IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.04.2022

PRONOUNCED ON : 13.06.2022

CORAM:

THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Original Petition No.762 of 2019
and
Crl.M.P.No.504 of 2019

M.Govindaswamy ... Petitioner /4th Accused

Vs

1.The Station House Officer,
District Crime Branch,
Erode District.
(FIR No.12 of 2018) : 1st Respondent/Complainant

2.Dr.M.K.Tamil Mani : 2nd Respondent/De-facto Complainant

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, seeking to call for the records of the Proceedings in FIR No.12 of 2018, dated 30.04.2018 on the file of the first Respondent being the Police and to quash the same as illegal and without jurisdiction.

For Petitioners :Mr.V.Raghavachari

For R1 :Mr. R. Vinothraja
Government Advocate (Crl.Side)

For R2 :Mr.B.Janakiram

ORDER

This Criminal Original Petition had been filed to quash the Proceedings in FIR No.12 of 2018, dated 30.04.2018 on the file of the first Respondent as illegal and without jurisdiction.

2.Learned Counsel for the Petitioner Mr.V.Ragavachari submitted his oral arguments. As per the submission of the learned Counsel for the Petitioner, the Petitioner is arrayed as an Accused in the First Information Report in Crime No.12 of 2018 on the file of the District Crime Branch, Erode, for the offences under Section 120(b), 409 and 420 of the Indian Penal Code. The learned Counsel for the Petitioner invited the attention of this Court to the contents in the First Information Report annexed in the typed set of papers filed along with this Petition and submitted that the names of the Accused are arrayed as - (1) Nataraja Murthy, (2) Aanantha Murthi, (3) Dr.Athiyannan, (4) Govindasamy (5) Ramachandiran, (6) Chinnasamy and (7) Latha. Further, the learned Counsel for the Petitioner invited the attention of this Court to the ingredients of the FIR where the Second Respondent/De-facto Complainant Dr.M.K.Thamizh Mani had alleged misappropriation of funds of the Educational Trust of Vidhya Mandhir Engineering College. In the concluding portion of the complaint, the Second Respondent/De-facto Complainant dragged the name of the Petitioner herein as one of the Accused. Further, the learned Counsel for the Petitioner invited the attention of this Court to the application dated 02.01.2018 made by the Erode Vidhya Mandhir Educational Trust for loan with the Corporation Bank and submitted that the name of the Petitioner herein is found in the list of guarantors for initiating action under Section 13(2) r/w. Section 13(3) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interst Act, 2002 (for short, hereinafter referred to as “SARFAESI Act”). Learned Counsel for the Petitioner also invited the attention of this Court to the legal notice caused to the Erode Vidhya Mandhir Educational Trust on behalf of (1) K.M.Elango, S/o.K.N.Muthusamy, (2) C.Karuppayammal, W/o.C.Chinnappan, (3) S.Shanmugaprabha, W/o.Dr.N.Malmurugan, (4) T.Venniladevi, W/o.Thangarasu and (5) C.Balasubramaniam, S/o.A.Chinnannan regarding the dispute in the Erode Vidhya Mandhir Educational Trust between the Trustees in respect of misappropriation of funds of the Trust and warning of civil and criminal consequences. Among the persons to whom the notice had been addressed is the Petitioner herein as the Respondent No.4, M.Govindasamy. It is the contention of the Petitioner herein that in the legal notice also, there are no specific averments regarding the specific overt acts in respect of misappropriation of funds by the Petitioner herein. For which, the Petitioner had issued reply dated 14.05.2018. The learned Counsel for the Petitioner also invited the attention of this Court to the copy of the affidavit filed in Crl.O.P.No.14552 of 2018 in Crl.M.P.No.29 of 2018 filed by the Intervenor/Second Respondent herein. The affidavit of the Petitioner clearly states about the handing over of money by the Trustees to Mr.Nataraja Murthy, Chairman of the Trust and Vice Chairman, who are alleged to have collected to the tune of Rs.4562 Lakhs. Whereas it states that the office bearers had indulged in misappropriation. The learned Counsel for the Petitioner invited the attention of this Court to the resignation letter of the Petitioner herein dated 03.04.2018 from the Trusteeship of the Erode Vidhya Mandhir Educational Trust and stated that the said letter was sent by the Petitioner with acknowledgement due. The copy of the acknowledgement is also available. When the complaint is devoid of any materials regarding the specific allegation of misappropriation against the Petitioner herein, the inclusion of the name of the Petitioner in the First Information Report is mischievous and only to cause harassment. Therefore, the Petitioner seeks indulgence of this Court to exercise the power vested in High Court under Section 482 of Cr.P.C. to prevent abuse of process of Court against the Petitioner herein who had already resigned from the Trusteeship.

3.Learned Counsel for the Petitioner invited the attention of this Court to the Counter affidavit filed by the Second Respondent/De-facto Complainant particularly to paragraph (D) which reads as under:

"D. I state that

1.Natarajamoorthy – Chairman - [A-1]

2.Aananthamurthi – Vice Chairman - [A-2]

3.Dr.Athiyannan, S/o.Kandaswami – Treasurer - [A-3]

4.M.Govindasamy, S/o.Muthusamy - [A-4]

5.M.Ramachandran, S/o.E.V.Muthusamy - [A-5]

6.Chinnasamy, S/o.Chennimalai Gounder- [A-6]

7.Latha, W/o.Radhakrishnan - [A-7]

have misappropriated the funds of the College for several years till the date of my complaint. As such, I started to question them regarding the same. Apart from the denial of submitting of accounts, I was threatened by them with dire consequences. Later, I came to know that by abovesaid misappropriation, they have conspired together and swindled several crore of rupees from the College under the Trust. As per the Trust Deed, the said Natarajamoorthy has to convene a General Body Meeting each and every year, i.e., from the year 2010 and should submit the audit and accounts for the preceding financial year. However, the said Natarajamoorthy used to conduct the meetings only with the office bearers of the Trust and he would give us only intimation regarding the said meetings and obtain signatures from me in the minutes book. Sometimes, he would obtain only signatures from myself and other trustees without any resolution in the minutes book. Whenever, the Trustees question about the convening of the meeting, the said Natarajamoorty gave some evasive replies."

4.It specifically mentions the allegation against Nataraja Murthy only. In paragraph (F) it is stated that the Trustees received notice under Section 13(2) of the SARFAESI Act from the Corporation Bank, Erode where the Petitioner states that the Nataraja Murthy had committed irregularities of swindling Trust's money without repaying the loan. The Trust members have made representation dated 12.11.2015 to the Corporation Bank requesting them not to permit the In-charge to withdraw the amount either in the name of the College or in the name of Nataraja Murthy from the Savings Bank Account or Current Account. Wherein it is further stated that the officials of the Bank had wantonly failed to take action against Nataraja Murthy. Therefore, it is the contention of the learned Counsel for the Petitioner that all the materials available before this Court indicates that the Second Respondent/De-facto Complainant had preferred the complaint only against Nataraja Murthy who was the Chairman of the Trust with whom he had parted money in the house of Nataraja Murthy. In the said transaction, no other members of the Trust were present as per her complaint. While so, dragging the names of the other members is found mischievous. As per the list of the Trustees, there are 49 members in the Trust.

5.Learned Counsel for the Petitioner Mr.V.Ragavachari relied upon the following rulings in support of his arguments regarding quashing of the First Information Report:-

5.1.In the case of Thangasamy -vs- State through Inspector of Police, KV Nallur Police Station, Tenkasi District [Crl.O.P.No.13302 of 2021 dated 30.11.2022] this Court had observed as follows:

"7. ... The petitioner's Counsel would contend that since the petitioner is working as TNEB employee, in order to coerce Manimaran to come to a settlement, he has been roped in. The Hon'ble Supreme Court in Bajan Lal's case has held that if the Court can come to a conclusion that the prosecution is attended by mala fides, that is a ground for quashing the FIR itself. I am more than satisfied that the case projected against the petitioner is inherently improbable. Continuance of the impugned prosecution against the petitioner would constitute an abuse of legal process. The impugned FIR is quashed as far as the petitioner is concerned."

5.2.In the case of G.Thomas and another -vs- The Superintendent of Police, CBI, Anti-Curruption Branch, Madurai and antoher [Crl.O.P.No.13508 of 2020, dated 11.03.2021] wherein this Court had observed that as per the ruling of the Hon'ble Supreme Court in State of Haryana -vs- Bhajan Lal reported in 1992 Suppl.(1) SCC 335 wherein the Hon'ble Supreme Court had enumerated the following conditions:

> "102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
>
> (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 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 F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;
>
> (3) where the uncontroverted 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 Code;

(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 concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide 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."

The said position was reiterated by the Hon'ble Supreme Court in Vineet Kumar -vs- State of Uttar Pradesh reported in 2017 (13) SCC 369. The relevant portion of the said judgment is extracted as under:

"22.Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 Cr.P.C. vested in the High Court. Section 482 Cr.P.C. saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

23. This Court time and again has examined scope of jurisdiction of High Court under Section 482 Cr.P.C. and laid down several principles which govern the exercise of jurisdiction of High Court under Section 482 Cr.P.C. A three~Judge Bench of this Court in State of Karnataka vs. L. Muniswamy and others, 1977 (2) SCC 699, held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed."

5.3.Learned Counsel for the Petitioner further relied on the case of the Hon'ble Supreme Court in Priya Vrat singh Vs. Shyam Ji Sahai reported in (2008) 8 SCC 232. The relevant portion of the said judgement reads as under:

"While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice."

Therefore, based on the said rulings, the learned Counsel for the Petitioner Mr.V.Ragavachari prayed for quashing the First Information Report in Crime No.12 of 2018 on the file of the District Crime Branch, Erode against the Petitioner Mr.M.Govindasamy.

6.Learned Counsel for the Second Respondent/De-facto Complainant vehemently objected to the line of arguments made by the learned Counsel for the Petitioner stating that the Petitioner had moved bail application before the learned District and Sessions Judge, Erode on coming to know that a case had been registered by the District Crime Branch, Erode based on the direction issued by this Court in Crl.O.P.No.9675 of 2018, the FIR was registered on 30.04.2018. Further, the learned Counsel for the Second Respondent/De-facto Complainant submitted that the Petitioner is a member of the Trust from 2010 onwards and he had chosen to resign only in the year 2018 because he had sensed that the Second Respondent/De-facto Complainant had moved the Hon'ble High Court by filing Criminal Original Petition. In the light of the Criminal Original Petition only, he had resigned his post. Therefore, the Petitioner cannot claim innocence and cannot claim that his name had been unnecessarily dragged in this case. The complaint by the Second Respondent/De-facto Complainant dated 05.01.2018 which was registered as FIR only on 30.04.2018 as per the order passed in Crl.O.P.No.9675 of 2018. Therefore, consequent to the complaint only, the Petitioner had resigned. When the Petitioner was member of the Trust, he had not protested or given complaint against Nataraja Murthy. Therefore, the allegations by the Second Respondent/De-facto Complainant has merit in it. The learned Counsel for the Second Respondent/De-facto Complainant also invited the attention of this Court to the Advocate notice sent on behalf of the Trustees to the Chairman and Officer bearers of the Trust numbering about 15 persons. The subject matter of this notice was that the Petitioner was aware of and he had been the Vice Secretary of the Trust. The learned Counsel for the Second Respondent/De-facto Complainant invited the attention of this Court to Paragraph No.11 of the Advocate notice on behalf of the five Trustees to about 15 Trustees which was filed along with the typed set of papers page 151, which reads as under:

> "11.My clients states that the second mentioned of you have given false assurance to my client in order to get more money from them with intent to defraud my client with malafide intention for which the second mentioned of you have unlawful gain and you have not spent money to the trust along with 3 to 7 mentioned herein which collected from the trustees and your act is purely in criminal nature because second mentioned of you have cheated my clients colluded with other by inducing them to invest a sum of Rs.1,75,00,000/- and also you are liable for criminal prosecution towards criminal breach of trust for the act of you along with

others."

Therefore, the Petitioner cannot claim ignorance. He had been with the said Nataraja Murthy in all his acts and misdeeds. Therefore, the same cannot be quashed exercising the powers of the High Court under Section 482 of Cr.P.C.

7.Learned Counsel for the Second Respondent/De-facto Complainant by inviting the attention of this Court to Page No.8 of the typed set filed by the Second Respondent submitted that the Petitioner is also a Founder Trustee of the Erode Vidhya Mandhir Educational Trust. The learned Counsel for the Second Respondent/De-facto Complainant also invited the attention of this Court to complaint given by a student by name Vignesh of this educational trust to the Hon'ble Governor of Tamil Nadu and the Hon'ble Chief Minister of Tamil Nade and other officials of the Education Department. This Petitioner had been replied to the said complaint. This complaint is with regard to misappropriation of scholarship for the downtrodden students belonging to the Backward Classes, Most Backward Classes and Scheduled Castes.

8.By way of re-joinder, learned Counsel for the Petitioner Mr.V.Raghavachari submitted that in the said complaint also, the Petitioners name had not been mentioned. Therefore, the allegations made by the Second Respondent/De-facto Complainant are only with regard to Mr.Nataraja Murthy. The main allegation of fraud, cheating, misappropriation centres around Nataraja Murthy alone. After resignation letter and filing of this petition, the registration of FIR wantonly arraying this Petitioner as an accused is only an abuse of process of Court. Therefore, the learned Counsel for the Petitioner seeks to quash the FIR against the Petitioner.

9.Learned Counsel for the Petitioner invited the attention of this Court to the ingredients of offences of criminal breach of trust under Section 405 of IPC and also Section 415 of IPC regarding ingredients of cheating. Here, in this case, none of the averments in the complaint of the second Respondent/De-facto Complainant gives any specific averments attracting the provisions of Section 415 of IPC and 405 of IPC. Under those circumstances, the First Information Report in Crime No.12 of 2018 on the file of the District Crime Branch, Erode, against this Petitioner lacks merits and it has to be quashed.

10.Learned Government Advocate (Crl. Side) appearing on behalf of the Prosecution vehemently objected to quash the FIR stating that the second Respondent/De-facto Complainant had mentioned the names of the Petitioner/Accused herein in the FIR and the complaint does not give all particulars. The complaint will always be brief but it has mentioned that there are materials available in the Trust regarding misappropriation of fund by the Trustees of the Trust. The second Respondent/De-facto Complainant herself was a member of the Trust after having parted with huge amount of Trust with the said Nataraja Murthy. Under those circumstances, for the acts of omission and commission, it is for the Investigation Officer to proceed with the investigation. If there are materials available before the Investigation Officer incriminating the Petitioner, he can file final report against all the trustees. On the other hand, if there are no materials available to incriminate the Petitioner and other similarly placed Trustees, the Investigation Officer will lay the final report of the investigation against those people found to have indulged/involved in the misappropriation of the Trust fund for their acts of omission and commission. Therefore, at the initial stage, the Complaint filed by the Second Respondent need not be quashed.

11.On consideration of the submission of the learned Counsel for the Petitioner Mr.V.Ragavachari, the learned Counsel for the Second Respondent/De-facto Complainant Mr.B.Janakiram and the learned Government Advocate (Crl. Side) Mr.R.Vinothraja and on perusal of the typed set furnished by the learned Counsel for the Petitioner/Accused and Respondent/De-facto Complainant, the submission of the learned Counsel for the Petitioner is found acceptable and reasonable in the light of the observations of the Hon'ble Supreme Court in the case of State of Haryana -vs- Bhajan Lal reported in 1992 SCC (Cri.) 426 which was reiterated in Vineet Kumar -vs- State of Uttar Pradesh reported in 2017 (13) SCC 369.

12.In the result, this Criminal Original Petition is allowed. Accordingly, the First Information Report in Crime No.12 of 2018 on the file of the District Crime Branch, Erode, is quashed against this Petitioner only for the present. The Investigation Officer is directed to proceed with the Investigation and lay the final report of the Investigation before the Court concerned within a reasonable period of three months.

If there are new materials found against the Petitioner, during the the course of investigation, the Investigation Officer can obtain permission of the learned Judicial Magistrate in laying the final report against this Petitioner. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

// True Copy //

Sub Assistant Registrar

SRM

To:

1.The Station House Office,
District Crime Branch,
Erode District.

2.The Public Prosecutor,
High Court, Chennai.

Crl.O.P.No.762 of 2019

PMK(CO)
CB(08/07/2022)