



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 06.01.2022
PRONOUNCED ON: 16.02.2022
CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

Crl.O.P. (MD)No.16453 of 2018

and

Crl.M.P. (MD)Nos.7282 and 7283 of 2018

Sirajudeen

... Petitioner/Sole Accused

Vs.

1.State represented by

The Inspector of Police,
Thirupparangundram Police Station,
Madurai District,
In Cr.No.193 of 2012.

... 1st Respondent/Complainant

2.G.Govindan

... 2nd Respondent / Defacto Complainant

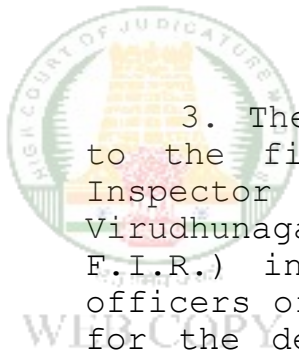
PRAYER : Criminal Original Petition has been filed under Section 482 Cr.P.C, to call for the records pertaining to C.C.No.50 of 2017, on the file of the learned Judicial Magistrate No.VI, Madurai and quash the same.

For Petitioner : Mr.D.S.Haroon Rasheed
For Respondents : Mr.R.Sivakumar
Government Advocate(Crl.Side)
for R.1
: Mr.M.Thirunavukkarasu
for R.2

ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records pertaining to C.C.No.50 of 2017 pending on the file of the Judicial Magistrate Court No.VI, Madurai and quash the same.

2. The petitioner is the sole accused in C.C.No.50 of 2017, on the file of the Court of Judicial Magistrate No.VI, Madurai. On the basis of the complaint lodged by the second respondent, F.I.R. came to be registered in Cr.No.193 of 2012, for the offence under Section 420 I.P.C., against four persons, including the petitioner. The first respondent, after completing the investigation, has laid a final report under Section 173 Cr.P.C against the petitioner herein for the offences under Sections 406 and 420 I.P.C., and the case was taken on file in C.C.No.50 of 2017 and the same is pending on the file of the Judicial Magistrate Court No.VI, Madurai.



3. The case of the second respondent, in the complaint lodged to the first respondent is that he was working as a Checking Inspector in the Tamil Nadu State Transport Corporation, Virudhunagar Depot, that one Alagarsamy (the first accused in F.I.R.) introduced three other named accused as if they are the officers of the Railway Department and they can get a job in Railway for the defacto complainant's son, that all the accused demanded Rs.3,20,000/- for obtaining the job in the Railway and the defacto complainant had also agreed for the same, that the defacto complainant gave a sum of Rs.70,000/- to the accused 1 and 2 on 15.09.2010 as an initial advance and the remaining balance of Rs.2,50,000/- to the accused 2 and 3 on 24.09.2010 and that subsequently the defacto complainant came to know that all the accused had cheated the defacto complainant and they have not at all taken any steps to get the job as agreed by them and also not returned the amount received. As already pointed out, the charge sheet has been laid only against the petitioner herein and it is evident from the records that the first respondent along with the charge sheet has filed a deletion report wherein the first respondent has specifically stated that on investigation, he came to know that Sirajudeen alone had received Rs.3,20,000/- from the defacto complainant and there was no evidence to suggest that the other two accused had received the amount and that since the accused Sirajudeen has also given a consent deed agreeing to pay the balance amount and no further particulars were furnished to find out the other accused, he had chosen to delete the other accused and filed the charge sheet only against the accused Sirajudeen.

4. The case of the prosecution canvassed in the charge sheet is that the accused Sirajudeen had promised to get a job for the defacto complainant's son in the Railways and received a sum of Rs.70,000/- on 15.09.2010 and Rs.2,50,000/- on 24.09.2010, totally Rs.3,20,000/-, that subsequently the accused had returned Rs.1,50,000/- and thereby cheated the remaining amount of Rs.1,70,000/- and that when the defacto complainant had demanded the repayment of the said amount, the accused had refused to pay any amount and that thereby he had committed the offence punishable under Sections 406 and 420 I.P.C.

5. The learned Counsel for the petitioner would submit that the defacto complainant in his complaint as well as in the statement recorded under Section 161(3) Cr.P.C., has specifically stated that his son was having influence over the police and only on that basis, the above case came to be registered, that the defacto complainant has himself specifically admitted that only on the recommendation made by the higher police officials, F.I.R., came to be registered and the Investigating Officer had conducted the investigation only on the instructions of the Superintendent of Police, Madurai and that the investigation has not been conducted in a fair and free manner. He would further submit that though the complaint as well as the statement recorded under Section 161 Cr.P.C., does not



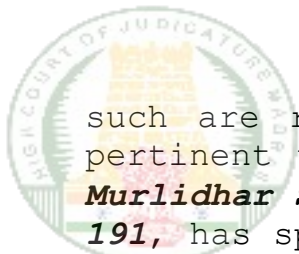
speak about the document allegedly executed in Twenty Rupees stamp paper, but all of a sudden, the prosecution has stated that the charge sheet was laid only on the basis of the said document, that the petitioner is not aware of the said document, that the police officials had taken the signatures and thumb impression in so many papers at the time of his arrest and there is every possibility for misusing the same for satisfying their higher officials and that therefore, the charge sheet filed is legally unsustainable and is liable to be quashed.

6. No doubt, as rightly pointed out by the learned Counsel for the petitioner, in the complaint, the defacto complainant has stated that since his son was working as a car driver to the son of Justice Ashok kumar, the Director General of Police had enquired the defacto complainant and his son and directed the Pookadai Inspector of Police to proceed with the investigation. It is pertinent to note that the defacto complainant has further stated that at the time of enquiry, the whereabouts of the persons who had cheated them, was not known to them and only after five months, they could trace out the present petitioner, who is the main accused and that the petitioner had approached the defacto complainant along with the murder case accused and a conductor in TNSTC, directing them not to give any complaint to the police and that they would pay the amount.

7. It is the further case of the defacto complainant that the petitioner had paid Rs.40,000/- on that day and thereafter Rs.50,000/-, Rs.40,000/- and Rs.20,000/-, totally Rs.1,50,000/- and that he had not paid the balance amount of Rs.1,70,000/-. As rightly pointed out by the learned Counsel for the second respondent, the defacto complainant has mentioned about his son working as a car driver to the son of the High Court Judge and on that basis, the enquiry was conducted and the concerned police was directed to proceed with the investigation. The defacto complainant, without suppressing those aspects, has openly claimed that the Director General of Police has made a recommendation to proceed with the investigation, it cannot be stated that the complaint given by the defacto complainant was a false one and only on the basis of the recommendation, the case came to be registered falsely.

8. As rightly pointed out by the learned Counsel for the second respondent, the petitioner had repaid Rs.1,50,000/- to the defacto complainant and according to the prosecution, a sum of Rs.1,70,000/- is still due by him. Moreover, as already pointed out, the prosecution has specifically alleged that the petitioner has executed a document in Twenty Rupees stamp paper to show the receipt of the amount from the defacto complainant.

9. It is settled law that the High Court while exercising powers under Section 482 Cr.P.C., is not required to enter into the merits of the allegation in detail, which as



such are required to be considered at the time of trial. It is pertinent to mention that the Honourable Supreme Court in ***Dhruvaram Murlidhar Sonar vs The State Of Maharashtra*** reported in **2019(18) SCC 191**, has specifically held that exercise of powers under Section 482 Cr.P.C., to quash the proceedings is an exception and not a rule and that the inherent jurisdiction under Section 482 Cr.P.C., though wide has to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in Section itself.

10. In the case on hand, the factual aspects raised by the prosecution and disputed by the accused cannot be gone into at this stage and the same is a matter for trial. Since the charge sheet and the other documents produced along with the charge sheet disclose the *prima facie* materials to proceed against the petitioner/accused, the question of quashing the charge sheet does not arise at all. Hence, this Court decides that the Criminal Original Petition is devoid of merits and the same is liable to be dismissed.

11. In the result, this Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar(CS III)

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/ /2022

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 Judicial Magistrate Court No.VI,
Madurai.
- 2.The Inspector of Police,
Thirupparangundram Police Station,
Madurai District,
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

PRE-DELIVERY ORDER MADE IN

Crl.O.P. (MD)No.16453 of 2018
16.02.2022