IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 06.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No. 21917 of 2018 and
Crl.M.P.No. 12037 of 2018

R.Ramalingam ... Petitioner/Accused

Versus

1.The Inspector of Police,
Central Crime Branch,
EDF-II, Team-III,
Vepery, Chennai-600 007.
(Crime No.213 of 2018) . . 1st Respondent/Complainant

2.Umamaheswari
. .2nd Respondent/Defacto Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records and to quash the FIR in Crime No.213 of 2018, on the file of the 1st respondent.

For Petitioner : Mr.B.Kumar
Senior Counsel
For Mr.C.Prabakaran

For Respondents : Mr.R.Kishore Kumar
Government Advocate (Crl.Side) for R1

: Mr.R.C.Paul Kanagaraj for R2

ORDER

This Criminal Original Petition is heard through Video-Conferencing, on account of the COVID-19 pandemic situation.

2. This Criminal Original Petition has been filed to quash the proceedings in FIR No.213 of 2018, filed against the accused for the offence under Sections 420, 294(b) and 506(i) I.P.C, on the file of the 1st respondent.

3. The crux of the allegation contained in the First Information Report is that the de facto complainant and the daughter of the petitioner, who is arraigned as A2, had become friends. A2 has married against the wishes of her parents.

Thereafter, she has approached the de facto complainant and sought help financially. Accordingly, in the year 2014, the de-facto complainant has given Rs.8,00,000/- and A2 had agreed to repay the same within three(3) months and she had paid the same. Again, she has introduced the present petitioner, namely her father, on 10.10.2015. The de facto complainant parted with another sum of Rs.50,00,000/- and again she parted with Rs.31,00,000/-. That apart, again they have requested for Rs.20,00,000/-, however, as the money was not there, the de facto complainant parted with her jewels and thereby they have cheated her, she has filed a complaint. Based on the complaint, an FIR came to be registered for the offence under Sections 420, 294(b) and 506(1) I.P.C.

4. The learned counsel appearing for the petitioner mainly submitted that the petitioner, merely because he is the father of A2, who is said to have financial transaction with the de facto complainant, has been arraigned as an accused. A similar complaint was given by the son of the de facto complainant in the year 2017, for the alleged payment of Rs.30,00,000/- and the jewels of 40 sovereigns that were said to have been parted. The above complaint, was enquired and closed as mistake of fact. After that, with a similar set of allegations except changing the amount, the present complaint has been filed. At any event, if the entire complaint is perused, there is no role played by the present petitioner for the alleged receipt of the money. The entire complaint itself indicate that due to friendship between A2 and the de facto complainant, there appears to be some payment made by the de facto complainant. There was no allegation of deception or fraudulent act on the part of the petitioner from the inception. Hence, the continuation of the First Information Report as against this petitioner, is nothing but an abuse of process of law.

5. Mr.R.C.Paul Kanagaraj, learned counsel appearing for the de facto complainant submitted that the earlier complaint is on different aspect, wherein the de facto complainant advanced some amount, which was closed by the police. Whereas the present complaint is relating to the amount received by the accused on different dates and the amount is also different. His contention is that a sum of more than Rs.81,00,000/- has been received by the accused. Therefore, he submitted that, as the investigation is in initial stage, the same cannot be quashed.

6. Heard the learned counsel appearing on both sides and perused the entire materials available on record.

7. Normally, the courts would not quash the First Information Report at the initial stage when there is a prima facie material to proceed with the investigation, but at the

outset, when the courts find that the accused has been implicated only for the purpose of collecting or recovering the money, which was said to have been parted by one of the family members and there is no allegation against the accused for committing any act of cheating from the beginning, such First Information Report can be quashed by the court in exercise of its power under Section 482 Cr.P.C.

8. As rightly pointed out by the learned counsel appearing for the petitioner, a similar set of allegations has been pressed into service by the son of the de facto complainant, namely Purushothaman, against the daughter of the petitioner herein, namely A2, for receipt of Rs.30,00,000/- and non payment of the same. After enquiry, the above First Information Report was closed as mistake of fact and they have agreed in the police station that they will sort it out their issue before the Civil Court. Thereafter, again the mother of the said Purushothaman, namely the present de facto complainant, has given the present complaint alleging that A2 has become friend of the de facto complainant and she has persuaded her to part with some amount for business purpose and in one occasion, she has also brought her father to part with a sum of Rs.50,00,000/- and that apart, she has also parted with some jewels. When the same was sought back, there was a threat made by the accused.

9. It is relevant to note that, in a similar set of complaint, which has been filed earlier by the son of the de facto complainant, there was no whisper or whatsoever about the present petitioner. Though the complaint was only by the other member of the family, the allegation was almost similar except some difference in the amounts. There was no whisper or whatsoever made in the earlier complaint against the present petitioner. Even the present complaint in its entirety seen, the allegation attracted against A2 is for receiving the amount. Though except contending that A1 was present while paying the amount, the entire complaint itself indicate that the amount has been paid only after persuasion of A2. Except the allegation that he was present while receiving the amount, no other overt act has been made against him. Even the entire allegation is taken as true, the same only attract against the A2 and not against the present petitioner. Except his presence, no other role was played by him and no allegation was attributed against this petitioner. There was no intention on his part to deceive the de facto complainant from the inception. The entire complaint itself indicate that the amount was paid voluntarily at the request of the A2. Therefore, the mere presence of the petitioner itself will not amount to an offence under Section 420 IPC, unless, there is material to show that there was an intention to deceive money on the part of A1 was present from the beginning.

10. Similarly, the other allegations with regard to the threat and other things, except making a general allegation, no other allegations as to the nature of threat made by the petitioner. Thus, it is clearly seen that only in order to attract an offence, such an accusation is made. The de facto complainant is none other than the wife of a retired Inspector of Police and a similar set of complaint already made by her son, wherein no whisper or whatsoever was made against the petitioner. As the ingredients to attract the offence under Section 420 IPC is lacking against this petitioner, continuing the investigation against this petitioner will lead to an abuse of process of law. Accordingly, the First Information Report is quashed only as against the present petitioner and the investigating officer shall proceed with investigation as against A2 and complete the same. The respondent police is directed to complete the investigation as against others and file a report, as expeditiously as possible, before the concerned court.

11.Accordingly, this Criminal Original Petition is allowed. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

psa/asr

To

1. The Inspector of Police,
   Central Crime Branch,
   EDF-II, Team-III,
   Vepery, Chennai-600 007.

2. The Public Prosecutor,
   High Court, Madras.

+1cc to Mr.L.Prabakaran, Advocate, S.R.No.1832

Crl. O.P. No. 21917 of 2018

SS(CO)
CT 08/02/2022