



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2022

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.O.P.No.1615 of 2019

and

Crl.M.P.No.1017 and 7612 of 2019

Sriram
S/o.Srinivasan

... Petitioner/Accused 2

-vs-

- 1.State rep by
The Inspector of Police,
F-4, Thousand Light Police Station,
Crime Branch, Chennai - 600 006.
(Crime No.1635 of 2017) ... 1st Respondent/Complainant
- 2.S.Thulasinathan,
S/o.T.Somasundaram,
General Manager (HRD),
Khivraj Group of Company,
No.617, Annasalai,
Chennai - 600 006. ... 2nd Respondent/De-facto Complainant

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C, praying to call for the records in C.C.No.7886 of 2018 on the file of the XIV Metropolitan Magistrate, Egmore (Allikulam), Chennai - 3 and quash the same as abuse of process of Court.

For Petitioner : Mr.G.Punniakoti

For Respondent 1: Mr.R.Vinoth Raja
Government Advocate (Crl. Side)

For Respondent 2: Mr.Ramesh Kumar Chopra

ORDER

This Criminal Original Petition is filed to quash the proceedings in C.C.No.7886 of 2018 on the file of the XIV Metropolitan Magistrate, Egmore (Allikulam), Chennai - 3.



2.The Second Respondent/De-facto Complainant seeks to vacate the interim stay granted by this Court on the ground that because of the stay order, the trial of the case in C.C.No.7886 of 2018 could not be proceeded with for the past three years. Therefore, learned Counsel for the Petitioner was directed to proceed with the arguments in the main Criminal Original Petition instead hearing the arguments of the Respondent/De-facto Complainant seeking to vacate the interim stay granted in this case.

3.Accordingly, the learned Counsel for the Petitioner/Accused No.2 submitted that the Petitioner herein is arrayed as Accused No.2. As per the Charge Sheet and as per FIR, First Accused is the father of the Petitioner herein/Accused No.2. He was employed as Cashier in Khivraj Motors/second respondent herein. The Accounts Department of the Khivraj Motors had found out that First Accused/Srinivasan, Cashier of Khivraj Motors had indulged in misappropriation of amount of the company for his own purposes and he was caught red-handed by the Company and based on which, the company had lodged a complaint with the Crime Branch, Chennai City Police. The Crime Branch, Chennai City Police, investigated the case in Crime No.1635/2017 and laid charge sheet in C.C.No.7886 of 2018 on the file of the learned XIV Metropolitan Magistrate, Egmore, Chennai. On service of summons on the Accused 1 and 2, the Accused No.2, son of Srinivasan had filed this Criminal Original Petition. At the time of admission itself, this Court had observed that in the complaint it had been mentioned that the amount misappropriated by the father was spent on the children by the father based on such averments in the complaint, the son of the Cashier/A1 had been arrayed as Accused No.2. Except that, there is no other role for the Petitioner/Accused No.2. Therefore, this Court had stayed the proceedings. Learned Counsel for the Petitioner/Accused No.2 invited the attention of this Court to the complaint as well as to the statement under Section 161 of Cr.P.C. found in page Nos.46 to 48 of the typed set of papers and submitted that on a perusal of the complaint as well as the statement under Section 161 of Cr.P.C., it can be found that the same averments had been repeated i.e., what had been misappropriated by Mr.Srinivasan/A1 the then Cashier of the Khivraj Motors, who had admitted his guilt and reported his superiors that he had utilised the misappropriated funds for the expenses of his daughter and son. Based on such admission by the First Accused/Cashier, who had misappropriated the amount, the son had been arrayed as co-accused. The said admission of First Accused cannot be taken cognizance by any Court dealing with



criminal law. It is unknown to criminal law impleading the son and daughter of an accused as co-accused. Therefore, he prays to quash the proceeding in C.C.No.7886 of 2018 on the file of XIV Metropolitan Magistrate Court, Egmore, Chennai.

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4.The learned Government Advocate (Crl. Side) appearing on behalf of the Prosecution vehemently objects to quash the criminal complaint regarding the son of First Accused stating that there are materials available and it is for the trial Court to consider it based on appreciation of evidence and not for this Court to quash the proceedings based on the prima facie materials. He further objected to quash the criminal complaint on the ground that the power conferred under Section 482 of Cr.P.C. to the High Court shall be sparingly used as per the observation of the Hon'ble Supreme Court in the case of Rajeev Kourav Vs. Baisahab and others reported in 2020 (3) SCC 317.

5.Considering the vehement objection of the learned Government Advocate (Crl. Side), this Petition is liable to be dismissed. Accordingly, this Criminal Original Petition is dismissed. The Petitioner/Accused No.2 is directed to cooperate with the trial and submit his valuable defence before the trial Court. The trial Court is directed to dispose of the case uninfluenced by any of the observations made in this order and the case shall be disposed of as expeditiously as possible. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

SRM

To

1.The XIV Metropolitan Magistrate Court,
Egmore (Allikulam), Chennai - 3.

2.The Inspector of Police,
F-4, Thousand Light Police Station,
Crime Branch, Chennai - 600 006.



3.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.Ramesh Kumar Chopra, Advocate SR.No.22968

+lcc to Mr.G.Punniakoti, Advocate SR.No.22914

Cr1.O.P.No.1615 of 2019

GP(CO)
CB(21/04/2022)