



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :26.04.2022

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THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.OP No.5501 of 2019
& Crl MP.No.3135 of 2019

R.Saravanan @ Shanmuga Saravanan .. Petitioner

Vs

1.The State rep by
The Inspector of Police(Crime),
Pallavaram Police Station,
Pallavaram, Chennai
(Crime no.250 of 2018)

2.Mr.Iyyappan .. Respondents

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the entire records and quash the proceedings in crime no.250 of 2018 on the file of the respondent police, registered against the petitioner.

For Petitioner : K.Chandrasekaran

For Respondents :Mr.S.Vinoth Kumar, GA (crl.side) for R1
No Appearance for R2

ORDER

This Petition had been filed under Section 482 Cr.P.C., to call for the entire records and quash the proceedings in Crime no.250 of 2018 pending on the file of the Respondent Police, registered against the Petitioner.

2.Heard the learned Counsel for the Petitioner and the learned Government Advocate(Crl.side) appearing for the first Respondent.

3. The learned Counsel for the Petitioner invited the attention of this Court to the Building Contract entered into between the Petitioner and the second Respondent/Defacto Complainant. Based on the Building Contract, the Petitioner who



is a qualified Engineer, had almost completed 75% of the construction. At that time, one of the employees of the Petitioner, had taken the second Respondent /Defacto Complainant to the site and intercepted him. Therefore, there was a dispute between both the parties. At that stage, based on mere doubt, second Respondent /Defacto Complainant had lodged a complaint against the Petitioner and based on which, an FIR in Crime no.250 of 2018 had been registered by the first Respondent.

4.At the time of admission, this Court ordered notice to the second Respondent/Defacto Complainant and interim stay was also granted, thereby preventing the Investigation Officer from proceeding with the investigation.

5.When this case was taken up for hearing on an earlier occasion i.e., on 08.04.2022, the Petitioner herein was directed to issue fresh notice to the second Respondent/Defacto Complainant. Accordingly, he had taken fresh notice privately and the same was unserved and returned with an endorsement 'unclaimed'. Therefore, there is no representation for the second Respondent/Defacto Complainant.

6.The learned Government Advocate(Cri.side) by way of reply to the line of arguments of the learned Counsel for the Petitioner, vehemently opposed to quash the FIR stating that if the arguments of the learned Counsel for the Petitioner are to be accepted, the Petitioner shall produce all the relevant documents before the Investigation Officer, and if the Investigation Officer is convinced, he will close the case by referring it as a 'mistake of fact' and on the other hand, if there are clinching materials, the Investigation Officer can proceed with the case. Further, the learned Government Advocate (Cri.side) had submitted that as per the reported ruling of the Hon'ble Supreme Court in "State of Haryana versus Bhajan Lal, reported in 1992 Supp(1) SCC 335, the FIR shall not be quashed solely on the basis of the materials relied on by the Petitioner in this Petition. On the other hand, what are all the materials relied on by the prosecution have to be considered while disposing of this petition under Section 482 Cr.PC. The learned Government Advocate(Cri.side) vehemently opposed to quash the FIR at this point of time. Further, he submits that as per the averments of the FIR, the Petitioner is alleged to have misappropriated a sum of Rs.41,50,000/- but he had furnished accounts only for Rs.13,50,000 lakhs. Therefore, there are materials which the Investigation Officer has to collect and verify the veracity of the allegations contained in the FIR. Hence, it is not a fit case for quashing the FIR at this stage.

7. At this point of time, the learned Counsel for the Petitioner submitted that after this dispute arose, the second



Respondent/Defacto complainant had got completed the construction. Therefore, he would not be prejudiced or injustice would be caused to the second respondent/Defacto complainant by quashing the FIR. These contentions cannot be accepted and based on these, this Court cannot venture upon to quash the FIR since this Court is of the view that without consideration of the submissions on behalf of the second Respondent/Defacto Complainant, this Court shall not exercise powers under Section 482 Cr.PC.

8. In view of the above, the interim stay granted by this Court is hereby vacated and this Criminal Original Petition is dismissed, with a direction to the Investigation Officer, if there are any clinching materials against the petitioner, to proceed with the investigation and file a final report before the competent Court concerned, within a period of three months from today. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-II)

//True copy//

Sub Assistant Registrar

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To

1. The Inspector of Police (Crime),
Pallavaram Police Station,
Pallavaram, Chennai
(Crime no.250 of 2018)

2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.A.R.Sakthivel, Advocate SR.No.28862

Cr1.OP No.5501 of 2019

PA (CO)
GMY (27/05/2022)