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Crl.O.P.No.4825 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2023

CORAM:

THE HON'BLE MR.JUSTICE **SUNDER MOHAN**

Crl.O.P.No.4825 of 2021 and
Crl.M.P.Nos.3073 & 3074 of 2021

Babu
S/o. Ranganatha Naidu

... Petitioner

Vs.

1. State by
The Inspector of Police,
District Crime Branch,
Tiruvallur, Tiruvallur District
(Crime No.31/2012)

2. Beemarao
S/o.Elumalai

... Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to
a) to stay all further proceedings in the case in CC No.22 of 2013 on the file of
the Learned Judicial Magistrate, Tiruttani, Tiruvallur District pending disposal
of the quash petition.; (b) to Dispense with the personnel appearance of the
petitioner for his appearance of the case in CC No.22 of 2013 on the file of the
Learned Judicial Magistrate, Tiruttani, Tiruvallur District pending disposal
of the quash petition; and (c) To call for the records of the case in CC No.22
of 2013 on the file of the Learned Judicial Magistrate, Tiruttani, Tiruvallur
District and quash the same.



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For Petitioner : Mr.A.Natarajan, senior counsel for
Mr.C.P.Palanichamy

For Respondent : Mr.S.Balaji
Govt. Advocate (Crl.Side)for R1
Mr.V.Balu for R2

ORDER

This petition is filed to quash the final report for the offences under Sections 406, 468, 471 and 506(ii) IPC read with Section 34 IPC.

2. It is alleged in the final report that the accused who are in the administration of a college by name DD Medical College, Tiruvallur with common intention to cheat the students and public made false advertisements in the news paper stating that their college was approved by the Central Government of India and Medical Council of India; that they were authorized to admit students for MBBS for the academic year 2012-2013; that the complainant, believing the said representation made by the accused, sought for admission and paid a sum of Rs.27.5 lakhs as demanded by them on various dates, i.e. on 01.06.2012, 11.06.2012 and 09.07.2012; that later, the defacto complainant came to know that the Medical Council of India and the Central Government of India did not renew the permission for admission of



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MBBS students for the academic year 2012-2013 to the said institution; that when the defacto complainant demanded return of the said money, the accused refused to return the said money and; that thus, the accused committed the offences of breach of trust and forgery.

3. Mr.A.Natarajan, learned senior counsel for the petitioner/third accused would submit that even if the entire allegations are accepted to be true, it would not constitute any of the offences alleged against the petitioner. The learned senior counsel would submit that it is a case of mistaken identity; that the petitioner was forced to accept summons; that he has nothing to do with the college; that he is a rice mill owner and; that he has been unnecessarily roped in. He would submit that even in the final report, the third accused is described as follows:

“A3.Babu Naidu, Now staying at D.D.Medical College & D.D.Hospital, Kunnavalam Village, Thiruvallur District.”



The above would show that the prosecution is not sure of the identify of the accused. Neither the father's name nor the age of the accused has been mentioned. Only a vague reference about the name 'Babu Naidu' is mentioned in the charge sheet. The respondent Police have not even conducted identification parade to fix the identity of the accused. The allegation is that capitation fee was paid to the institution and admittedly the accused No.3 was not benefited in the transaction. The alleged role played by him is also not clear. Learned senior counsel would further submit that in any event, there are no materials in the final report to implicate the petitioner.

4. Learned Government Advocate (Criminal Side) would submit that there are materials to show that a *prima facie* case is made out against the petitioner. The points raised by the petitioner can be adjudicated only during trial and prayed for dismissal of the quash petition.

5. Learned counsel for the second respondent has filed an affidavit of the defacto complainant stating that the matter has been settled out of Court, since the management has paid the money due to the defacto complainant. He further stated that he does not wish to pursue the complaint filed by him.



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6. This Court finds that the impugned final report does not suggest as to how the petitioner is guilty of offences alleged. As rightly contended by the learned senior counsel for the petitioner, the description of A3 is bereft of necessary particulars. It does not contain the age or father's name of the said Babu Naidu. A prosecution cannot be maintained on the basis of such vague description. Admittedly, there was no identification parade. That apart, even assuming that the petitioner was employed in the college, the offences alleged are not made out against him. Admittedly the money was paid as capitation fee and it cannot be treated as money entrusted to the college. Hence, the offence of Section 406 IPC is not made out. The impugned final report though states that some blank papers were taken from the defacto complainant, it does not state as what document was forged and as to who forged it so as to attract the offences under Sections 468 and 471 IPC. Even with regard to the criminal intimidation, this Court has repeatedly held that mere words are not sufficient to constitute the offence under Section 506(ii) IPC unless there is a real threat. There is nothing in the final report to suggest that there was real threat to attract the offence of criminal intimidation.



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7. In any case, this Court finds that the defacto complainant has also filed an affidavit stating the fact that the matter has been settled out of Court and he does not wish to pursue the case against the accused. For the above reasons, the impugned final report as against the petitioner is liable to be quashed. The impugned final report in C.C.No.22 of 2013 as against the petitioner is quashed and this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petitions are closed.

17.03.2023

Index: Yes/No

Speaking / Non Speaking Order

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To

1. The Judicial Magistrate, Tiruttani,
Tiruvallur District
2. The Inspector of Police,
District Crime Branch,
Tiruvallur, Tiruvallur District
3. The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN, J

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