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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 28.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CrI. O.P. No. 835 of 2018 and  
CrI.M.P.Nos.285 and 286 of 2018

Edwin Jayakumar

. . . Petitioner/Accused

Versus

1.The State represented by  
The Sub-Inspector of Police,  
C-2, Race Course Police Station,  
Law & Order,  
Coimbatore City.  
(Crime No.1148 of 2016)

2.Thasleem Banu  
(Impleaded as per order  
in CrI.M.P.No.7038/2021 in  
CrI.O.P. No.835 of 2018  
dt.04.01.2022)

. . . Respondents/Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records and quash the proceedings in C.C.No.249 of 2017, for an offence under Section 420 IPC, pending on the file of the learned Judicial Magistrate No.III, Coimbatore and quash the same.

For Petitioner : Mr.C.Arun Kumar

For Respondents : Mr.R.Kishore Kumar  
Govt.Advocate (CrI.Side) for R1

: No appearance for R2

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.249 of 2017 pending on the file of the learned Judicial Magistrate No.III, Coimbatore for the offence under Section 420 IPC.



2. The crux of the allegations in the final report is that the petitioner being a practicing lawyer in Chennai has appeared on behalf of one Mohammad Riyaz who was arrested in connection with Crime No.1034 of 2016 for the offence under Section 4(2)(C) of the Immoral Traffic Prevention Act. On 09.11.2016, he has received a sum of Rs.25,000/- from the wife of said Mohammad Riyaz under the pretext that some amount has to be given to the Judicial Magistrate. Thereby, he has committed the offence of cheating.

3. The learned counsel appearing for the petitioner mainly contented that this case is nothing but false implication. At the relevant point of time, the advocate was in Coimbatore and has conducted the proceedings before the concerned Judicial Magistrate. The petitioner was engaged by the wife of the accused in the above crime to come down to Coimbatore and filed a bail application. Accordingly, he has filed bail application. Whereas, the learned Judicial Magistrate himself has entertained a similar bail petition of the accused and allowed the same and dismissed his petition. Besides, he has also recorded the statements from the de facto complainant and registered the crime. The entire case is nothing but highly motivated and hence, prayed to quash the final report.

4. Heard the learned counsel appearing for the Government Advocate(Crl.Side) appearing for the respondent.

5. This Court has perused the entire materials available on record. The allegations in the final report referred above are as if the accused has received his professional fee in the name of judge. It is relevant to note that the prosecution was filed on the basis of the complaint sent by the head clerk of the Judicial Magistrate on 09.11.2016. On the same day, the accused was arrested and the police was claimed to have seized a sum of Rs.5,500/-. It is relevant to note that the present petitioner has filed an application for bail in Crl.M.P.No.5424 of 2016, on behalf of one Mohammad Riyaz who was arrested under Section 4(2)(C) of the Immoral Traffic Prevention Act.

6. The learned Judicial Magistrate however dismissed the bail application on the same ground that he has received some amount by using his name. Thereafter, however strangely he has allowed the bail application of the party in person in Crl.M.P.No.5430 of 2016, allowing the application of the party in person. However, the order dated 09.11.2016 passed by the learned Judicial Magistrate clearly shows that bail application was earlier filed by the petitioner which was some how or other, dismissed and later the application was allowed. When the other



circumstances particularly, shows that the complaint was lodged with some motive. The de facto complainant had requested the petitioner on 08.11.2016, through phone messages, which is also placed on record. Therefore, this Court is of the view that when the present petitioner has already filed an application for bail on 05.04.2016, entertaining the second application by the party in person, it creates a serious doubt about the very lodging of the prosecution. It is also to be noted that the Court will not infer or presume certain aspect but the fact remains that so called Learned Judicial Magistrate whose name said to have been targeted for collecting fees is also not facing disciplinary proceedings. The administrative action also taken by this Court in various other allegations and he is also in suspension. Be that as it may, that may not be germane for consideration of this case.

7. It is relevant to note that entertaining the second application and dismissing the application filed by the present petitioner, thereafter, recording the statements from the de facto complainant, and pursuant to the same, forwarding the complaint by the head clerk of the Court, the entire proceedings in the manner in which it was conducted by the Learned Judicial Magistrate probablise the contention of the learned counsel for the petitioner, that the petitioner has been made as a scapegoat before the Judicial Magistrate Court at the relevant point of time, he all along to Coimbatore from Chennai. Since he went from Chennai to the Court of Learned Judicial Magistrate, further materials also clearly show that only the de facto complainant has requested the petitioner to seek bail for her husband. Therefore, this Court is of the view that any fees paid in that process, would not constitute any offence. Merely on the basis of complaint forwarded by the Court, the F.I.R has been lodged.

8. In such view of the matter, this Court is satisfied from the materials and this case is nothing but a falsely motivated against the practicing lawyer. Hence, the proceedings in C.C.No.249 of 2017, on the file of the learned Judicial Magistrate No.III, Coimbatore is quashed.

9. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Criminal Miscellaneous Petitions are closed.

Sd/-  
Assistant Registrar (CS-VII)

//True copy//

Sub Assistant Registrar



msv/psa

To

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1.The Judicial Magistrate No.III,  
Coimbatore.

2.The Sub-Inspector of Police,  
C-2, Race Course Police Station,  
Law & Order,  
Coimbatore City.

3.The Public Prosecutor,  
High Court, Madras.

+3ccs to Mr.RC.Paul Kanagaraj, Advocate SR.No.5375, 5352

Crl. O.P. No. 835 of 2018 and  
Crl.M.P.Nos.285 & 286 of 2018

MG(CO)  
GMY(17/02/2022)