WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2022

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.O.P.Nos.6573 & 32282 of 2019
and
Crl.M.P.Nos.17733 & 17735 of 2019

1.Sanjay A. Kanna
2.Kanchan Amirlal Nichani
3.Sheetal S. Khanna ...Petitioners in Crl.O.P.No.6573 of 2019
4.Sujatha Mouli ...Petitioner in Crl.O.P.No.32282 of 2019

Versus

1.The State of Tamil Nadu,
Rep. by the Inspector of Police,
Central Crime Branch,
EDF-2, Team 4,
Vepery, Chennai – 600 007.

2.Dr.J.Jaya Prasad ...Respondents in both Crl.O.Ps

Prayer in Crl.O.P.No.6573 of 2019: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code to call for the records pertaining to the Charge sheet in C.C.No.4651 of 2015 on the file of the Additional Chief Metropolitan Magistrate Court, Egmore, Chennai (CCB).

Prayer in Crl.O.P.No.32282 of 2019: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code to call for the records pertaining to the Criminal Proceedings in C.C.No.1923 of 2017 on the file of the CCB, CBCID Metropolitan Magistrate Court, Egmore, Chennai.

For Petitioner in Crl.O.P.No.6573 of 2019 : Mr.Ajmal Azzath

For Petitioner in Crl.op.No.32282 of 2019 : Mr.Palani Kumar for M/s.Kaithamalai Kumaran

For R1 (in both Crl.O.Ps) : Mr.S.Vinothkumar Government Advocate (Crl.Side)

For R2 (in both Crl.O.Ps) : M/s.A.Kalaiselvan

COMMON ORDER

Crl.O.P.No.6573 of 2019 is filed by the Petitioners, who are arrayed as A1, A2 and A7, before the Court of the learned Additional Chief Metropolitan Magistrate, Egmore in C.C.No.4651 of 2015, in the final report laid before the said Court by the Sub Inspector of Police, Central Crime Branch, EDF-II, Team-IV, Vepery, Chennai.

2.Crl.O.P.No.32282 of 2019 is filed by the Petitioner - Sujatha Mouli, who is the Third Accused in C.C.No.1923 of 2017 on the file of the Special Court for Central Crime Branch, CB-CID Cases, Metropolitan Magistrate Court, Egmore, Chennai.

3.Both the cases arose out of the complaint filed by the second Respondent Dr.J.Jaya Prasad to the Central Crime Branch, EDF-II, Team-IV, Vepery, Chennai.

4.In Crl.O.P.No.32282 of 2019 the Petitioner is Sujatha Mouli, who is arrayed as Accused No.3 in the final report filed by the Investigation Officer, Central Crime Branch, EDF-II, Team-IV, Vepery attached to the Commissioner of Police, Chennai.

5.Crl.O.P.No.6573 of 2019 is filed by three Petitioners, who are arrayed as A-1, A-2 and A-7. In the final report laid before the Court of the learned Special Judge, Metropolitan Magistrate for Central Crime Branch, CB-CID Cases, Egmore, Chennai. A-8 is the Company viz., M/s.Health Care Services Private Limited through its Director - K.Chandra Mouly.

6.The learned Counsel for the Petitioners in Crl.O.P.No.6573 of 2019 and the sole Petitioner in Crl.O.P.No.32282 of 2019 had submitted his arguments. As per the submission made by the learned Counsel for the Petitioners, the Second Respondent/De-facto Complainant executed a Power of Attorney in favour of A-3 - Tmt.Sujatha Mouli, wife of K.Chandra Mouly and had approached her for loan for the hospital run by him under the name of Jaya Hospital at Old No.8, New No.15, Velachery Main Road. For that, Tmt.Sujatha Mouli-A3 in the Criminal Complaint is alleged to have prevailed upon the De-facto Complainant/Second Respondent herein to execute a Power of Attorney deed in her name so that she can arrange the loan. After execution of the Power of Attorney, which was registered on the file of the Sub Registrar, Mylapore, A-3-Tmt.Sujatha Mouli is alleged to have executed a sale deed in favour of her husband K.Chandra Mouly, who is arrayed as A-4 in the charge sheet. A-8 the Company had mortgaged the property with M/s.India Bulls Housing Finance Limited. In the 8th Accused Company, namely, M/s.Health Care Services Private Limited, A-3-

https://hcservices.ecourts.gov.in/hcservices/

Tmt.Sujatha Mouli and A-4-K.Chandra Mouly are Directors. The said Company had executed a mortgage deed with M/s.India Bulls Housing Finance Limited. Since the outstanding dues through mortgage deed was not cleared, the India Bulls Housing Finance Limited had caused public notice bringing the property to sale by public auction wherein A-1-Sanjay A. Khanna, A-2-Mrs.Kanchan Amirlal Nichani and A-7 Mrs.Sheetal S. Khanna, wife of Sanjay A. Khanna had cleared the dues and purchased the property. The De-facto Complainant/Second Respondent herein is aware of the said proceedings but he had suppressed those facts and preferred a Private Complaint before the learned Chief Metropolitan Magistrate, Egmore, wherein the learned Chief Metropolitan Magistrate had mechanically passed orders directing the Central Crime Branch attached to the office of the Commissioner of Police, Vepery, Chennai to register an FIR and investigate the case. Based on the direction of the learned Chief Metropolitan Magistrate under Section 156(3) of Cr.P.C., FIR in X.Crime No.153 of 2013 was registered by the Central Crime Branch under Sections 420, 406, 468 and 506(i) r/w. Section 120(b) of IPC. The Investigation Officer had proceeded with the investigation and laid the final report before the Court of the learned Additional Chief Metropolitan Magistrate, Egmore in C.C.No.4651 of 2015 which was later transferred to the file of the learned Special Metropolitan Magistrate for cases arising out of Central Crime Branch and CB-CID cases, Egmore, Chennai and which was later numbered as C.C.No.1923 of 2013. It is the submission of the learned Counsel for the Petitioners that there was a suit filed by the Accused-8 Company and Accused-3 and 4 in the complaint before the learned Chief Metropolitan Magistrate against the Complainant before the learned Chief Metropolitan Magistrate Dr.J.Jaya Prasad before the original side of this High Court in C.S.No.371 of 2011 which was later withdrawn. Only after execution of the sale deed in favour of the A-1, A-3 and A7 by A-4-Mr.K.Chandra Mouly, the husband of A-3, after 2½ years, the private complaint was lodged suppressing the material facts. Therefore, the learned Counsel for the Petitioners seeks to quash the FIR as it is nothing but an attempt by the De-facto Complainant/Second Respondent herein to convert the civil dispute into a criminal case only to cause harassment and to extract money from the Petitioners herein. Also, the Second Respondent had received entire sale consideration by way of three cheques. Only to cause harassment and to extract more money from the petitioners, A-1, A-3, A-4, A-7, the criminal case had been lodged by the De-facto Complainant/Second Respondent. Therefore, the learned Counsel for the Petitioners seeks to quash the C.C.Nos.4651 of 2015 and 1923 of 2917 pending on the file of the learned Metropolitan Magistrate, Special Court for offences arising out of Central Crime Branch and CB-CID cases, Egmore, Chennai, as it is nothing but an abuse of process of law.

WEB COPY

7.Learned Counsel for the De-facto Complainant/Second Respondent herein vehemently objected to quash the Charge Sheets stating that as it involves committing fraud on the Second Respondent by misrepresenting that A-3-Smt.Sujatha Mouli can get him loan for less interest from the financier if the De-facto Complainant/Second Respondent executes a general power of attorney in her favour. Believing her representation, the De-facto Complainant had executed an general power of attorney which was registered on the file of the Sub Registrar, Mylapore. Misusing the general power of attorney executed by the De-facto Complainant/Second Respondent herein, the Petitioner in Crl.O.P.No.32282 of 2019 - Smt.Sujatha Mouli had executed a sale deed in favour of her husband A-4 in C.C.No.1923 of 2017. Both husband and wife being Directors of the Company, M/s.Health Care Services Private Limited, they had executed a mortgage deed in favour of M/s.India Bulls Housing Finance Limited. The De-facto Complainant/Second Respondent was kept in the dark regarding the said transactions and A-3 and A-4 had in turn executed sale deed in favour of A-1, A-2 and A7 who are the Petitioners in Crl.O.P.No.6573 of 2019. Suspecting foul play and the Petitioner in Crl.O.P.No.32282 of 2019 - Smt.Sujatha Mouli not responding to the De-facto Complainant's query regarding loan, the De-facto Complainant/Second Respondent herein had cancelled the power of attorney executed in her favour. Even after such cancellation of power of attorney, ignoring the said act of the De-facto Complainant, the Petitioner in Crl.O.P.No.32282 of 2019 - Smt.Sujatha Mouli and her husband K.Chandra Mouly had executed a sale deed in favour of A-1, A-2 and A-7 the Petitioners in Crl.O.P.No.6573 of 2019. The Petitioner in Crl.O.P.No.32282 of 2019 and her husband with the help of rowdy elements threatened the De-facto Complainant/Second Respondent herein and entered into the hospital run by the De-facto Complainant/Second Respondent herein. The rowdy elements had caused damage to the hospital equipments and threatened the staff of the hospital and under duress and threat and coercion, obtained the signature on the blank sheets which might have been misused as sale deeds thereby causing loss of the property of the De-facto Complainant/Second Respondent herein by his hard earned money which is in a prime location in Velachery, Chennai. Therefore, the De-facto Complainant/Second Respondent herein was forced to initiate action through the learned Chief Metropolitan Magistrate by filing a private complaint. Based on the private complaint, the learned Chief Metropolitan Magistrate had issued direction under Section 156(3) Cr.P.C. directing the Central Crime Branch - CB-CID to register an FIR and proceed with the investigation. Based on the said direction, the Central Crime Branch had proceeded with the investigation. In the investigation, they had collected sufficient materials incriminating the Accused 1 to 8. Based on the materials collected by the Investigation Officer, a final report of the

https://hcservices.ecourts.gov.in/hcservices/

investigation was laid before the Court of the learned Additional Chief Metropolitan Magistrate, Egmore which was taken cognizance by the learned Additional Chief Metropolitan Magistrate under Sections 420, 406, 468 and 506(i) r/w. Section 120(b) of IPC. After registration of FIR, Mrs.Sujatha Mouli and her husband K.Chandra Mouly absconded. Subsequently, they approached the High Court and obtained anticipatory bail. At the time of laying the final report, all the accused were absconding. Subsequently, they obtained bail.

8.The learned Government Advocate (Crl. Side) Mr.S.Vinothkumar had vehemently objected to the submission of the learned Counsel for the Petitioners stating that what are all raised in the grounds of this petition to quash final report in C.C. No.4651 of 2015 on the file of the learned Additional Chief Metropolitan Magistrate which was later transferred to the file of the Special Metropolitan Magistrate for cases arising out of Central Crime Branch and CB-CID Team, Egmore, Chennai and renumbered as C.C. No.1923 of 2017 are to be agitated before the trial Court. The learned Government Advocate (Crl. Side) further submitted that there are enough materials to incriminate the overt act committed by each of the Accused which are to be tried by the learned Metropolitan Magistrate, Special Court for offences arising out of cases investigated by the Central Crime Branch - CB-CID. The grounds raised by the Petitioners in both the Criminal Original Petitions cannot at all be considered by the Hon'ble High Court exercising extraordinary power under Section 482 of Cr.P.C. to quash the criminal complaint. The learned Government Advocate (Crl. Side) also submitted that as per the guidelines issued by Hon'ble Supreme Court in State of Haryana -vs- Bhajan Lal and another [(1992) SUPP (1) SCC 335] to the Hon'ble High Courts throughout India regarding using the extraordinary power leniently and deprecated such practice also directing the Hon'ble High Courts to use the extraordinary power sparingly. The guidelines issued in the said judgment of the Hon'ble Supreme squarely applies to the facts of this case. Here is a case where the De-facto Complaint, who is a Doctor by profession, had been cheated by the Accused under the guise of obtaining loan from finance companies for lesser interest, if the De-facto Complainant executes the power of attorney deed in favour of the Petitioner in Crl.O.P.No.32282 of 2019. After executing a power of attorney deed and registering it in the office of the Sub Registrar, Mylapore, the Petitioner in Crl.O.P.No.32282 of 2019, Mrs.Sujatha Mouli had executed a sale deed in favour of her husband K.Chandra Mouly. Mrs.Sujatha Mouli and her husband, both joined together executed a mortgage deed as Directors of the Company - A-8 in favour of M/s.India Bulls Housing Finance Limited and they had not informed the De-facto complainant about those transactions and the mortgage amount was not repaid. Based on the said mortgage, the India Bulls Housing

WEB COPY

Finance Limited brought the property for sale, in which, the Petitioners in Crl.O.P.No.6573 of 2019, who are arrayed as A1, A2 and A7, had purchased the properties on the basis of the sale deed executed by A-3 and A-4 as though they had cleared the mortgage of Indian Bulls thereby acquired the valuable property belonging to the De-facto complainant for a throw away price. The second respondent suffered loss. The Petitioners in both the petitions are alleged to have misappropriated the property and obtained unlawful gain for an amount of Rs.13 Crores. Therefore, the grounds of this quash petition is to be treated only as a valuable defence available to the Petitioners herein which can be raised only during trial at the time of adducing evidence and not at this stage by exercising extraordinary power under Section 482 of Cr.P.C.

9.On consideration of the rival submissions of the learned Counsel for the Petitioners, learned Counsel for the De-facto Complainant/Second Respondent herein and learned Government Advocate (Crl. Side) for the first Respondent and on perusal of the records, it is found that the submission of the learned Counsel for the Petitioners cannot at all be accepted in invoking the extraordinary power under Section 482 of Cr.P.C. On perusal of the records, it is found that as rightly pointed out by the learned Government Advocate (Crl. Side) the property belonged to the De-facto Complainant, Jaya Hospital at Velachery, the premises of the hospital had been sold to the Petitioners in Crl.O.P.No.6573 of 2019 by the Petitioner in Crl.O.P.No.32282 of 2019 by misusing the power. Whether she had exercise the power, Whether the De-facto complainant had suppressed the fact of sale executed by the Petitioner in Crl.O.P.No.32282 of 2019 after having received the sale amount are all materials to be considered by adducing evidence before the learned trial Judge and not by this Court by exercising extraordinary power under Section 482 of Cr.P.C. It is to be noted that the private complaint was preferred by the Second Respondent before the learned Chief Metropolitan Magistrate, Egmore. Only on the direction of the learned Chief Metropolitan Magistrate, FIR in X.Crime No.153 of 2013 was registered for the offences under Sections 420, 406, 468, 506(i) r/w. Section 120 (b) of IPC. In the course of the investigation, the Investigation Officer had collected sufficient materials thereby laying the final report before the Court of the learned Additional Chief Metropolitan Magistrate which was taken cognizance by the learned Additional Chief Metropolitan Magistrate and numbered as C.C.No.4651 of 2015 which was later transferred to the file of the Special Metropolitan Magistrate dealing with cases arising from the investigation by Central Crime Branch and CB-CID. If the Investigation Officer had found in the course of the investigation that there are no sufficient materials to proceed with the investigation, he might have

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

referred the same as referred charge sheet, but he had not done so. He had laid the final report placing the final report in which there are eight accused and all the accused were shown as absconding accused. Only after the said final report, the Petitioners herein had obtained bail by moving the High Court. What are all raised by the learned Counsel for the Petitioners in the grounds seeking to quash the final report in C.C.No.1923 of 2017 are to be considered as valuable defence of the accused. As rightly pointed out by the learned Government Advocate (Crl. Side), if this petition is allowed and the final report of the investigation pending on the file of the Special Metropolitan Magistrate for the cases dealing exclusively for cases arising out of Central Crime Branch - CB-CID are quashed, it may result in miscarriage of justice as per the ruling of the Hon'ble Supreme Court in State of Haryana -vs- Bhajan Lal and another [(1992) SUPP (1) SCC 335] and violations of the guidelines issued by the Hon'ble Supreme Court to the High Courts directing the High Courts to use extraordinary powers sparingly.

10.In the grounds of petition in Crl.O.P.No.32282 of 2019 the Petitioner Smt.Sujatha Mouli had sought exemption from personal appearance from the trial Court on the ground of her age and age related health issues, if the Accused 1 to 8 files any Petition seeking exemption, the learned Metropolitan Magistrate may consider it after following due procedures after hearing the objection of the prosecution and the De-facto complainant regarding exemption from personal appearance and may pass appropriate orders. If there is no dispute regarding the identity of the accused, the learned Metropolitan Magistrate may pass appropriate orders stating that the identity of the accused shall not be taken as a valuable defence when they are seeking exemption.

11.Since there are no merits in these Criminal Original Petitions, both the Criminal Original Petitions are dismissed as having no merits. The learned Metropolitan Magistrate, Special Court dealing with cases arising out of cases investigated by the Central Crime Branch attached to the office of the Commissioner of Police, Chennai and CB-CID is directed to proceed with the trial on day-to-day basis and dispose of the case within a period of three months from the date of receipt of a copy of this order or from the date of uploading of the order on the website of the High Court. The connected Miscellaneous Petitions are closed.

12.If the Petitioners herein as accused 1 to 8 fails to co-operate with the trial, the learned Metropolitan Magistrate, Special Court for cases arising out of Central Crime Branch attached to the Commissioner of Police and CBCID shall issue Non-Bailable Warrant. If the accused are produced on execution

WEB COPY

of the warrant, the learned Metropolitan Magistrate, Special Court for offences under Central Crime Branch – CB-CID shall remand them till the disposal of the cases and proceed with the trial on day-to-day basis thereby disposing of the case within a reasonable period of three months.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

sp/SRM

To

1.The Additional Chief Metropolitan Magistrate Court,
Egmore, Chennai(CCB).

2.The Metropolitan Magistrate,
Special Court for CCB, CBCID Cases,
Egmore, Chennai.

3.The Inspector of Police,
Central Crime Branch,
EDF-2, Team – 4, Vepery,
Chennai-7.

4.The Public Prosecutor,
Madras High Court,
Chennai-7.

+2cc to Mr.Ajmal Azzath, Advocate, S.R.No. 30834

Crl.O.P.Nos.6573 & 32282 of 2019
and
Crl.M.P.Nos.17733 & 17735 of 2019

NRL(CO)
GN(27/05/2022)

https://hcservices.ecourts.gov.in/hcservices/