IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl. O.P. No. 23892 of 2018
and
Crl.M.P.Nos.13530 and 13531 of 2018

Moorthy, S/o Manickam
.. Petitioner/Accused

Versus

1. State Rep. by its
Inspector of Police,
Town Police Station,
Erode. .. First respondent/complainant

2. Lalithkumar Jain,
Managing Director,
M/s.Meena Exports and Pvt. Ltd.,
Shop No.8/1-6,
Opposite Mahajana High School,
Court Road, Erode-638 001. .. Second respondent / de-facto complainant

PRAYER : Criminal Original Petition (Crl.O.P) filed under Section 482 of the Code Criminal Procedure Code (Cr.P.C), to call for the records in C.C.No.61 of 2018 on the file of the Judicial Magistrate No.II, Erode and quash the same.

For Petitioner : Mr.Abudukumar Rajarathinam for M/s.Ashok Kumar

For Respondent : Mr.S.Vinoth Kumar, Govt. Advocate (Crl.Side) for R1

Mr.R.Shase for Mr.M.Guruprasad for R2

ORDER

This Petition has been filed to call for the records in C.C.No.61 of 2018 on the file of the Judicial Magistrate No.II, Erode and quash the charge sheet.

2. The crux of the charge is that during December 2012, A3

and A5 introduced the petitioner to the de-facto complainant and represented that he is running several educational institutions and he is in need of Rs.60 lakhs. It is also stated that the petitioner had already sold 2 acres of land to A2 (Raja) and also mortgaged 50 cents of land to the father of A2, namely Palanisamy. However, since, Palanisamy demanded repayment of the mortgage amount, the petitioner requested money. It is also stated that the petitioner, after cancelling the mortgage with Palanisamy, will execute a fresh mortgage deed with the de-facto complainant. Believing the representation of the petitioner, A4 and A5, after verifying the encumbrance with respect to the properties under dispute, the de-facto complainant obtained a sale deed dated 11.12.2012 from A2. On the same day, by cancelling the earlier mortgage with the father of A2, a fresh mortgage was registered in favour of the de-facto complainant as Document No.5642 of 2012. Upon execution of such mortgage, the de-facto complainant was alleged to have paid Rs.25 lakhs towards mortgage loan, apart from Rs.22 lakhs as hand loan to the petitioner. Thereafter, on 12.03.2013, the de-facto complainant came to know about the provisional order of attachment, attaching the properties by invoking the provisions of the PMLA. According to the petitioner, the accused persons, by suppressing the provisional order of attachment, had executed the sale deed/mortgage deed and obtained the amount from him. Thus, it is stated that the accused persons have calculatedly cheated the petitioner of his lawful money without mentioning about the preliminary order passed by the investigating officer.

3. The main contention of the learned counsel for the petitioner is that the sale deed, dated 11.12.2012 is made by the said Raja in favour of the de-facto complainant, but he is not made as an accused. The petitioner, who mortgaged his properties on 11.12.2012, alone had been arrayed as an accused on the ground that such mortgage has been executed by suppressing the provisional attachment made by the Enforcement Directorate on 14.12.2013, after one and half years from the date of execution of the mortgage deed. The petitioner/A1 has no knowledge about the preliminary order said to have been passed by the investigating officer on 14.12.2013. Hence, the alleged knowledge of the attachment proceedings, cannot be attributed against the petitioner and the entire charge is based on the alleged knowledge as to the provisional attachment, which is subsequent to the mortgage deed and no offence could be constituted as against the petitioner.

4. Heard both sides and perused the entire materials available on record.

5. From the provisional attachment, dated 14.02.2013, relied upon by the petitioner, itself, shows that the petitioner

appeared to have had a knowledge about the Enforcement Directorate proceedings under the Prevention of Money Laundering Act (PMLA). Therefore, when the proceedings themselves indicate that the petitioner/A1 has a knowledge about the pendency of the proceedings, this Court, while entertaining this Crl.O.P. under Section 482 Cr.P.C., cannot form an opinion that there was no knowledge on the part of the petitioner/A1. It is a matter of evidence to be let in only at the time of trial before the trial Court.

6. In such view of the matter, as the final report discloses prima-facie materials about the concealment and the alleged deception, whether or not, there was a deception on the part of the petitioner in dealing with the properties, has to be seen only in the evidence to be adduced during the course of trial. In this view of the matter, this Court is not inclined to entertain the present quash petition. It is very well open to the petitioner/A1 to raise all his defence before the trial Court at the time of trial.

7. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Criminal Miscellaneous Petitions are closed.

8. At this stage, the learned counsel appearing for the petitioner/A1 seeks indulgence of this Court to dispense with the personal appearance of the petitioner/A1 before the trial Court, as A1 is a senior citizen. Accordingly, the personal appearance of the petitioner/A1 before the trial Court is dispensed with, except for receipt of copies of documents or answering the questions under Section 313 Cr.P.C., or on any other date that may be specifically required by the trial Court for his personal appearance.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

psa/cs

To

1.The Judicial Magistrate No.II, Erode.

2.The Inspector of Police,
Town Police Station,
Erode.

3.The Public Prosecutor,
 High Court, Madras.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.3785

PCH(CO)
SB(07/02/2022)