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Crl.O.P.No.5269 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.08.2023

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

Crl.O.P.No.5269 of 2023
and
Crl.M.P.Nos.3321 & 3322 of 2023

R.Mahalakshmi

.. Petitioner

Vs.

1.The Inspector of Police,
CBI/SCB, Chennai.

2.The Superintendent of Police,
CBI/SCB, Chennai.

3.The Inspector of Police,
Cyber Crime Cell,
Central Crime Branch,
Vepery, Chennai-600 007.

..Respondents

PRAYER : Criminal Original Petition has been filed under section 482 of Criminal Procedure Code to call for the records of the impugned proceedings in C.C.No.5061 of 2016 pending on the file of the learned Additional Chief Metropolitan Magistrate Court, Chennai and quash the same.



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For Petitioner : Mr.V.Ramamurthy
For M/s.K.R.Priya

For Respondent : Mr.K.Srinivasan, Senior Counsel
Special Public Prosecutor (CBI)

ORDER

A practising Advocate, who is now facing trial for fabricating false evidence with an intention to get one A.Sankar and his associate Panimalar conviction for extortion and harassment has filed this Criminal Original Petition under Section 482 of Cr.P.C., to quash the case.

2. The facts centres around the objectionable and defamatory material against the petitioner in the social media circulated by a Youtuber followed by demand of ransom to remove the said objectionable material. In this regard, complaint given by this petitioner was registered in Crime No.96 of 2014 by CCB, Chennai for the offence under Sections 384, 506(i), 120 B IPC and 66A of I.T.Act and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998.



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3. Prior to that, almost with the same averments, alleging that no action has been taken on her complaint, the petitioner approached the Additional Chief Metropolitan Magistrate, Egmore, Chennai, to direct CCB to register a case and investigate against Ms.Panimalar and A.Sankar. The said petition filed under Section 200 of Cr.P.C., been taken into consideration by the learned Additional Chief Metropolitan Magistrate in Crl.M.P.No.3967 of 2013. Vide order dated 05.06.2013, the complaint petition was referred to CCB for registration and investigation. Accordingly, a case in Crime No.260 of 2013 against Ms.Panimalar and A.Shankar under Section 199 and 211 IPC and Section 66 A of I.T.Act, and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, was registered.

4. Meanwhile, the conduct of said Shankar posting objectionable material in his website came to the notice of this Court and this Court has directed the CBI to take up the investigation including the complaint given by the petitioner herein. As a result, CBI has taken up the investigation and has found that there is prima facie material in the



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complaint given by the petitioner regarding objectionable and defamatory content posted in the facebook by Shankar and Panimalar. At the same time, it has been found that the complaint regarding demand of ransom by Sankar over phone found to be a false complaint. Documents and conversation had been fabricated by the petitioner herself in connivance with one Prabhu. During the course of investigation, the said Prabhu had confessed about fabricating false evidence and turned approver.

5. On completion of investigation, the CBI has filed final report. The learned Additional Chief Metropolitan Magistrate, Egmore has taken the final report on file. Case in which this petitioner is the defacto complainant is assigned C.C.No.8 of 2016. Sankar and others are the accused. This, whereas the case against this petitioner for fabricating false evidence for offence under Sections 193, 211 & 468 r/w.471 IPC, the Additional Chief Metropolitan Magistrate has taken the final report on file and assigned C.C.No.5061 of 2016. The trial in both the cases are in progress.



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6. The present petition by the accused is filed to quash the case against her in Spl.C.C.No.5061 of 2016 on the ground that the offences alleged in the final report does not attract punishment above 7 years. Therefore, the procedure to grant pardon to an accused and take him as an approver is contrary to the procedure laid down under Cr.P.C., and it is opposed to Section 306 Cr.P.C. The evidence of so called approver Prabhu after granting pardon, exercising power under Section 306 IPC for an offence, where the punishment is less than 7 years amounts is abuse of law and will lead to miscarriage of justice.

7. The learned counsel appearing for the petitioner referring Section 306 Cr.P.C., and Sections 193 and 211 of IPC, submitted that the complaint of extortion given to the police for investigation will not fall within the definition of judicial proceedings to attract Sections 193 or 211 IPC. Till the so called fabricated evidence not used in the judicial proceedings, cannot be construed as an evidence at all, unless it is introduced in the course of trial in a judicial proceedings.



8. The learned Special Public Prosecutor (CBI) submitted that the term “judicial proceedings” is defined in Code of Criminal Procedure under Section 2(i). “Judicial proceeding” includes any proceeding in the course of which evidence is or may be legally taken on oath and also submitted that explanation (2) and (3) of Section 193 IPC makes more clear that the investigation directed by law preliminary to a proceeding before a Court of justice is a stage of judicial proceedings, though that investigation may not take place before a Court of justice and explanation (3) says an investigation directed by a Court of justice according to law, and conducted under the authority of a Court of justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of justice.

9. Relying upon the explanation (2) & (3) of Section 193 IPC, the learned Special Public Prosecutor (CBI) submitted that the criminal law as far as C.C.No.5061 of 2016 was set into motion, pursuant to the complaint given by this petitioner to the Chief Judicial Magistrate, in Crl.M.P.No.3967 of 2013 and same was also taken judicial notice of this



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Court while directing CBI to take up the investigation and investigate.

Therefore, the judicial proceedings has already been set into motion and the investigation has unravel falsehood in the material relied by the complainant to prosecute Shankar and another. Therefore, the learned Senior Counsel submitted that Section 193 IPC prescribes punishment upto 7 years and therefore, taking Prabhu as an approver by granting pardon is not in violation of the Code.

10. This Court, on perusing the nature of the complaint and the material, which has lead to filing of final report against this petitioner, finds that a telephonic conversation alleged to have been recorded by this petitioner with the help of other accused and approver, now found to be a fake conversation and particularly it is not the voice of A.Shankar against whom, the allegation of extortion made. No doubt that the offence of extortion if proved, the punishment prescribed under IPC is upto 3 years. However, when independently Section 193 of IPC is read, it is not the offence for which, false evidence is created, but the stage and the forum in which the false evidence attempted to be used or used to be taken into



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consideration. This Court finds that consciously the petitioner had relied upon the telephonic conversation to prosecute Sankar and Panimalar, it is now *prima facie* found to be a fake conversation and the telephonic conversation is the subject matter of the complaint. She has set the criminal law into motion by filing a private complaint before the Chief Judicial Magistrate and also approached this Court for transfer of investigation. Having gone so far, it is not too late to say that the judicial proceedings not yet commenced.

11. Therefore, this Court finds no merit in this petition filed. However, there is a point in the arguments made by the learned counsel for the petitioner regarding the statement alleged to have been recorded under Section 164 Cr.P.C from the approver Prabhu, whether this statement has a trapping of statement by an accused turned approver or a witness or an accused are matter for appreciation by the trial Court. The statement of Prabhu been recorded by the Magistrate under Section 164 Cr.P.C., cannot be given any undue reliability without being put to proper test.



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11. The learned Special Public Prosecutor submitted that after framing of charge, trial has commenced the proceedings and the prosecution has started marshalling its witnesses. In view of the above fact, the trial Court is directed to expedite the trial and complete it within reasonable time.

12. In the result, this Criminal Original Petition is disposed of. Consequently, the connected Criminal Miscellaneous Petitions are closed.

08.08.2023

Internet : Yes/No
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To

1.The Inspector of Police,
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2.The Superintendent of Police,
CBI/SCB, Chennai.

3.The Inspector of Police,
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Dr.G.JAYACHANDRAN, J.

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4.The Pubic Prosecutor,
High Court of Madras, Chennai.

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