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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2022

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.1418 of 2022

G.Srinivasan ... Petitioner

Versus

State Rep.by
Inspector of Police,
Economic Offences Wing-II,
Thiru.Vi.Ka.Industrial Estate,
Guindy, Chennai – 600 032,
Crime No.04/2021. ... Respondent

Criminal Revision Case filed under Sections 397 r/w 401 of Criminal Procedure Code to call for the records and to set aside the order dated 29.08.2022 passed in C.M.P.No.9397 of 2022 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai in C.C.No.4218 of 2021 and to discharge the petitioner by allowing this revision.

For Petitioner	:	Mr.Swami Subramanian
For Respondent	:	Mr.S.Sugendran Additional Public Prosecutor

O R D E R

This Criminal Revision Case has been filed against the order dated 29.08.2022 passed in C.M.P.No.9397 of 2022 in C.C.No.4218 of 2021 by the learned Chief Metropolitan Magistrate, Egmore, Chennai.

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2.The petitioner has been shown as A8 in C.C.No.4218 of 2021. During the pendency of the said case, the petitioner/A8 has filed a petition under Section 239 Cr.P.C before the learned Chief Metropolitan Magistrate, Egmore, Chennai seeking discharge. The said petition was dismissed. Aggrieved by the same, the petitioner has preferred the present revision petition.

3.The learned counsel for the petitioner submitted that as per the complaint and statement of witnesses and also the documents produced by the prosecution, no offence was made out as against the petitioner herein and that apart, originally the petitioner's name was not mentioned as an accused in the First Information Report, however, after investigation, the investigating agency included the name of the petitioner in the final report. Even the documents produced by the prosecution itself does not disclose any offence as against the petitioner and as per the statement of L.W.1, the petitioner has no role to play at the time of investment made by him with A1/Company and he was no way connected with the alleged transactions. Even as per the documents produced by the prosecution, the alleged cheque was issued by A7/Company and the same was not issued in his individual capacity. As per the certificate of Incorporation issued by MCA in respect of A7/Company shows that the

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petitioner has resigned from A7/Company on 12.03.2019 and the same was reflected in MCA portal on 13.03.2019 and hence, the petitioner is not a Director of A7/Company at the time of issuance of cheque to the *de-facto* complainant dated 07.12.2020. He further submitted that as the petitioner has resigned from A7/Company on 12.03.2019 and the same was accepted by the other Directors of the Company, the version of the *de-facto* complainant that the petitioner issued the cheque dated 07.12.2020 cannot be acceptable. As alleged by the prosecution, the petitioner has not committed any offences under Sections 120(b), 420, 406, 409, 465, 467, 468 r/w 471 IPC. The cheque was forged as if the petitioner issued the cheque and therefore, there is no materials to establish that the petitioner has committed the charged offences. Further, the petitioner was no way connected with any of the transaction of A7/Company, since on the date of issuance of the cheque and date of sending notice and filing the complaint, the petitioner has not acted as Director of A7/Company. Once upon a time he acted as Director of A7/Company and subsequently, he resigned from his post and hence, the petitioner has no role and there are no materials to connect him with the alleged offences.

4. The learned Additional Public Prosecutor appearing for the respondent submitted that the petitioner has admitted the signature and issuance of the

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cheque. Once, the petitioner admitted that the cheque in question belongs to him, the same was issued by him, if the cheque is dishonored and statutory notice is issued, the petitioner is liable to pay the cheque amount, or he may have to face the ordeal of statutory action. He further submitted that (a) whether the petitioner is the Director of A7/Company at the time of issuance of the cheque or not, and (b) whether the petitioner has involved in the case or not can be decided only after trial and not at this stage. Now, the Court as to see the averments made in the complaint and as to whether *prima facie* materials available as against the respondent or not. Once the complaint is lodged, then it is for the defence to face the trial and disprove the same. Hence, there is no merit in the revision and the same is liable to be dismissed.

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

6. Admittedly, the respondent/Police filed a charge sheet as against the petitioner and others for the offence under Sections 120(b), 420, 406, 409, 465, 467, 468 r/w 471 IPC and the same was taken on file as C.C.No.4218 of 2021. Pending Calendar Case, the petitioner/A8 filed a petition under Section

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239 Cr.P.C to discharge him from the aforesaid charges stating that the Directors of A7/Company forged the documents of the petitioner/A8 and issued the cheque in order to involve the petitioner in the criminal case.

7. On a careful reading of the entire materials, it is seen that *prima facie* there are allegations as against the petitioner. It is settled proposition of law that at the time of framing charges, the Court cannot conduct a roving enquiry, the Court need not see whether the materials are sufficient to convict the petitioner and need not look into the defence taken by the accused. The Court has to see as to whether there is *prima facie* allegations against the petitioner and whether there are materials to frame charges and proceed with the trial. From the reading of the entire materials, this Court finds that there are averments made in the complaint and allegations have been made against the petitioner/A8 herein.

8. At this juncture the learned counsel for the petitioner pointed out that the petitioner was not shown as an accused in the original complaint and in the First Information Report and only subsequently, in the charge sheet the name of the petitioner/A8 was incorporated.

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9. It is settled proposition of law that the First Information Report is not an encyclopaedia. Based on the F.I.R., the investigating officer will conduct the investigation and on completion of investigation if the investigation officer comes to the conclusion that other persons have also involved in the case and *prima facie* materials and incriminating materials are available against those persons, their name also can be included as accused persons. Therefore, non mentioning of the name of the petitioner in the F.I.R and complaint is not a sole ground to discharge the petitioner from the charged offences. As already stated that the Court need not look into the defence taken by the accused, the Court has to see only the materials produced by the investigating officer along with the final report filed under Section 173(2) Cr.P.C.

10.A careful reading of the entire materials, this Court finds that there is a *prima facie* materials as against the petitioner to frame charges. It is for the revision petitioner to prove that he is not the Director of A7/Company at the relevant point of time, his signature was forged in the cheque and his name was included as A8 without any materials at the time of trial. As only charges have been framed in this case, this Court need not conduct a roving enquiry on the

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materials produced by the prosecution and cannot look into the defence taken by the accused.

11. Taking into consideration of the facts and circumstances, this Court does not find any perversity in the order passed by the learned Magistrate and there is no merit in the revision. Accordingly, this Criminal Revision Case is dismissed.

03.11.2022

Index : Yes/No
Speaking Order/Non Speaking Order
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To

1.The Chief Metropolitan Magistrate,
Egmore, Chennai.

2.The Inspector of Police,
Economic Offences Wing-II,
Thiru.Vi.Ka.Industrial Estate,
Guindy, Chennai – 600 032.

3.The Public Prosecutor,
High Court, Madras.

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P.VELMURUGAN, J.

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Crl.R.C.No.1418 of 2022

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