IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.23923 of 2016
and
C.M.P.No.11372 of 2016

1.M.Senthil
2.G.M.Senthil Kumar
3.E.L.Christopher
4.S.Sivakaleswara Rao ... Petitioners

Vs.

1.State through
Inspector of Police,
S-5 Pallavaram Police Station,
Pallavaram, Chennai – 600 043.
[Cr.No.579/2012]

2.G.Raju ... Respondents

Prayer : Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code to call for the records in C.C.No.993 of 2012 on the file of the learned Judicial Magistrate, Tambaram and quash the same.

For Petitioner : Mr.R.Ganesh Kumar

For Respondents
R1 : Mr.L.Baskaran
Government Advocate [Crl. Side]
R2 : M/s.L.Sheeba Devi
Legal Aid Counsel

ORDER

The petitioners/A3 to A6 in C.C.No.993 of 2012 facing trial for the offence under Sections 420 and 109 IPC filed this quash petition.

2.The prosecution case is that the defacto complainant/second respondent was a money exchanger doing business in the name of M/s.Coinex Forex at Madipakkam, he had business dealing in Foreign exchange with M/s.Indusind Bank, Madipakkam Branch and thereby, he came in contact with A1/Prem Kumar. On 09.02.2012, the defacto complainant transacted through the said Prem Kumar, Staff in foreign exchange of M/s.Indusind Bank and received Rs.14,65,884/-. Subsequently, on 15.02.2012 at about 3.30 p.m., the said Prem Kumar approached the defacto complainant and purchased $30,500 [US Dollars] valued around Rs.15,09,750/- on the promise that as soon as he reaches the Bank, the amount would be remitted through banking channel. But he had not sent any money. One week thereafter the defacto complainant enquired with the bank, he was informed that A1 was not reporting to duty. Thereafter, he went to A1's house which was also under lock and A1 was unable to be contacted in his mobile, hence the defacto complainant lodged a complaint. The respondent police received the complaint on 18.02.2012, registered a case in Crime No.579 of 2012, thereafter arrested A1 and A2, collected documents and on the confession of A1, found the role of A2 to A6, alteration report filed and thereafter on completion of investigation, charge sheet filed listing L.W.1 to L.W.10 and the same was taken on file by the learned Judicial Magistrate, Tambaram as C.C.No.993 of 2012. Against which, the present petition is filed.

3.The contention of the learned counsel for the petitioners is that the petitioners are employees of M/s.Paul Merchants Limited involved in forex business, the petitioners' name does not find place in the complaint and FIR. He would submit that A1 and A2 were arrested, on the basis of their confession it is projected as though these petitioners are also involved in the offence and they were arrayed as accused. He further submitted that the petitioners got nothing to do with A1, who is an employee of M/s.Indusind Bank, Foreign Exchange Department, Madipakkam Branch. Further, the petitioners are roped in as co-accused with the aid of Section 109 IPC without any material. The confession of A1 and A2 lead to no recovery and in view of the same nothing admissible and no value to the confession. The petitioners are proceeded merely on surmises and conjunctures. He further submitted that the defacto complainant was having some business dealing with M/s.Paul Merchants Limited, in which the petitioners are employees. Further, from the alteration report it is seen that the defacto complainant is due to the tune of Rs.30 lakhs and hence, to brook vengeance a false complaint given, the respondent police conducted only table top investigation without verifying the facts, ascertaining the truthfulness or otherwise of the same and falsely proceeded against the petitioners. Further, merely on the confession which is inadmissible no person can be proceeded. For this proposition, the learned counsel for the petitioners relied upon the decision in the case of ***Dharmalingam and another vs.***

State rep. by Inspector of Police, Namakkal District [Crl.O.P.No.712 of 2015 dated 10.03.2015]. He further submitted that the case against A2 has been quashed by this Court in Crl.O.P.NO.17404 of 2017 dated 06.01.2022 and the petitioners herein are also similarly placed.

4.The learned Government Advocate [Crl. Side] appearing for the first respondent submitted that on the complaint of the defacto complainant on 18.02.2012, FIR came to be registered. He would submit that A1 in this case gained confidence with the defacto complainant, who was running a business in the name of M/s.Coinex Forex, A1 was employed in M/s.Indusind Bank in Foreign Exchange division, Madipakkam Branch, hence he developed good relationship with the defacto complainant and other accused. A2 to A6 are the employees of M/s.Paul Merchants Limited, an another forex business entity. Since all happened to be in the forex business, they know each other well. Taking advantage of the same and by gaining confidence on 09.02.2012 when defacto complainant converted foreign currency and received Rs.14,65,884/-, thereafter on 15.02.2012 A1 came to the office of the defacto complainant, received US Dollars to the tune of $30,500 valued around Rs.15,09,750/- with a promise that money would be paid through banking channel but failed to make the payment and unable to be contacted. He further submitted that A1 was finally arrested on 19.02.2012 who confessed about the offence and also involvement of the other accused. Thereafter A2 was arrested on 22.02.2012 who confessed and corroborated the confession statement of A1. In the meanwhile, the other accused obtained anticipatory bail, all the accused joined together, abetted each other in commission of the offence. He would further submit that the defacto complainant was due a sum of Rs.30 lakhs to M/s.Paul Merchants Limited, to recover the same, taking advantage of the relationship A1 collected the foreign currency from the defacto complainant and handed over to M/s.Paul Merchants Limited. The petitioners who are employees of M/s.Paul Merchants Limited, all connived together. Further, L.W.1 clearly stated about A1 coming along with five others in Swift car while collecting the money.

5.He further submitted that in this case, totally ten witnesses were examined. L.W.1 is the defacto complainant, L.W.2, the Manager of L.W.1

Company, L.W.3 is the Director of L.W.1 Company and all corroborated the statement of L.W.1. L.W.4 is the employee of L.W.1, L.W.5 and L.W.6 are the witnesses to the arrest of A1. L.W.7 and L.W.8 are the witnesses for the arrest and confession of A2. On the confession, the sections were altered and the petitioners were added as accused. L.W.9 is the Inspector who received the complaint, registered FIR and conducted investigation and L.W.10 concluded the investigation and filed the charge sheet. He further submitted that due to the active involvement of the petitioners, the defacto complainant was cheated and defrauded to an extent of Rs.15,09,750/- and no money could be recovered from the accused. He would further submit that the points raised by the petitioners can be decided only during trial. He further submitted that in this case, the case against A2 was quashed in Crl.O.P.No.17404 of 2017 dated 06.01.2022.

6.The learned counsel for the second respondent/defacto complainant submitted that they are in money exchange business in the name of M/s.Coinex Forex and in their business, he came into contact with M/s.Indusind Bank as well as M/s.Paul Merchants Limited. She would submit that A1 was an employee of M/s.Indusind Bank in Foreign Exchange division and A2 to A6 are the employees of M/s.Paul Merchants Limited. In their business they are regularly contacting each other and exchanging money in the best interest of each other. On 09.02.2012 A1 facilitated exchange of foreign currency into Indian currency and paid Rs.14,65,884/- to the defacto complainant, who gained confidence, following the same, on 15.02.2012 A1 came to the office of the defacto complainant and collected US Dollars to the tune of $30,500 and promised that the equivalent amount of Rs.15,09,750/- would be paid through banking channels. Thereafter he was unable to be contacted, when the defacto complainant went to M/s.Indusind Bank, enquired about A1 it was informed that A1 was not reporting to duty for the past one week, when the defacto complainant went in search to A1's house, it was found locked, his mobile was switched off and thereafter only, complaint was lodged on 18.02.2012 to the respondent police who registered the FIR, arrested A1 on 19.02.2012 who admitted the offence and the cheating committed by him. A1 further disclosed that it was on the compulsion of A2 to A6 foreign currencies were handed over to them for the reason that the defacto complainant was due to them to the tune of

Rs.30 lakhs. She further submitted that A2 was immediately arrested on 22.02.2012 who admitted and corroborated the confession statement of A1. Thereafter, alteration report filed, all the accused, took part actively in the offence, the petitioners are the reason for A1 to commit the offence. Further, it is M/s.Paul Merchants Limited who is the beneficiary on this deceitful act and thereby cheated A1. She further submitted that the points raised by the petitioners to be decided during trial and hence, opposed this petition.

7.Considering the submissions made and on perusal of the materials, it is seen that nowhere in the complaint the name of the petitioners found place. It is admitted that A1 and the defacto complainant were having business relationship, they were converting foreign currencies to Indian currencies and vice versa in their forex business and for some reason, the defacto complainant handed over US Dollars which was not repaid by A1, for which the petitioners who are also into forex business, merely on the confession of the co-accused cannot be made as an accused to stand trial. This Court in the case of ***Dharmalingam*** [cited supra] clearly held that the confession of co-accused is inadmissible and in this case, from the confession there is no recovery. Added to it, it is seen that the prosecution case is that the defacto complainant owes around Rs.30 lakhs to M/s.Paul Merchants Limited and for this reason, all the accused joined together and cheated him. If that is the case, some materials to be collected, produced to confirm the same. From the statement of witnesses, it is seen that L.W.1 to L.W.6 are the employees of M/s.Coinex Forex and none of these witnesses stated anything with regard to the role of the petitioners/A3 to A6. L.W.7 and L.W.8 are the witnesses who have been examined after the arrest of A2 on 22.02.2012, the confession not admissible except for Section 27 recovery. Further, the alteration report including the petitioners' name made on 22.02.2012, except for a bald and vague statements, there is no statement or material against the petitioners. Taking into account the uncontroverted statement of L.W.1 to L.W.6, the employees of L.W.1, there is nothing pointed against the petitioners. Added to it, this Court had quashed the proceedings as regards A2, who was similarly placed as that of the petitioners herein in Crl.O.P.No.17404 of 2017 dated 06.01.2022. Thus, looking the case from any angle, no case is made out against the petitioners/A3 to A6.

8.In view of the same, this Court finds that there is no reason to continue the proceedings against the petitioners which would only amount to abuse of process of law. Hence the proceedings against the petitioners/A3 to A6 in C.C.No.993 of 2012 pending on the file of the learned Judicial Magistrate, Tambaram is hereby quashed. Accordingly, this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petition is closed.

9.This Court appreciates M/s.L.Sheeba Devi, appointed as legal aid counsel for the respondents in thorough preparation, effectively defending the respondents and rendering her sincere efforts in this regard.

10.11.2022

Index : Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
cse

M.NIRMAL KUMAR, J.

cse

To

1.The Inspector of Police,
S-5 Pallavaram Police Station,
Pallavaram, Chennai – 600 043.

2.The Judicial Magistrate,
Tambaram.

Crl.O.P.No.23923 of 2016

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