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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.28658 of 2018
and
Crl.M.P.No.16680 of 2018

M.Baskaran ... Petitioner/Accused-1

Versus

1.The State
rep by its Station House Officer,
DCB Villupuram Police Station,
Villupuram District.
(Crime No.11/2014)

2.K.Babu ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records relating to C.C.No.22 of 2014 on the file of the Judicial Magistrate, Sankarapuram and quash the same by allowing this Criminal Original Petition.

For Petitioner : Mr.A.Tamilrajan

For Respondent-1 : Mr.L.Baskaran
Government Advocate (Crl. Side)

For Respondent-2 : Mr.Prakash Adiapadam

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O R D E R

This petition has been filed to quash the complaint against the petitioner/Accused-1 in C.C.No.22 of 2014 pending on the file of the Judicial Magistrate, Sankarapuram.

2. The petitioner/A-1 in C.C.No.22 of 2014, who is facing trial for offence under Sections 409 and 420 I.P.C. along with another accused, has filed this quash petition.

3. The gist of the complaint is that the first accused is the Branch Manager and second accused is the Cashier of Indian Bank, Pudupet Branch. On 04.06.2010, the second respondent/de-facto complainant/L.W.1 gone to the Indian Bank, Pudupet branch and approached the accused to make a Fixed Deposit for a sum of Rs.2 lakhs by way of transfer from his savings bank account No.583205855. The accused persons agreed to the same and issued receipt for the Fixed Deposit Account No.890346782 at the rate of 6.5% interest and the date of maturity was 04.06.2011 with matured amount of Rs.2,13,320/-. With that promise they issued the Fixed Deposit receipt. On the

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date of maturity, the de-facto complainant approached both the accused to credit his F.D. amount. At that time, he was informed that no F.D. amount has been deposited in his name and the F.D. receipt produced by him is of no consequence. Hence, the de-facto complainant lodged a complaint. On registration of F.I.R., the District Crime Branch conducted investigation, examined witnesses and filed charge sheet listing L.W.1 to L.W.5. The trial Court thereafter taken the complaint on file in C.C.No.110 of 2017 against which, the present petition has been filed.

4. The contention of the petitioner is that on the complaint of the de-facto complainant, one G.Ramachandran, Manager (Vigilance) of Indian Bank Zonal Office, Cuddalore conducted investigation and enquired the petitioner as well as the second respondent/de-facto complainant on 16.03.2013 and perused the bank documents. The enquiry officer found that the deposit receipt though issued for Rs.2 lakhs, the amount had not been debited from the second respondent's Savings Bank account and credited to the Fixed Deposit account. The second respondent during enquiry admitted that he had deposited an amount of Rs.2 lakhs in Indian Bank, Pudupet Branch for three years and thereafter went to Andhra. Later he visited the branch only on 04.06.2010 and

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approached the accused to open a Fixed Deposit for a sum of Rs.2 lakhs. The accused have agreed to the same and issued receipt for the Fixed Deposit Account No.890346782 at the rate of 6.5% interest and the date of maturity was 04.06.2011. On the date of maturity, the de-facto complainant gone to the bank and approached both the accused to credit his F.D. Amount. At that time, it was informed to him that though F.D. receipt dated 04.06.2010 was issued to him, the corresponding debit was not made and further clarified that the amount of Rs.2,02,079/-, which was available in his account on 09.04.2010, is continued to be in his account till 06.08.2010, on which date, the second respondent's another Fixed Deposit account bearing No.583244261 was closed and an amount of Rs.1,28,684/- was credited to his savings bank account and there was a balance of Rs.3,33,979/-. On the same day, i.e. On 06.08.2010, an amount of Rs.3,30,000/- was debited from his S.B. Account and credited to his RIP Account No.900267836. He further submitted that the second respondent/ de-facto complainant though agreed to the same, he was insistent and adamant that F.D. receipt issued on 04.06.2010 to be honoured, since it stands in his name and he should be paid the matured F.D. Amount. The second respondent/de-facto complainant was acting in histrionic manner and was making allegation one and all. For this reason, the respondent police

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had lodged a complaint. Unable to withstand the de-facto complainant's constant harassment, the respondent police had registered the F.I.R. and further filed a final report. He further submitted that except for the statement of L.W.1/de-facto complainant, three other bank officials have been examined, who have clearly stated that no amount has been debited from the de-facto complainant's account and there is no misappropriation except for issuance of F.D. Receipt, which was by oversight and pressure of work. The other witness, the Sub Inspector of Police, who conducted investigation. In normal circumstances, the investigating officer ought to have filed a negative report for the reason “further action dropped”. Despite statement and materials are in favour of the petitioner and contrary to the complaint, for the reasons best known, the first respondent filed a final report. Hence, prayed for quashing of the complaint.

5. Learned counsel appearing for the second respondent/de-facto submitted that the specific case of the de-facto complainant is that he had approached both the accused on 04.06.2010, requesting them to make Fixed Deposit by transfer of funds from his S.B. Account No.583205855. Thereafter they issued a receipt in F.D. Account No.890346782 and the date of maturity

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was on 04.06.2011 with maturity value of Rs.2,13,320/-. After the date of maturity, the de-facto complainant approached the accused and asked them to credit the matured F.D. amount. At that time it was informed that the F.D. receipt issued was not valid and no amount to be paid. Finding that the accused have misappropriated the amount of Rs.2,00,000/-, the de-fact complainant has lodged a complaint. The respondent-Police after registration of F.I.R. conducted enquiry and filed charge sheet against the petitioner and other accused. The points raised by the petitioner are factual, which is necessarily to be decided during trial. The petitioner is in possession of the copy of the F.D., which is yet to be discharged.

6. Learned Government Advocate (Crl. Side) appearing for the first respondent-police submitted that on the complaint of the second respondent, F.I.R. registered. Thereafter, investigation carried out. During investigation, statement of L.W.1 to L.W.4 has been recorded. The bank witnesses have not disputed the genuineness of the F.D. receipt given to the second respondent. Their only explanation is that from the S.B. Account of the de-facto complainant, no amount has been debited. Whether the amount has been debited from his S.B. Account or paid by way of cash or transfer of funds from

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any other account, are the facts to be decided during trial. Though bank officials have given positive evidence with regard to F.D. receipt, charge sheet has been filed in this case. He fairly submitted that on the complaint of the de-facto complainant, the Manager (Vigilance) of Indian Bank Zonal Office, Cuddalore had conducted an enquiry. From the enquiry it is found that though F.D. receipt has been issued, no amount debited from the de-facto complainant's S.B. Account. The Statement of Account of the de-facto complainant for the period from 01.06.2010 to 30.11.2010 produced, from which, it is seen that there has been no debit from the de-facto complainant's account on 04.06.2010. On 06.08.2010, an amount of Rs.3,30,000/- was debited form his S.B. Account and transferred to RIP Account No.900267836. On 06.08.2011 and 22.01.2013 three Fixed Deposits opened in the name of the de-facto complainant by transfer of funds from his S.B. Account. The enquiry report is also produced.

7. Considering the submissions and on a perusal of materials, it is seen that the de-facto complainant approached the petitioner on 04.06.2010 seeking for opening F.D. Account for a sum of Rs.2,00,000/- by transfer of funds from his S.B. Account No.583205855. On 04.06.2010, the receipt for F.D. Account

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No.890346782 was issued and the date of maturity was on 04.06.2011 and the matured value is Rs.2,13,320/-. On the date of maturity, the de-facto complainant approached the petitioner and other accused, who are the Branch Manager and Cashier of the Indian Bank, Pudupet Branch, to credit his F.D. amount in his S.B. Account. At that time, it was informed that the F.D. receipt issued on 04.06.2010 was not followed by any debit. Hence, it is not a valid negotiable instrument. From the perusal of the Statement of Account and bank enquiry report dated 04.07.2013, it is seen that there is no debit from the de-facto complainant's S.B. Account on 04.06.2010. Further, the categorical finding of the enquiry officer is that "The action of issuing a deposit receipt for Rs.2,00,000/- on 04.06.2010 without transferring the amount from the S.B. Account has created confusion and we regret very much for the same". The statement of account and the F.D. particulars of the de-facto complainant had been furnished to the petitioner. Thus from the statement of account, enquiry report it is seen that though F.D. receipt dated 04.06.2010 had been issued, no corresponding debit had been made. Hence, F.D. receipt is not a negotiable instrument and got no credentials and cannot be acted upon. The de-facto complainant taking advantage of the same has lodged the complaint. The enquiry report and the statement of accounts confirm that there is no debit. In

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view of the same, this Court is inclined to quash the proceedings against the petitioner, since continuation of prosecution would amount to abuse of process of law.

8. Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.22 of 2014 on the file of the Judicial Magistrate, Sankarapuram against the petitioner/A1 is hereby quashed. It is also found that the other accused, who is the cashier, though has not filed any petition, he is also standing on the same footing. Hence, the case against him is also quashed. In the result, the case in C.C.No.22 of 2014 on the file of the Judicial Magistrate, Sankarapuram is hereby totally quashed against all accused. Consequently, connected miscellaneous petition is closed.

14.10.2022

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M.NIRMAL KUMAR, J.

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To

1.The Judicial Magistrate,
Sankarapuram.

2.The Public Prosecutor,
High Court, Madras.

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