



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.01.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P. (MD)No.17945 of 2021

and

Cr.M.P. (MD)No.9789 of 2021

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S.P.Rama Chandran

... Petitioner/Accused No.4

Vs.

1.The State represented by
The Inspector of Police,
City Crime Branch,
Tirunelveli City,
Tirunelveli.
(Crime No.3 of 2020)

... 1st Respondent/Respondent

2.S.Mookan

... 2nd Respondent/Defacto Complainant

Prayer : Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to First Information Report in Crime No.3 of 2020 dated 17.01.2020, on the file of the first respondent and quash the same.

For Petitioner : Mr.T.Lajapathi Roy

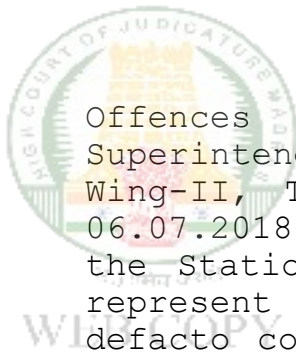
For Respondents : Mr.T.Senthil Kumar
Additional Public Prosecutor for R.1

ORDER

Heard the learned counsel appearing for the petitioner, the learned Additional Public Prosecutor appearing for the first respondent and the learned counsel appearing for the defacto complainant.

2. This Criminal Original Petition has been filed to quash the impugned FIR as far as the petitioner is concerned.

3. The case of the prosecution is that the defacto complainant parted with a sum of Rs.18,50,000/- (Rupees Eighteen Lakhs and Fifty Thousand only) to A.1 to A.3 sometime in the year 2013 since he was promised that employment in Railways would be obtained for the petitioner's son-in-law and two daughters. A.1 to A.3, however, did not fulfil the said promise and keep on dragging the matter. The petitioner has been approaching them repeatedly. Only in the year 2016, A.1 to A.3 returned a sum of Rs.4,64,500/- (Rupees Four Lakhs Sixty Four Thousand and Five Hundred only). Since the balance amount was not paid, the petitioner gave a complaint before Economic



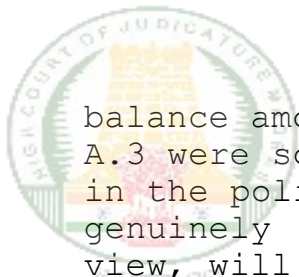
Offences Wing-II, Chennai. Based on the instruction of the Superintendent of Police, the Inspector of Police, Economic Offences Wing-II, Tirunelveli enquired the accused. Enquiry was held on 06.07.2018. On the said date, A.2 - Sivaraman was alone brought to the Station. The petitioner herein was present in the enquiry to represent the said A.1 & A.3. The specific allegation of the defacto complainant is that the petitioner persuaded him to accept the offer of the said Sivaraman and not insist on registering a criminal case. According to the defacto complainant, he believed the words of the petitioner and entered into a kind of compromise. The defacto complainant was issued with a few cheques. The defacto complainant was also assured that the said cheques would be honoured on presentation. But unfortunately, when it was presented, it was returned; an invalid cheque was given. Therefore, the impugned complaint was lodged on 17.01.2020 and Crime No.3 of 2020 was registered on the file of the first respondent Police against not only A.1 to A.3 but also against the petitioner for the offences under Sections 406, 420 and 120(B) IPC.

4. The learned counsel appearing for the petitioner reiterated all the contentions set out in the memorandum of grounds and called upon this Court to quash the impugned FIR, as far as he is concerned.

5. The learned Additional Public Prosecutor as well as the learned counsel appearing for the defacto complainant submitted that the FIR itself was registered only pursuant to the directions given by the jurisdictional Magistrate under Section 156(3) Cr.P.C and therefore the question of quashing the same may not really arise. The learned Additional Public Prosecutor would further point out that the petitioner has been specifically named in the FIR and overt acts have been attributed to him. Therefore, according to them no case for quashing has been made out.

6. I carefully considered the rival contentions and went through the materials on record.

7. It is true that the petitioner has been named as A.4 in the FIR. It is also true that the petitioner is said to have committed certain acts. On a careful reading of the entire complaint, one can easily come to the conclusion that the defacto complainant is a victim of job racketing. It is not the case of the defacto complainant that the petitioner induced him to part with any amount. The transaction between the A.1 to A.3 and the defacto complainant had taken place wayback in the year 2013. The defacto complainant had parted with a sum of Rs.18,50,000/- (Rupees Eighteen Lakhs and Fifty Thousand only) through bank transactions. The petitioner herein was nowhere in the picture. Subsequently, from A.1 to A.3 the defacto complainant had received a sum of Rs.4,64,500/- (Rupees Four Lakhs Sixty Four Thousand and Five Hundred only) in the year 2016. The petitioner was nowhere in the picture. Since the



balance amount was not paid, one more complaint was given and A.1 to A.3 were sought to be enquired. The petitioner had represented them in the police enquiry. It is quite possible that the petitioner had genuinely made an attempt to mediate in the dispute. This, in my view, will not amount to committing an act of cheating.

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8. Obviously, the ingredients of the offence under Section 406 IPC are absent. The petitioner was not entrusted with any amount or property for him to commit any breach of trust. The only question that arises for consideration is whether the petitioner had committed an act of cheating. The act of cheating was committed in the year 2013 itself. Just as the defacto complainant was a victim at the hands of A.1 to A.3, the petitioner can also be considered as a victim. However, the petitioner must learn his lessons. When counsel represent the accused in any police enquiry, they should not play any role greater than that is expected of them.

9. The registration of the impugned FIR against the petitioner is not warranted. The FIR is quashed as far as the petitioner is concerned.

10. The first respondent is directed to file an alteration report intimating the jurisdictional Court about the deletion of the petitioner's name from the FIR.

11. When the matter was taken up for hearing on the last occasion, I wanted to know the action taken by the first respondent against the main accused. Today when the matter was taken up for hearing, it was stated that the first accused has already passed away and the second accused - Sivaraman is absconding and the third accused has been arrested and was remanded to custody. As and when any bail petition is filed by the third accused, the defacto complainant will be put on notice before any order is being passed. In other words, no bail shall be granted to the third accused behind the back of the defacto complainant. The first respondent is directed to take emergent steps to secure the second accused Sivaraman also. Sivaraman, appears to have played the major role. The first respondent is directed to file final report at the earliest.

12. With these directions to the first respondent, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

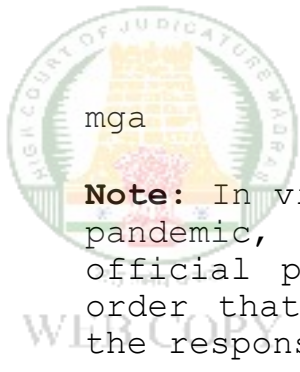
Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar(CS)



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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Chief Judicial Magistrate, Tirunelveli.

2.The Inspector of Police,
City Crime Branch,
Tirunelveli City,
Tirunelveli.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T.LAJAPATHY ROY, Advocate (SR-933[F] dated
10/01/2022)

CrI.O.P. (MD)No.17945 of 2021
and
Cr.M.P. (MD)No.9789 of 2021
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nsn(CO)
TR(04.02.2022) 4P 5C