IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **26.10.2022**

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Crl.O.P No.6358 of 2021
and Crl.M.P. No.4252 of 2021

G.Ligi Thiyagu ... Petitioner

Vs.

1. The State Rep. by
   Inspector of Police,
   G-7, Chetpet Police Station,
   Chennai.
   Cr. No.687 of 2020.

2. Anita Jayaprakash ... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, praying to call for the records relating to the FIR in Cr. No.687 of 2021 on the file of the G-7 Chetpet Police Station, Chennai and quash the same by allowing this Criminal Original Petition.

For Petitioner : Mr.D.Lakshmipathy

For Respondent -1 : Mr. A.Damodaran
Additional Public Prosecutor
2 : Mr. V.Krishnakumar

O R D E R

This Criminal Original Petition is filed to call for the records relating to the FIR in Cr. No.687 of 2021 on the file of the G-7 Chetpet Police Station, Chennai and quash the same.

2. The case of the prosecution is that the second respondent / *de facto* complainant / is the Director of a travel agency having name and style 'M/s.Triton Travels Private Limited'. The petitioner / accused was working as an Accountant in the said concern for nearly 10 years and earned the trust of the second respondent. It is alleged by the second respondent that the petitioner had swindled the company funds. On the basis of the above allegations, a case has been registered against the petitioner in Cr. No.687 for the offences under Section 408, 464, 465, 468, 471 & 42 IPC.

3. The learned counsel for the petitioner submitted that the petitioner is the former staff of the second respondent's company; the second respondent's company was rendering services to a travel agency and the business transaction issues have been exaggerated as a criminal case; the petitioner has not involved in any criminal case as alleged by the

prosecution.

4. The learned Additional Public Prosecutor on instructions submitted that the investigation reveals that many cheques have been forged by the petitioner and there are sufficient grounds available for continuing the investigation on the basis of the impugned FIR.

5. Since the very allegation of the second respondent is that the petitioner, taking advantage of her position in the company, had swindled the company's fund. Since the first respondent police has also stated that there are *prima facie* materials available to make out a case against the petitioner, I feel it is appropriate to allow the investigation to go on. At the threshold stage itself, the Court cannot presume that the case given by the second respondent itself is false. In this regard it is appropriate to refer the guidelines rendered by the Supreme Court in the case of ***State of Haryana and others Vs. Bhajan Lal and Others*** reported in ***1992 Supp (1) Supreme Court Cases 335*** which reads as follows:

"........

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and

accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence bu constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can every reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the Institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge".

6. None of the parameters listed out above is seen in the facts and circumstances of this case. Since there are serious allegations that the petitioner had misused her position and misappropriated the funds of the company by creating false cheque, I feel that there are *prima facie* materials available for the case and hence the first respondent police should be allowed to continue the investigation.

7. In view of the above stated reasons, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

26.10.2022

Index : Yes/No
Speaking Order : Yes / No
bkn

R.N.MANJULA, J.,

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