 2013, for the offence under Sections 120(b) and 420 IPC, was registered as against the nine accused persons. The first respondent took up the investigation and after collecting the materials and recording the statement of the witnesses, filed a final report on 27.09.2018 altering the Sections 120(b), 420 and 406 IPC.

3.The present petition has been filed to quash the final report mainly on the ground that there were money transactions between the defacto complainant and his brother and that the first petitioner's wife, namely, Subbulakshmi, had preferred a complaint before the Inspector of Police, Ayakudi, as against the husband of the defacto complainant, namely, Pandidurai, and others, namely, Senthilkumar, Velladurai, Karuthapandi and a case was registered in Crime No.76 of 2012 for the offence punishable under Sections 3 and 4 of Tamil Nadu Prohibition of Exorbitant Interest Ordinances Act 2003 r/w Sections 365 and 506(ii) IPC. After the registration of the above said case, Pandidurai has given a complaint before the District Crime Branch, Virudhunagar on 19.10.2012. In that case, the first and second petitioners were illegally detained by the police and obtained signature in blank stamp papers and in 18 blank cheques. In thish regard, a complaint was also preferred on 28.10.2012. Thereafter, a Writ Petition in W.P(MD)No.14509 of 2012 was also filed by the second respondent herein. In order to escape from the criminal prosecution in Cr.No.76 of 2012, the present complaint has been preferred.

4.According to the petitioners, the defacto complainant has not filed even a single document and the first respondent has also not collected any materials in the course of investigation to show that Rs.89 lakhs was deposited in the alleged company. So according to them, in the absence of any documents and the light of the above said counter complaint, none of the allegations mentioned in the final report or any of offences are attracted against these petitioners.

5.The matter was heard even in the admission stage itself for final disposal.

6.Heard the learned counsel for the petitioner as well as

Mr.K.Suyambulinga Bharathi, learned Government Advocate (Crl.side) for the first respondent and perused the records as mentioned above.

7.The second respondent has preferred a complaint stating that believing the words of the first petitioner, she deposited as sum of Rs.89 lakhs in the bogus company alleged to have been run by the petitioners. Reading of the first information report shows that on the inducement made by the petitioners on 10.01.2012, they collected Rs.1 lakh each from Malarkodi, Kuruvammal and the defacto complainant Rajeswari, promising that the amount will be paid with high profit. On 09.02.2012 they have paid Rs.1,82,500/- each to all the above said three persons and on that day, they induced them to introduce their relatives, so that they can also get profit. Only on that inducement, various persons have paid several lakhs of rupees on various dates. So the total amount paid to the company was Rs.89 lakhs, as mentioned in the first information report. But later they absconded and switched off their mobile phones. But later they executed promissory notes and issued cheques apart from bond. After that they did not repay the amount.

8.The reading of the FIR and statement of the witnesses, it is clear that the petitioners have collected huge amount from various persons promising to return the same within huge profits, but, later they failed to do so. It is only during the trial, the fact whether there was a money transactions and there was a clear case of cheating and misappropriation can be found. *Prima facie* materials have been collected by the first respondent. The absence of deposit receipt affects for the prosecution case cannot be considered in the stage by this Court.

9.The execution of various documents, such as pro-notes and issue of cheques are admitted by the petitioners. Hence, I am of the view that the disputed questions of facts cannot be gone into in this petition by this court at this stage. So I am of the considered view that the trial must be continued to its logical conclusion. This is not the fit case, which requires the interference of this Court by exercising the jurisdiction under Section 482 Cr.P.C. So this petition is liable to be dismissed at the admission stage itself with the direction to the concerned Court to conclude the trial as early as possible, since the offence is of the year 2012.

10.At the conclusion of the hearing, the learned counsel for the petitioners would submit that if this Court for any reason conclude that the petition is liable to be dismissed, then at least, the personal appearance of the petitioners may be dispensed with before the trial Court. After pronouncing the order, the learned counsel for the petitioners seeks indulgence of this Court to dispense with the personal appearance of the petitioners except the 2nd petitioner before the trial Court. Accordingly, the personal appearance of the petitioners except the 2nd petitioner is dispensed with before the trial Court on condition that they have to file an affidavit of undertaking that they will appear before the trial Court as and when required and they must also affix photograph attested by their respective advocate in the affidavit.

11.With the above conditions, the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

vsd

To

1.The Judicial Magistrate No.1,
Tirunelveli.

2.The Inspector of Police,
District Crime Branch,
Tirunelveli.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.J.JEYAKUMARAN, Advocate (SR-16627[F] dated 20/04/2021)

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