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Crl.O.P.No.4116 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2023

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.4116 of 2021
and
Crl.M.P.Nos.2608 & 2609 of 2021

S.Rajkumar

... Petitioner

Vs

1. The State,

Represented by Inspector of Police,
Central Crime Branch - Team-II,
Vepery, Chennai - 600 074.
Crime No.275 of 2014.

2. Mr.K.Sivananthan,

Sr.General Manager (Finance and Accounts)
VGN Group of Companies,
Chennai - 600 029.

... Respondents

Prayer:- Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in pertaining to the C.C.No.2251 of 2017, on the file of the Metropolitan Magistrate Court - CCB Cases, Egmore, Chennai, pertaining to the case in Crime No.275 of 2014 on the file of the 1st respondent and quash the same, in respect of the petitioner/10th accused.



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For Petitioner : Mr.R.Chakkaravarthy
For R1 : Mr.A.Gopinath
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.2251 of 2017 on the file of the Metropolitan Magistrate Court - CCB Cases, Egmore, Chennai.

2. The case of the prosecution is that a complaint is lodged by the General Manager (Finance & Accounts) of VGN Group of Companies, Chennai, alleging that their company was involved in doing business of construction related activity, such as, promotion of Flats, Villas, etc., in the name of VGN Enterprises Private Limited and VGN Homes Private Limited and deployed employees in the sales and marketing department to look after entire business transaction in various levels from the Vice President to Sales Executives. While being so, the active persons were responsible for collecting money from customers and they had not accounted a sum of Rs.2,16,77,791/-, which were collected from its customers and they had misappropriated the same. They also



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produced bogus receipts by using bogus company seal and forged the builders agreement using the signature of authorized signatory of the company. They also removed the pages of consideration part in the builders agreement and made a wrongful loss to the company. Hence, the complaint.

3. On the receipt of the complaint, the first respondent registered an F.I.R. in Crime No.275 of 2014 for the offences under Sections 408, 467, 468, 471 r/w 120(b) of IPC against 15 accused persons. After completion of investigation, the first respondent filed a final report and the same has been taken cognizance in C.C.No.2251 of 2017 on the file of the CCB & CBCID Special Court, Egmore, Chennai. There are totally 15 accused, in which the petitioner is arrayed as A10.

4. The learned counsel for the petitioner submitted that the petitioner had acted as sales executive and he did not receive the amount from the customers. Therefore, there is absolutely no misappropriation. All the allegations are bald and vague and no specific allegation is made against the petitioner. No material evidence to attract those offences as



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against the petitioner is available. Further on 31.12.2013, one Pradeep Kumar had booked a Flat No.F2E in one of his project for a sale consideration of Rs.49,71,062/- and he was allowed to pay the payment in installments. The accused A1 to A3 and A10 was entrusted with the power of sale and collection. In the said complaint, A1 to A3 and A10 misused their power and joined together with a common intention and misappropriated the companies fund and collected a sum of Rs. 10,00,000/- on 02.02.2013 and the accused A1 to A3 and A10 remitted cash of Rs. 2,40,640/- on 15.06.2013 and a cheque for a sum of Rs. 6,50,000/- on 15.06.2013 in the account of the said Pradeep Kumar, which was issued by one Raja, thereby misappropriated to the tune of Rs.1,09,360/- and shared the money illegally and falsified in the account. Therefore, the petitioner, being the 10th accused, appeared to have committed the offence under Sections 408, 420, 477A r/w. 34 of IPC and it is clearly attracted against him.

5. P.W.13 in his statement had categorically stated that he paid a sum of Rs. 1,00,000/- by cheque on 31.12.2012 and he had transferred a sum of Rs.28,71,066/- through RTGS on 08.01.2013,



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15.05.2013 & 24.05.2013 and also he had paid a sum of Rs.10,00,000/- by cash on 04.03.2013. Another sum of Rs.10,00,000/- was paid by cash on 24.05.2013. For these payments no receipt was issued by the petitioner and other accused persons. Therefore, there are material and specific evidence as placed by the petitioner in order to attract the offence as alleged by the prosecution. Therefore, the grounds raised by the petitioner cannot be considered before this Court that too under Section 482 of Cr.P.C.

6. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.579 of 2019*** dated ***02.04.2019*** in the case of ***Devendra Prasad Singh Vs. State of Bihar & Anr.***, as follows:-

" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this



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could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

7. Recently, the Hon'ble Supreme Court of India dealing the very same issue in **CrI.A.No.1572 of 2019** dated 17.10.2019 in the case of **Central Bureau of Investigation Vs. Arvind Khanna**, as follows:

“19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court,



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in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

8. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** in **CrI.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i)



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whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioners are mixed question of facts and it cannot be considered in a quash petition under Section 482 Cr.P.C.

9. The provisions of inherent jurisdiction under Section 482 Cr.P.C can be invoked only to meet out the ends of justice and to prevent the abuse of process of law.

10. The above cases are squarely applicable to the case on



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hand. Since there are specific allegations and materials available on record as against the petitioner in order to attract offences under Sections 408, 467, 468, 471 r/w 120(b) of IPC, this Court is not inclined to quash the proceedings in C.C.No.2251 of 2017, on the file of the Metropolitan Magistrate Court - CCB Cases, Egmore, Chennai. Accordingly, this Criminal Original Petition stands dismissed. The Trial Court is directed to complete the trial within a period of three months from the date of receipt of a copy of this order.

03.10.2023.

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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G.K.ILANTHIRAIYAN, J.

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To

1. The Metropolitan Magistrate,
CCB Cases, Egmore, Chennai,
2. The Inspector of Police,
Central Crime Branch - Team-II,
Vepery, Chennai - 600 074.
3. The Public Prosecutor
High Court, Madras.

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