IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2022

CORAM:

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

CRL.O.P.NOS.20900 & 32511 OF 2019
AND
CRL.M.P.NOS.10779 & 17908 OF 2019

V.Sathish Kumar

... Petitioner in both Crl.O.Ps.

Versus

1. The State rep by its
   The Inspector of Police,
   CCB-1, Team,
   Chennai – 7.
   (Crime No.137/2019)

2. Robert Nirmal Singh

... Respondents in both Crl.O.Ps.

PRAYER in Crl.O.P.No.20900 of 2019 :

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the entire records pertaining to the above First Information Report in Crime No.137 of 2019 registered on the file of the 1st respondent Police (Central Crime Branch-1, Chennai) and quash the same.

PRAYER in Crl.O.P.No.32511 of 2019 :

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to transfer the investigation of the case in Crime No.137 of 2019 on the file of the 1st respondent Police to any other independent investigating agency.

For Petitioner in both Crl.O.Ps.	:	Mr.Niranjan S.Kumar
For Respondent-1 in both Crl.O.Ps.	:	Mr.N.S.Suganthan Government Advocate (Crl. Side)
For Respondent-2 in both Crl.O.Ps.	:	Ms.A.Madhumathi

COMMON ORDER

The second accused in FIR No.137/2019 dated 15.04.2019 registered by CCB-I, Chennai is before this Court seeking to quash the FIR and to transfer the investigation of the case to any other independent investigating agency.

2. The sum and substance of the complaint which has led to registration of case in Crime No.137 of 2019 by CCB-I is that the de-facto complaint one Mr.Robert Nirmal Singh, who claimed to have been running a photo and video business in the name and style as "Photocity" at Chennai and various other places as proprietary concern, had engaged one Samraj/A1 as his driver and collecting agent, on the introduction made by one Sathish Kumar/petitioner herein. It is alleged that the petitioner and Samraj had connive together and after gaining the confidence of the de-facto complainant, the said Samraj had collected money from his customers to the tune of Rs.1,80,00,000/- and misappropriated the same and invested the money in his name and his relatives name and also shared the misappropriated money with Sathish Kumar. Based on his complaint, Sathish Kumar/petitioner herein was arrested on 09.05.2019 for the alleged offence under Sections 409, 420, 506(i) r/w. 34 I.P.C. and later released on bail on condition to deposit Rs.30,00,000/- in cash and also title deed documents in respect of immovable property as security worth about Rs.30,00,000/-.

3. The petition to quash the F.I.R. is filed on the premises that the petitioner is one of the Trustees of a Non-Governmental Organisation carrying on services in and around Kanniyakumari District. The de-facto complainant/Robert Nirmal Singh requested him to arrange a driver and therefore he introduced one Samraj (A1) to the de-facto complainant and his brother Rabi Mohan. The said Rabi Mohan had illegaly confined the said Samraj and called the petitioner to settle the money dispute he had with Samraj and also forced to issue nearly 160 cheque leaves and signed blank stamp papers. Thereafter, with the help of police officials, extracted a sum of Rs.21,00,000/- from the petitioner on 13.12.2018. Subsequently, a case was registered by District Crime Branch, Kanniyakumari in Crime No.38 of 2018 against the petitioner and his wife. While so, the said Rabi Mohan also filed a suit in O.S.No.1 of 2018 on the file of District Judge, Kanniyakumari District at Nagercoil against Samraj and his mother alleging that the said Samraj owe him a sum of Rs.78,00,000/-. However, the suit came to be dismissed on 12.10.2018. Soon thereafter, the de-facto complainant, on 25.10.2018 had given a complaint alleging that around Rs.1,80,00,000/- collected from its 50 to 60 customers has been

misappropriated by Samraj(A1) and the petitioner/A2 and when the de-facto complainant questioned about the misappropriation, they promised to repay the money by June, 2018 and in lieu of payment of money, they handed over the title deed of document bearing No.481/1993 and signed cheques. But, however, they failed to repay the money as promised. Initially, this complaint was addressed to the Commissioner of Police, Chennai and then forwarded to Inspector of Police, Crime Branch, Anna Nagar, who registered a case in C.S.R. No.1054/2018 and then it was forwarded to Central Crime Branch, Vepery, Chennai for further investigation.

4. Learned counsel appearing for the petitioner contended that the said complaint was launched only to wreak vengeance against the petitioner and to extract money from his Trust and applying the terms laid down by this Court in the case of State of Haryana and Others Vs. Bhajanlal and Others, there is no material on the face of the record to proceed with the investigation.

5. Per contra, the learned counsel appearing for the second respondent/de-facto complainant submitted that the petitioner herein, in connivance with the said Samraj (A1), has cheated more than Rs.1,80,00,000/- and the said Samraj had given a confession statement in the manner in which the money was siphoned off and therefore, this is not a fit case for quashing at the stage of investigation.

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. This Court, on a perusal of the materials, finds that between the petitioner and Samraj(A1) on the one side and Rabi Mohan and his brother Robert Nirmal Singh/De-facto complainant on the other side, several proceedings have been initiated before the Criminal Court and Civil Court. However, neither of them has whispered how huge money has been generated for transaction. Even, the impugned complaint does not whisper as to how and what manner a sum of Rs.1,80,00,000/- has been misappropriated by Samraj(A1) and petitioner(A2) and from whom it was collected. However, the Central Crime Branch soon after the registration of F.I.R. had arrested the petitioner/A2 even without ascertaining as to whether the de-facto complainant has been running a business as he has mentioned in his complaint and the business had the probability of generating a sum of Rs.1,80,00,000/-.

8. Be that as it may, raising doubt on the credentials of the investigation by Central Crime Branch, the present transfer application has been taken out by the petitioner along with the quash petition alleging that the first respondent Police is making all attempts to procure false evidence to justify illegal arrest and registration of the complaint and if they are allowed to continue the investigation, he may not get justice. Relying upon the Full Bench judgment of the Hon'ble Supreme Court in the case of Gurcharan Dass Chadha Vs. State of Rajasthan reported in 1966 0 AIR(SC) 1418, the learned counsel for the petitioner submitted that the petitioner has reasonable apprehension about the impartial investigation and the hast manner, in which he was arrested without even ascertaining the credential of the de-facto complainant, who had already initiated criminal proceedings and Civil Suit through his brother and failed and thereafter filed a complaint with bereft of details and facts. However, without ascertaining the truthfullness of the averment made in the complaint, the petitioner was arrested and forced to deposit a sum of Rs.30,00,000/- as security for getting bail.

9. For consideration of this Court, the pleadings in Civil and Criminal proceedings initiated by either side is also produced and the same was perused. This Court is of the opinion that the gravity of the allegation found in the complaint and counter complaint in only tip of an iceberg and neither of the party had disclosed about the transaction of huge sums, which as on date is not supported by any document, except undertaking and receipts alleged to have been extracted under duress.

10. Further, it is also now brought to the notice of this Court that the Trust by name, “Anugraha” is also involved in this case and the complaint has been lodged only to grab the properties of the Trust. In view of the above fact, it is appropriate to entrust the entire investigation to CB-CID, which shall seize the matter and carry out an impartial investigation and complete the investigation within a period of six months.

11. The learned Government Advocate (Crl. Side) appearing for the first respondent Police submitted that this Court earlier has directed the present investigation officer to proceed with the investigation, but not to file a final report. In view of the present order, the Inspector of Police, Team-XX, EDF-III, Central Crime Branch, Vepery, Chennai - 7, shall hand over the entire records to the new incumbent, namely, the Inspector of Police, CB-CID, Chennai, who shall carry on the investigation and complete the same within a period of six

months from the date of receipt of a copy of this order.

12. With the above directions, these Criminal Original Petitions are disposed of. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
   CCB-1, Team,
   Chennai – 7.

2. The Inspector of Police,
   CB-CID, Chennai.

3. The Public Prosecutor,
   High Court, Madras.

Crl.O.P.Nos.20900 & 32511 of 2019

KV(CO)
PM/11/07/2022