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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2022

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P.NO.16480 OF 2019

AND

CRL.M.P.NO.8275 OF 2019

1. Anthony George

2. Judith Leema

3. Alice Arputhamary

... Petitioners/Accused
1 to 3

Versus

1. The State represented by
The Inspector of Police,
City Crime Branch,
Office of the Commissioner of Police,
Coimbatore - 641 018.
(Crime No.59 of 2018)

2. J.Dhanraj

... Respondents/Complainant
& Defacto Complainant

PRAYER:-

This Criminal Original Petition had been filed under Section 482 of Criminal Procedure Code to call for the records in Cr.No.59 of 2018 pending on the file of the 1st respondent herein namely the Inspector of Police, City Crime Branch, Office of the Commissioner of Police, Coimbatore - 641 018 and quash the same.

For Petitioners : Mr.I.Jenkins William

For R1 : Mr.R.Vinothraja
Government Advocate
(Criminal Side)

For R2 : Mr.R.Sivakumar



O R D E R

This Criminal Original Petition has been filed seeking to quash the FIR in Crime No.59 of 2018 pending on the file of the 1st respondent police.

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2. The learned Counsel for the Petitioners submitted that this is a case involving the relatives of the second respondent. He invited the attention of this Court to the family tree annexed to the quash petition, wherein the learned Counsel had submitted that one J.Dhanraj/defacto Complainant is unmarried and he had a sister by name Leela Mary. There was a dispute regarding the partition, which was referred to the Court, wherein in the Civil Court, there was a decree for partition. Based on the partition, half of the property was allotted to Leela Mary and other half was allotted to Dhanraj. Each of them received a sum of Rs.85,00,000/- towards their share in the property. Since Dhanraj was unmarried and aged about 80 years old, he deposited a sum of Rs.85,00,000/- in a joint account in the name of himself and one Kulandai Theresa, who is the daughter of Leela Mary. Subsequently, there was a dispute regarding withdrawal of the amount.

3. It is the allegation of the defacto Complainant that he was not allowed to withdraw the amount in the joint account maintained in the joint account with Kulandai Theresa and she had been withdrawing the amount. In the meanwhile, the second respondent/defacto Complainant went out from the custody of Kulandai Theresa and stayed in an Old Age home. Subsequently, he came to the third Petitioner herein, namely Alice Arputhamary, where also there was a similar complaint. In brief, the learned Counsel for the Petitioners submits that the defacto Complainant is not in his stable mental health and he had been swayed at the old age by the relatives. Based upon which, he has animosity with the other group of the family members. Therefore, based on the influence by the relatives, he had preferred a complaint before the learned Judicial Magistrate No.VI, Coimbatore.

4. On recording the sworn statement of the second Respondent and other witnesses produced by him before the learned Judicial Magistrate, the learned Judicial Magistrate had taken the complaint on file and directed the first respondent to register an FIR. Accordingly, FIR in Crime No.59 of 2018 was registered. In the FIR, Petitioners herein were arrayed as A1 to A3. The Petitioners moved this Court for bail. At the time of granting of bail, the learned Single Judge had ordered the Petitioners to directly deposit the amount in the account of the second Respondent without any objection from the Petitioners. Therefore, based on the orders, they had returned the amount also. Still the second Respondent disputed a sum of



Rs.5,00,000/- has to be paid by the Petitioners to the second Respondent.

5. The learned Counsel for the second Respondent/defacto Complainant objects to the line of arguments of the learned Counsel for the Petitioners seeking to quash the complaint. It is his submission that the first Petitioner/Anthony George by mis-using his official capacity as a Bank Manager had been withdrawing the amount from the account of the defacto Complainant and misappropriating the amount to himself into various bank account. Also, the first Petitioner had opened a joint account with his wife, second Petitioner herein without the knowledge and permission of the second Respondent. Therefore, he objects to quash the FIR.

6. The learned Government Advocate (Crl.Side) also objects to quash the FIR stating that the second Respondent/defacto Complainant seems to have been appeared before the learned Judicial Magistrate. The learned Judicial Magistrate had examined him and recorded sworn statement. Therefore, he was of full mental health and not as claimed by the learned Counsel for the Petitioners. The learned Judicial Magistrate was satisfied with the defacto Complainant that he was hale and healthy and in a fit state of mind to give complaint. Therefore, the subject matter of the FIR is as recorded by the learned Judicial Magistrate and the materials that are to be collected by the Investigation Officer. Since the Petitioners admitted that at the time of admission of this petition, stay of investigation was granted and the Investigation Officer was directed not to proceed with the investigation. Only if the Investigation Officer has the discretion either to lay final report or to close it as submitted by the learned Counsel for the Petitioners.

7. It is the objection of the learned Government Advocate (Crl.Side) that if this petition is allowed and FIR is quashed, it amounts to the violation of the guidelines issued by the Hon'ble Supreme Court in the case of State of Haryana Vs. Bajan Lal. Facts disputed can be considered only at the time of trial, if the charge sheet had been filed. It is not for this Court to consider the disputed facts while exercising discretion under Section 482 of Cr.P.C.

8. Considering the rival submissions and the materials available in the typed set of papers, this Court finds that this is not a fit case as pointed out by the learned Government Advocate (Crl.Side).

9. In view of the above, the Investigation Officer is directed to proceed with the investigation and lay final report



10. With the above direction, this Criminal Original Petition is dismissed. Consequently, connected Criminal Miscellaneous Petition is closed.

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1. The Inspector of Police,
City Crime Branch,
Office of the Commissioner of Police,
Coimbatore - 641 018.

+1cc to Mr.I.Jenkins William, Advocate, S.R.No.25983
+1cc to Mr.R.Prabakar, Advocate, S.R.No.26215

SR (CO)
PBS/26/05/2022