IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2022

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.NO.18107 OF 2020
AND
CRL.M.P.NO.7091 OF 2020

Manikandan ...Petitioner

Vs

1.The Inspector of Police
CCB, Salem City,
636 004.
(FIR.No.3 of 2019)

2.Vasudevan ...Respondents

PRAYER : Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to call for the records relating to FIR No.3 of 2019 dated 21.01.2019 pending on the file of the Inspector of Police, CCB, Salem City, against the petitioner and quash the same.

For Petitioner : Mr.S.I.Sharukumar

For Respondents
For R1 : Mr.A.Gopinath
Government Advocate (Crl. Side)
For R2 : Mr.R.Marudhachalamurthy

O R D E R

This petition has been filed to quash the F.I.R. in Crime No.3 of 2019 registered by the first respondent police for offences under Sections 420, 465, 468 & 471 of IPC, as against the petitioner.

2. On the complaint lodged by the second respondent, the first respondent registered the above said case. There are totally three accused in which, the petitioner is arrayed as second accused. The crux of the complaint is that the first accused is the mother of the second accused i.e., the petitioner herein and the defacto complainant is the son-in-law of the petitioner's sister. On the assurance given by the first accused that she would get a job for the defacto complainant's son in the Income Tax Department, the defacto complainant parted with a

sum of Rs.6 lakhs in the year 2016, thereafter he paid a sum of Rs.1,25,000/- as loan to the first accused. She also assured that she knows higher officials in the income tax department and immediately the defacto complainant's son will receive interview card and thereafter he will be appointed as income tax officer.

3. Thereafter, the first accused had shown the order in the name of the defacto complainant's son and demanded further amount of Rs.4,00,000/- and the remaining amount will be received after getting the appointment order. Thereafter again the defacto complainant paid some amount, in total, he paid a sum of Rs.13,30,000/- to the first accused. When the defacto complainant was waiting for receiving the appointment order to his son, in the year 2018, the first accused went to United States of America (USA) stating that she had some works with her son at USA. Even from USA, the first accused demanded further sum of Rs.2 lakhs to be deposited in the account of the third accused and accordingly, the defacto complainant paid the same to the third accused. Thereafter, she fabricated some appointment orders and sent to the defacto complainant's son. It is found to be a forged one thereby all the accused persons have cheated the defacto complainant to the tune of Rs.13,30,000/- and also produced the fabricated documents.

4. The learned counsel appearing for the petitioner would submit that the entire allegations are made as against the first and third accused. Insofar as the petitioner is concerned, he is the son the first accused and he is nothing to do with the crime as alleged by the defacto complainant. In the year 2012 itself, the petitioner went to USA and he is continuously residing in USA even till now. The first accused being the mother of the petitioner herein, she used to visit USA. Even according to the prosecution, there is absolutely no avernment to attract any of the offences as alleged by the defacto complainant. The petitioner never induced the defacto complainant to pay any amount and the petitioner never issued any interview letter or appointment order to the defacto complainant's son. Therefore, the offences under Sections 420, 465, 468 & 471 of IPC, are not at all attracted as against the petitioner. The only allegation made in the FIR is that, the first accused went to USA to met the petitioner for other purposes and she threatened the defacto complainant as if her son will contact the higher officials. Except these allegations, there is no other avernment made in the FIR to attract any of the offences as alleged by the prosecution. Hence, he prayed for quashment of the FIR.

5. The learned counsel appearing for the second respondent submitted that the petitioner is none other than son of the first accused. He also colluded with other accused and cheated the defacto complainant to the tune of Rs.13,30,000/-. He

further submitted that it is only FIR and it cannot be quashed on its threshold. Only after investigation, the truth will come out that who cheated the defacto complainant. Therefore, he prayed for dismissal of this petition.

6. The learned Government Advocate (Crl. Side) appearing for the first respondent Police submitted that so far no one is arrested in this crime, since the first accused is absconding. As far as the petitioner is concerned, he is none other than the son of the first accused and he has full relationship with the first accused, though he is residing at USA. He further submitted that the investigation is still in progress and prayed for dismissal of this petition.

7. Heard Mr.S.I.Sharukumar, learned counsel appearing for the petitioner, Mr.A.Gopinath, learned Government Advocate (Crl. Side) appearing for the first respondent and Mr.R.Marudhachalamurthy, learned counsel appearing for the second respondent.

8. There are totally three accused in which, the petitioner is arrayed as second accused. The defacto complainant is the relative of the petitioner. The first accused is the mother of the petitioner and the third accused is his friend. Admittedly, the petitioner is living and working in USA from the year 2012. On perusal of the petitioner's Passport revealed that even till today, he is living and working at USA. The first accused is being the mother of the petitioner, she used to visit USA.

9. On perusal of the FIR revealed that the defacto complainant parted a sum of Rs.13,30,000/- to the first and third accused. That apart, there is no allegation that the first accused transferred the amount which was received from the defacto complainant in favour of the petitioner herein. The only allegation made in the FIR is that, the first accused went to USA to see her son in respect of other issues. Further the petitioner is well acquaintance with the higher officials and the first accused will escape easily.

10. As rightly pointed out by the learned counsel appearing for the petitioner, the petitioner never induced the defacto complainant to pay any amount to get employment for his son in the income tax department. In fact, the petitioner had never seen the defacto complainant and never induced him to pay any amount. That apart, the orders sent in the name of the defacto complainant's son are fabricated by the first accused and the petitioner had no knowledge about the orders issued in favour of the defacto complainant's son. When there is no allegation about the inducement made by the petitioner herein, he cannot be prosecuted for the offence under Section 420 of IPC.

11. To attract the offence under Section 420 of IPC, there must be dishonour inducement. According to the provisions under Section 420 of IPC, whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, can be said to have committed the offence under Section 420 of IPC. Thus, it is clear that there must be dishonest inducement to deceive a person to deliver the property to any other person. In the case on hand, there is no allegation levelled as against the petitioner that on his inducement the defacto complainant delivered the case.

12. In view of the above facts and circumstances, the impugned FIR cannot be sustained as against the petitioner and it is nothing but clear abuse of process of law. Accordingly, the F.I.R. in Crime No.3 of 2019 on the file of the first respondent is hereby quashed as against the petitioner alone. The first respondent is directed to complete the investigation and file final report as against the other accused persons, within a period of 12 weeks from the date of receipt of a copy of this Order.

13. Accordingly, this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar

rts

To

1.The Inspector of Police
CCB, Salem City,
636 004.

2.The Public Prosecutor,
Madras High Court,
Chennai.

+1cc to M/s.R.Marudhachalamurthy, Advocate Sr.No.41140

+3ccs to M/s.K.Elangovan, Advocate Sr.No.41313

Crl.O.P.No.18107 of 2020
and Crl.M.P.No.7091 of 2020

NK(CO)
RVM(21/07/2022)