IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.27822 of 2017
and
Crl.MP.Nos.15839 & 15840 of 2017
& 8337 of 2019

Harish gupta ... Petitioner

Vs.

1. The Inspector of Police,
   T-1 Ambattur Police Station,
   Ambattur, Chennai - 600 053.

2. Ashish Gupta

... Respondents

Prayer : Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code to call for the entire records and quash the proceedings in C.C.No.376 of 2017 pending on the file of the learned Judicial Magistrate, Ambattur, Chennai - 53 with respect to the petitioner/first accused.

For Petitioner	:	Mr.A.R.L.Sundaresan Senior Counsel for M/s.A.L.Gandhimathi
For R1	:	Mr.A.Damodaran Additional Public Prosecutor
For R2	:	Mr.Manuraj

ORDER

The petitioner/A1 facing trial in C.C.No.376 of 2017 on the file of the learned Judicial Magistrate, Ambattur, Chennai-53, filed this quash petition.

2.The second respondent/defacto complainant, Secretary of Venkatapuram Cultural Association lodged a complaint stating that he is the Correspondent of P.J.Gupta's High School, P.J.Gupta's Primary School and P.J.Gupta's Kinder Garden School. Earlier, the petitioner Harish Gupta was the Correspondent of the School and under his aegis the Association was running the School. The petitioner misappropriated money belonging to the School and finding the misappropriation, the Management Committee by unanimous decision removed the petitioner from the primary membership of the Association on 14.06.2009. Subsequently, a suit was filed for recovery of money from the petitioner in O.S.No.732 of 2010 before the learned V Assistant Judge, City Civil Court, Chennai. When the same was pending, it was found that Mrs.Jyoti Agarwal/A2, who was also present in the meeting on 14.06.2009 which unanimously removed Harish Gupta/petitioner herein from the Association, later colluded with the petitioner Harish Gupta entered into the School premises and threatened the staff with dire consequences, for which, Venkatapuram Cultural Association filed two suits in O,S.No.438 of 2010 and O.S.No.440 of 2010 on the file of the District Munsif Court, Ambattur against A2/Jyoti Agarwal from convening any meeting including the Annual General Body Meeting in the name of the Association. On the contrary, the petitioner/A1 convened a meeting on 30.10.2010, A2/Jyoti Agarwal, Vishal Agarwal, Indu Gupta and Prevendra Gupta participated, they passed a resolution in the name of the Association holding that any resolution passed in the meeting held on 14.06.2009 as null and void and several other resolutions were passed. Thereafter, it came to know that A1/petitioner had withdrawn a sum of Rs.49,999/- on 20.11.2010 from the bank account of the Association. Thus, the petitioner committed the offence of misappropriation, cheating, FIR registered on 30.11.2010 and thereafter, on completion of investigation, charge sheet filed against the petitioner/A1 and one Jyoti Agarwal/A2 for the offence under Sections 419, 406, 420, 448 and 506(i) of IPC listing L.W.1 to L.W.8 and documents. The Trial Court finding prima facie case taken the case on file in C.C.No.376 of 2017.

3.The contention of the petitioner is that Venkatapuram Cultural Association, formed in the year 1940, the said Association is running the P.J.Gupta's High School, P.J.Gupta's Primary School and it is also an aided school. Initially, there were about 4000 students studying in the School, now, there are only around 400 students studying there. The defacto complainant's father and the petitioner's father are brothers, there was some dispute between them and now they have got separated. Charges and counter charges made by each, there is a dispute as regards who is to run the School and the Association. The petitioner was running the School as Correspondent for quite sometime, the defacto complainant with an ulterior motive cobbled the members of the Association, conducted a General Body Meeting on 14.06.2009, removed the petitioner from the primary membership of the Association and also from the post of Correspondent of the School which is being defended in the Civil Court. Further, for tarnishing the image and to portray the petitioner in bad light, an allegation was made as though the petitioner misappropriated a sum of Rs.1,11,215/-, but the petitioner withdrawn the said money and utilized the same for the benefit of the School and not for any personal use. Since it is an aided School as per the requirement of the Education Department, the petitioner signed the Form and Application on 22.02.2009 admitting the election held on that day for change in Correspondentship of the School and for this reason alone he signed the forms which were submitted to the School authorities. Thereafter, he signed the cheque on 20.11.2010 for the Association and withdrawn the money, the petitioner is disputing the Annual General Meeting held on 14.06.2009, according to the petitioner, the majority of the members of the Association are with his and a resolution already passed on 30.10.2010 confirming the authority to the petitioner. In any event, this is the disputed fact which the Civil Court has to finally decide. Now the proceedings against the petitioner and another as though they have misappropriated and cheated the Association using a cheque and for an earlier withdrawal is only to spike vengeance. It is further submitted that in the list of witnesses, L.W.4 is the Senior Manager, Bank of Baroda, who categorically states that only after passing of the cheque dated 20.11.2010, he was informed that the petitioner Harish Gupta was removed from the post of Correspondent of the School and from the primary membership of the Association. The other listed witnesses are the defacto complainant, his wife, the present Treasuer, L.W.5 son of the defacto complainant, L.W.6 is the witness for the observation mahazar, L.W.7 is the Inspector of Police who registered FIR, L.W.8 is the Investigating Officer who completed investigation and filed final report. Hence, he prayed for quashing of C.C.No.376 of 2017.

4.The learned counsel for the defacto complainant vehemently opposed this petition stating that in W.P.No.10430 of 2017, this Court by order dated 27.06.2018 observed that the defacto complainant is continuing as Secretary of the Association and there is no change in the Constitution from 2009. Thus, the defacto complainant having a right to lodge a complaint against the erstwhile Office bearers of the Association who misappropriated the funds of the Association. Added to it, the Civil Court had already given a finding in favour of the defacto complainant, finding petitioner unable to give proper accounting as to the amount of Rs.1,11,215/-. Further, L.W.4/Senior Manager, Bank of Baroda categorically state that the petitioner had withdrawn the amount of Rs.49,999/- on 20.11.2010, this is after 14.06.2009 when the petitioner was removed from the post of Correspondent of the School. Thus, using the cheque of the Association and withdrawing the amount is nothing but forgery, misappropriation and cheating. During investigation, L.W.1 to L.W.8 examined and their statements recorded. L.W.1, L.W.2, L.W.3 and L.W.5 have clearly state about the misappropriation committed on the funds of the Association. Further, the petitioner/A1 and A2 entered into the School, threatened the students and staff, for which separate FIR was registered. Added to it, L.W.4/Bank Manager confirms the petitioner withdrawing the amount of the Association, L.W.6 is the witness for the observation mahazar, L.W.7 is the Inspector who registered FIR and L.W.8 is the other Investigating Officer. He further submitted that the points raised by the petitioner are factual in nature which ought to be decided during trial and not in the quash petition.

5.The learned Additional Public Prosecutor submits that on the complaint of the defacto complainant, FIR registered, investigation commenced, the Investigating Officer recorded the statement of witnesses, collected documents and thereafter filed the final report. The Trial Court perused the final report finding prima facie case against the petitioner, taken the complaint on file and issued summons, against which the petitioner filed this quash petition. He further submitted that the petitioner's contentions are factual, to be decided only during trial and opposed this quash petition.

6.Considering the submissions made and on perusal of the materials placed before this Court, it is seen that it is not in dispute that the petitioner and the defacto complainant hail from the same family, their family was running Venkatapuram Cultural Association which was formed in the year 1940, they were also running the Schools and some of the Schools are aided Schools. The petitioner was in Management for quite sometime, thereafter the defacto complainant had some objections in the manner in which the petitioner was conducting the Association and the School. This dispute had snow balled and finally, the Association members got divided into two groups. The defacto complainant's group conducted Annual General Meeting and a resolution was passed on 14.06.2009 removing the petitioner from the post of Correspondent of the School. Thereafter the petitioner and his group conducted Annual General Meeting on 30.10.2010 and passed a resolution nullifying the alleged Annual General Meeting said to have been conducted by the defacto complainant on 14.06.2009. There seems to be claim and counter claim over running of the Trust and the School. Admittedly, there are also civil cases between them which are the matter to be decided in the Civil Court. As regards the criminality, it is primarily on the issuance of cheque on 20.11.2010. L.W.4/Bank Manager states that the Bank was not informed about the change of constitution. When the petitioner makes a rival claim over the Association Management, this cannot be conclusively held to be an offence as on date. The Management issue to be decided only by a Civil Court.

7.In view of the same, this Court finds that there is no reason to continue the proceedings against the petitioner which would only amount to abuse of process of law. Hence the proceedings against the petitioner in C.C.No.376 of 2017 pending on the file of the learned Judicial Magistrate, Ambattur is hereby quashed. Accordingly, this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petitions are closed.

8.As regards the other accused A2, the averments against her is that she participated in the Annual General Meeting held on 14.06.2009, thereafter sided with the petitioner, entered into the School threatened the students and staff. It is only a consequential act. In view of the same, the proceedings pending against A2 is also hereby quashed.

9.Learned senior counsel for the petitioner submitted that the petitioner has voluntarily come forward to show his benevolence that he is not the person who is behind money by donating a sum of Rs.1,00,000/- (Rupees One Lakh only) to the Madras Advocate Cooperative Society Limited, Madras for the welfare of its members. Hence, the petitioners are directed to donate Rs.1,00,000/- (Rupees One Lakh only) to the credit of of the Madras Advocate Cooperative Society Limited, Madras in Account No.484022647, Indian Bank, Madras High Court Branch, Madras.

10.It is made clear that the observations made herein is only for the disposal of the above case which cannot be cited or used by the petitioner as well as the defacto complainant in any other proceedings.

Sd/-
Assistant Registrar(CS IV)

True Copy//

Sub Assistant Registrar

cse

To

1. The Judicial Magistrate,
   Ambattur.

2. The Inspector of Police,
   T-1 Ambattur Police Station,
   Ambattur, Chennai - 600 053.

3. The Public Prosecutor
   High Court, Madras - 104.

Copy to
The Officer Incharge,
Madras Advocate Co-Operative Society Ltd,
High Court, Madras.

+1cc to Mr.Manuraj, Advocate, S.R.No.28038
+1cc to M/s.A.L.Gandhimathi, Advocate, S.R.No.28203

Crl.O.P.No.27822 of 2017

MT[co]
NSK/20/05/2022