IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.06.2022	PRONOUNCED ON : 20.06.2022

CORAM::

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Criminal Original Petition Nos.2946 & 2948 of 2019
& Crl.M.P.Nos.1966 & 1968 of 2019

Dr.K.Pruthvinath, Aged 34 years,
S/o.Dr.K.Ravindranath,
Villa No.C-5, Amara Anantha,
No.4/211, MGR Road, Palavakkam,
Chennai, Tamil Nadu – 600 041. ...Petitioner/2nd Accused in Crl.O.P.No.2946 of 2019

Dr.Badrikrishnaswami, Aged 55,
Residing at No.3, Umayal Villa,
No.8/18, Indira Nagar, 12th Cross, Adyar,
Chennai – 600 042 ...Petitioner/1st Accused in Crl.O.P.No.2948 of 2019

/versus/

1. The Sub-Inspector of Police,
S10, Pallikaranai Police Station,
Chennai – 600 100.

2. Mr.Dinesh Kumar Mishra,
General Manager,
Finance and Accounts Department,
Ravindranath GE Medical Associates Pvt. Ltd.
Having its Registered Office at
439, Cheran Nagar,
Off OMR, Medavakkam,
Sholinganallur Road, Perumbakkam
Chennai – 600 100. ...Respondents/Complainant in both cases

Prayer in Crl.O.P.Nos.2946 & 2948 of 2019: Criminal Original Petition are filed under Section 482 of Cr.P.C., to call for the records and quash the proceedings in F.I.R.No.32 of 2019 on the file of the Sub-Inspector, S10, Pallikaranai Police Station for offence under Sections 408 and 420 of I.P.C.

For Petitioner in Crl.O.P.No.2946 of 2019	:	Ms.Deepika Murali
For Petitioner in Crl.O.P.No.2948 of 2019	:	Mr.C.Arun Kumar
For R1 in both cases	:	Mr.N.S.Suganthan, Government Advocate (Crl.Side)
For R2 in both cases	:	Mr.T.Sai Krishnan

COMMON ORDER

These two Criminal Original Petitions are filed separately by two accused namely Dr.K.Pruthvinath (in Crl.O.P.No.2946 of 2019) & Dr.Badrikrishnaswami (in Crl.O.P.No.2948 of 2019), to quash the F.I.R No.32 of 2019, on the file of 1st respondent police.

2.The gist of the F.I.R registered pursuant to the complaint given by one Dinesh Kumar Mishra, General Manager, Finance and Accounts Department of M/s.Ravindranath GE Medical Associations Private Limited against Dr.Badrikrishnaswami (the petitioner in Crl.O.P.No.2948 of 2019), Dr.K.Pruthvinath, (the petitioner in Crl.O.P.No.2946 of 2019) and M/s.Paceman Finance India Limited is that, the defacto complainant company is having its registered Office at Perumbakkam, Chennai. On 07.09.2018, the company recovered a legal notice from M/s.Paceman Finance India Limited (hereinafter referred as "M/s.Paceman") and on perusing the said notice of the defacto complainant/Dinesh Kumar Mishra came to know that cheque of the defacto complainant for Rs.12 lakhs drawn at HDFC Bank, Madipakkam Branch, maintained by the defacto complainant Company alleged to have been issued to M/s.Paceman on 28.08.2018 for the repayment of the loan availed by Dr.K.Pruthvinath, Ex-Director of the Company and same was dishonoured on presentation. On verification of the records, the complainant alleges that the said cheque pertains to the period between 2013 to 2014. When the 1st accused was serving with the defacto complainant Company as Financial Manager. Their enquiry revealed that, the 1st accused/Badrikrishnaswami with ulterior motive given the cheque to Dr.K.Pruthvinath, for to be misused. Accordingly, for the personal loan of Dr.K.Pruthvinath, the cheque stealthy handed over to Dr.K.Pruthvinath, has been fraudulently used for discharging the personal loan transaction of Dr.K.Pruthvinath.

3.It was specifically alleged that 1st accused/ Badrikrishnaswami was the Executive Director, Finance and Accounts Department of the defacto complainant between 2011 till

2014. At that time, Dr.K.Pruthvinath was authorized signatory for the cheques. They both in connivance had misused the cheque bearing No.003708 pertaining to the bank account at HDFC bank maintained by the defacto complainant. Badrikrishnaswami in connivance with Dr.K.Pruthvinath have committed misrepresentation with intent to cheat by issuing the said cheque to M/s.Paceman for the fraudulent transaction.

4.Based on this complaint, a case has been registered in F.I.R.No.32 of 2019 on the file of 1st respondent police, for the offences under Section 408 and 420 of I.P.C.

Crl.O.P.No.2948 of 2019

5.The Learned Counsel appearing for the petitioner/ Badrikrishnaswami (in Crl.O.P.No.2948 of 2019) submitted that, from the complaint, it appears that the cheque drawn by 2nd accused Dr.K.Pruthvinath from relates to the bank account maintained by defacto complainant. The said cheque for Rs.12,00,000/- has been issued by Dr.K.Pruthvinath, to discharge the personal loan availed by Dr.K.Pruthvinath. The present complaint has been lodged presuming that, the said cheque issued by Dr.K.Pruthvinath to M/s.Paceman (3rd accused) was given to the 2nd accused by Badrikrishnaswami (1st accused). While, 1st accused/petitioner was working as an Executive Director in the defacto complainant's company during the period 2011 and 2014 and entrusted with the cheque book by the complainant.

Crl.O.P.No.2946 of 2019

6.The Learned Counsel appearing for the petitioner/2nd accused/Dr.K.Pruthvinath (in Crl.O.P.No.2946 of 2019) submitted that, Dr.K.Pruthvinath, availed personal loan from M/s.Paceman, (3rd accused) and he has discharged the said loan and as on the date there is no due payable to M/s.Paceman. As far as the said cheque and the statutory notice issued by M/s.Paceman concern, it has been suitably replied. The signature found in the cheque is not his signature and issuance of the said cheque is denied. The corporate drawer (defacto complainant) and its authorized signatory (Dr.K.Pruthvinath) are father and son. They are at loggerhead the presentation of the cheque by M/s.Paceman and issuance of Statutory notice on dishonour of the cheque are all handiwork of the promoter of the defacto complainant company. By creating false records wants to settle the score with the petitioner/2nd accused.

7.Alleging that, the defacto complainant and the 3rd accused are really the culprits colluded together to create records to prosecute him, claiming that Section 408 or 420 of I.P.C are not made out and he prays for quash.

8. Heard the Learned Counsel for the petitioners and the Learned Counsel for the respondents. Records perused.

9.The Learned Counsel appearing for the defacto complainant/Dinesh Kumar Mishra in response to the submissions made by the Learned counsel for the petitioner/accused submitted that, the defacto complainant's company and 3rd accused Finance Company had no privity of contract and there is no money transaction between them. While so, the cheque drawn in the name of defacto complainant for Rs.12 lakhs had been issued to M/s.Paceman by 2nd accused/Dr.K.Pruthvinath to discharge his personal loan. The 2nd accused cannot issue the company cheque to discharge his personal loan misusing the authorization given to him to be the signatory. Therefore, there is a clear attempt by the 2nd accused to siphoned the funds of the defacto complainant, by presenting the cheque of the defacto complainant to discharge his personal loan. On enquiry, it was found that the subject cheque was handed over to this petitioner/the 2nd accused/Dr.K.Pruthvinath by the 1st accused/ Badrikrishnaswami, for the purpose of misappropriation. The said Badrikrishnaswami was the erstwhile employee of the complainant company entrusted with the cheques to administer the Accounts and Finance of the Company. Therefore, neither the 1st accused/Badrikrishnaswami nor the 2nd accused/K.Pruthvinath can seek quash of the complaint. They are bound to participate in the investigation, produce all the documents to prove their innocence. If really, they had no intention to cheat the defacto complainant, no reason to stay away from participating in the investigation and seek quash of the complaint.

10.On perusing the records, it is clear that the 2nd accused/K.Pruthvinath was authorized signatory. The signature found in the disputed cheque is purported to have been signed by K.Pruthvinath. In the statutory notice which the defacto complainant received from M/s.Paceman and copy of which also served to the A1 and A2 namely Badrikrishnaswami and K.Pruthvinath. It is clearly stated that the cheque was handed over by K.Pruthvinath to M/s.Paceman, to discharge the loan amount. The 1st accused Badrikrishnaswami has categorically stated that, he left the defacto complainant’s company in July-2014 and he was never entrusted with the subject cheque at any point of time. Even according to the case of the defacto complainant, the subject cheque dated 28.08.2018 is much after the petitioner left the company. At no point of time, when he was employed with the defacto complainant, he was authorized to sign cheques. Therefore, the allegation that this petitioner/Badrikrishnaswami was authorized to sign cheques till 05.07.2014 is per se a false statement. When there was no entrustment of cheque and when there is no element of deception at the inception, there is no prima facie evidence to enquiry for offences under Section 408 & 420 of I.P.C.

11.This Court finds that, mere allegation that the erstwhile employee handed over the cheque to the authorized signatory and same was misused by the authorized signatory, 4 years after the employee left the service is a far fetching allegation and highly postures.

12.In Ankur Gupta -vs- State of U.P and others reported in 2019 (3) Crimes 81 (SC), the Hon'ble Supreme Court, after considering the catena of its earlier judgments has observed as below:-

> "5. When a complaint does not make out any case against the accused, it will not be correct to say that the accused must still undergo the agony of criminal trial. When there is an abuse of process of law and the Courts, the High Court should not shy away in exercising its jurisdiction. The provisions of Section 482 of the Code of Criminal Procedure are devised to advance justice and not to frustrate it. The allegations made in the first information report or the complaint, if are accepted in their entirety, and are taken at the face value, do not prima facie constitute any offence or make out a case against the accused, or where the allegations made are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient room for proceeding against the accused, the jurisdiction Under Section 482 of the Code of Criminal Procedure needs to be exercised."

13.In the present case, 1st accused/Badrikrishnaswami is arrayed as an accused solely on allegation that, he has connived with K.Pruthvinath and the cheques entrusted to him been misused by the 2nd accused with an intention to cheat the complainant Company. To substantiate the case of entrustment, it is also alleged that the said Badrikrishnaswami was authorized to sign on behalf of the defacto complainant, while he was in service. This allegations goes contra to their own complaint which says the authorized signatory to manage the bank accounts was the 2nd accused who served as the whole time Director from July 2011 till 27.11.2015. He was the authorized signatory of the Company from December 2011 to July 2014, who later seized to be the Director of the company with effect from 18.09.2019. Therefore, there is no prima facie material against Badrikrishnaswami, who is petitioner in Crl.O.P.No.2948 of 2019.

14.On receipt of the Section 41(A) of Cr.P.C., notice from the police, the petitioner/Badrikrishnaswami appeared before the 1st respondent police and had produced all the documents including the relieving order passed by the defacto complainant in the month of July 2014 with acknowledgement of receipts of all the documents entrusted to the petitioner. While so, the belated complaint lodged after 5 years of the resignation alleging as if, the cheque dated 28.08.2018 and signed by 2nd accused was misused by 2nd accused in connivance with 1st accused.

15.The subject cheque admittedly has been issued by the 2nd accused Dr.K.Pruthvinath for the loan, he availed in the year 2016. This has happened much after the petitioner/1st accused left the defacto complainant’s company. The said Dr.K.Pruthvinath, is none other than son of Ravindranath, who is the promoter of the complainant Company. The said Dr.K.Pruthvinath was the authorized signatory of the cheques during the relevant point of time. If Dr.K.Pruthvinath had issued the Company cheque to discharge his personal loan, it is for Dr.K.Pruthvinath to explain why and not the 1st accused Badrikrishnaswami who left the defacto complainant's company 4 years before.

16.The alleged loan transaction of Dr.K.Pruthvinath with M/s.Paceman and issuance of company cheque to discharge the loan, by no stretch of imagination will attract the ingredients of Section 408 & 420 of I.P.C., against the first accused in the absence of material to show entrustment or deception. Hence, no case made out against the petitioner/1st accused. The Court hold that there is no prima facie case to proceed against the petitioner in Crl.O.P.No.2948 of 2019. Hence, this petition to quash is allowed.

17.As far as the 2nd accused who is signatory of the subject cheque and prima facie from the statutory notice it appears the cheque was issued to discharge his loan, it is for the 2nd accused/K.Pruthvinath to explain how the subject cheque drawn by him came into the possession of the 3rd accused Finance Company to discharge his personal loan. This Court finds that, there are material to investigate the complaint as against K.Pruthvinath, who is purported to sign the cheques in the name of the defacto complainant’s company.

18.For the aforesaid reasons, the Criminal Original Petition No.2948 of 2019 filed by Badrikrishnaswami is allowed and the F.I.R No.32 of 2019 on the file of the respondent police against Badrikrishnaswami is hereby quashed. The Criminal Original

Petition No.2946 of 2019 filed by K.Pruthvinath is dismissed.Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

bsm

To

1. The Sub-Inspector of Police,
   S10, Pallikaranai Police Station,
   Chennai.

2. The Public Prosecutor,
   High Court, Madras.

+1cc to M/s.R.S.Raveendharan, Advocate, S.R.No.37467

+1cc to M/s.T.Sai Krishnan, Advocate, S.R.No.38195

Crl.O.P.Nos.2946 & 2948 of 2019

PMK(CO)
RGA(24/06/2022)