IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition Nos. 2734 & 5992 of 2021
and
Crl.M.P. Nos. 1517 & 3914 of 2021

J. Praveen ... Petitioner in Crl.O.P. No. 2734 of 2021

Mrs. Ezhil Arul ... Petitioner in Crl.O.P. No. 5992 of 2021

Versus

1.The State rep. by,
Inspector of Police,
EDF – II, Team – IX – A,
Vepery, Chennai – 600 007.

2.K.S. Dhilip ... Respondent in both the petitions

COMMON PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records relating to the final report in C.C. No. 3553 of 2020 on the file of the CCB / CBCID Metropolitan Magistrate Court, Egmore, quash the same in as far as the petitioner concerned.

For Petitioners : Mr. E.K. Kumaresan in
Crl.O.P.No. 2734 / 2021

Mr. Abdul Hameed, Senior Counsel

assisted by M/s.Arun Pradeesh, AAV Partners in Crl.O.P.No. 5992 / 2021

For Respondents : Mr. A. Damodaran, Additional Public Prosecutor for R1.

Mr. V. Raghavachari, Senior Counsel for M/s.V. Srimathi for R2.

COMMON ORDER

These petitions are to quash the final report in C.C. No. 3553 of 2020 for the alleged offence under Sections 406, 420, 506(i) read with 34 read with 109 of the Indian Penal Code.

2.The allegations in the final report are that A1 and the defacto complainant were known to each other and were friends; that A1 represented to the defacto complainant that he had mortgaged a property and promised to execute the sale deed in respect of the said property in favour of the defacto complainant; that believing the representation made by A1, the defacto complainant paid a sum of Rs.1,82,86,000/- through various modes to the first accused and to A2 and A3; that it is alleged that A2 who is the friend of A1 had also made representation to the defacto complainant and on his instructions, a portion of the amount namely Rs.35,00,000/- was sent to a company in Hong Kong; that A3's husband had given the account number of A3 to A2 (Petitioner in Crl.O.P. No. 2734 of 2021) and the defacto complainant's brother in USA had transferred Rs.24,00,000/- to the account of A3 (Petitioner in Crl.O.P.No.5992 of 2021).

3.Mr. Abdul Hameed, learned Senior Counsel for the petitioner in Crl.O.P. No. 5992 of 2021 submitted that even according to the prosecution A3 had nothing to do with the alleged transactions. No representation was made by A3. The allegations even if accepted to be true would show that A3's husband had given instructions to the defacto complainant to credit an amount of Rs.24,00,000/- into the account of A3. The further allegation is that A3's husband had given a document making it appear that the defacto complainant's brother had business transaction with A3's wife. Admittedly, in this case, A3 does not know the defacto complainant or the other accused. She is a resident of New york, USA. Since there is no deception practised by A3, she cannot be held guilty of the offence of cheating or the other offence such as criminal breach of trust etc., The learned Senior Counsel relied upon the Judgment of the Honourable Supreme Court in ***Rekah Jain Vs. State of Karnataka*** reported in ***2022 SCC Online SC 585,*** the Judgment of this

Court in ***A.Yuvaraj Vs. State in Crl.O.P. No.4896 of 2021 dated 17.03.2023*** and the Judgment of the Telengana High Court in ***Rajsheel Reddy Mamidi Vs. Hanumantha Reddy Eigapuri in Criminal Petition No.5755 of 2018 dated 02.08.2018*** in support of his submissions that unless there is any material to show that the petitioner had deceived the defacto complainant, the petitioner cannot be held liable for the offence under Section 420 of the Indian Penal Code merely because some payments were credited to her accounts.

4.Mr. E.K. Kumaresan, learned counsel for the petitioner(A2) in Crl.O.P. No. 2734 of 2021 submitted that it is the admitted case of the prosecution that he is a friend of A1. There is absolutely no allegation that he had gained wrongfully. The only allegation is that he had given the account number of a private company in Hong Kong to the defacto complainant. Since this was done at the instance of A1, the petitioner / A2 cannot be made liable for the aforesaid offences.

5.Heard the learned Additional Public Prosecutor who submitted that the matters have to be adjudicated only before the trial Court and prayed for dismissal of these petitions.

6. Mr. V. Raghavachari, learned Senior Counsel for the second respondent in both the petitions submitted that there are allegations in the final report to suggest that the offence was committed by all the petitioners who shared common intention and they have been charged for the offence under Section 34 read with 420 of the Indian Penal Code. The question as to whether they have shared the common intention or not cannot be decided in this petition since there are materials in the final report. Further, the learned Senior Counsel submitted that A3's husband had given a false explanation during the course of investigation stating that the defacto complainant's brother and A3's wife had business transactions. It is only at the instance of A3's husband, money was transferred to the account of A3. In view of the said explanation, it cannot be said that A3 is innocent and prayed for dismissal of these petitions.

7.This Court finds that admittedly, A1 and the defacto complainant were friends and on his representation, the defacto complainant had transferred money to various persons to the tune of Rs.1,82,86,000/-. Out of the said sum, it is said that Rs.35,00,000/- was transferred to the account of the company in Hong Kong at the instance of A2. It is further alleged that A2, friend of A1 had also made false representations to the defacto complainant. The question as to whether A2 is guilty of deception has to be adjudicated only before the trial Court since there are allegations that he too made false representation. Hence, this Court is not inclined to entertain this petition filed by A2 in Crl.O.P. No. 2734 of 2021. However, it is open to the petitioner to raise all his points before the trial Court.

8.As regards A3, it is seen that the admitted facts are that the A3's husband is the friend of A2. At the instance of A3's husband, the defacto complainant's brother had transferred money to A3. A3, admittedly, is not known to either the other accused or the defacto complainant. That apart, she had not made any false representation. Even assuming that A3's husband had given A3's account number and some amount had been credited to her account, she cannot be held liable for deception. This Court had repeatedly held that in order to attract the offence of cheating under Section 420 of the Indian Penal Code, the person should have practised deception either by making false representation or by concealing facts and induced the victim to part with the property. In the instant case,the first ingredient of deception is absent in so far as A3 is concerned. It can also not be said that she had aided the other accused as admittedly she has nothing to do with either the defacto complainant or the other accused. Further, the allegation of deception and entrustment would not go together and hence, the offence of Sections 406 & 420 of the Indian Penal Code are not made out. In such circumstances, this Court is of the view that prosecution against A3 is unsustainable for the aforesaid reasons. Hence, this Court is inclined to entertain the petition filed by A3 in Crl.O.P. No. 5992 of 2021.

9.Mr. V. Raghavachari, learned Senior Counsel for the second respondent submitted that A3's husband ought to have been made as accused. It is needless to say that if it appears from the evidence that A3's husband had committed any offence, it is open to either the prosecution or the defacto complainant to invoke Section 319 of the Criminal procedure Code.

10.Accordingly, the Criminal Original Petition in Crl.O.P. No. 5992 of 2021 is allowed and the impugned proceedings in C.C. No. 3553 of 2020 on the file of the Metropolitan Magistrate Court for the

Exclusive trial of CCB(cheating) cases, Chennai and CBCID Metro Cases is quashed against the petitioner / A3 and the Criminal Original Petiton in Crl.O.P. No. 2734 of 2021 is dismissed. Consequently, the connected miscellaneous petitions are closed.

28.06.2023
ay
Index: Yes/No
Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No

SUNDER MOHAN, J

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To

1.The Inspector of Police,
EDF – II, Team – IX – A,
Vepery, Chennai – 600 007.

2.Metropolitan Magistrate Court for the
Exclusive trial of CCB(cheating) cases,
Chennai and CBCID Metro Cases,
Egmore, Chennai.

3.The Additional Public Prosecutor,
High Court of Madras,
Chennai.

Crl.O.P. No. 2734 & 5992 of 2021
and
Crl.M.P. Nos. 1517 & 3914 of 2021

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