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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.6659 of 2022
and Crl.MP.No.3793 of 2022

Baluraj, age 60 years
S/o.Rengasamy

.. Petitioner /Accused No.3

.Vs.

1.State of Tamil Nadu
rep.by
Inspector of Police
District Crime Branch
Villupuram District.

.. Respondent/ Complainant

2.Ramanujam
S/o.Arumugam

..Respondent/De facto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.59 of 2021 for the alleged offence u/s.420, 506(i) of IPC pending on the file of the learned Judicial Magistrate No.II, Tindivanam, quash the same.

For Petitioners : Mr.S.N.Subramani

For Respondents : Mr.A.Gopinath
Government Advocate (Crl.side) for R1

Mrs.S.Sathya
Mr.S.P.Ravi
for R2



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ORDER

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This criminal original petition has been filed by A3 aggrieved by the order passed by the Court below in CMP.No.3513 of 2019 adding the petitioner as A3 in the final report and issuing summons.

2.The 2nd respondent filed a complaint before the 1st respondent Police alleging that A1 and A2 had collected huge amount of Rs.26,50,000/- and thereafter had cheated the 2nd respondent. Originally, the petitioner was also added as an accused in the FIR on the ground that he also threatened the de facto complainant when the de facto complainant was demanding for the repayment of the amount from A1 and A2.

3.After the completion of the investigation, a final report was filed and the name of the petitioner was dropped and the final report was confined only to A1 and A2. The respondent Police did not find any material to add the petitioner as an accused in this case.

4.The de facto complainant filed a protest petition before the Court below in CrI.MP.No.3513 of 2019 and in this protest petition, the Court below decided to act upon the final report even as against the petitioner (A3). Aggrieved by the same, the present criminal original petition has been filed before this Court.



5. Heard Mr.S.N.Subramani, learned counsel for the petitioner, Mr.A.Gopinath, learned Government Advocate (Crl.side) for R1 and Mrs.S.Sathya, learned counsel for R2.

6.The respondent Police at the time of investigation found that there are absolutely no materials against the petitioner (A3) and that is the reason why the name of the petitioner was dropped in the final report. The only allegation that was made against the petitioner is that the petitioner is also aware about the transaction made by A1 and A2 and he had also threatened the de facto complainant.

7.The Court below has rendered a finding to the effect that only during the course of trial the involvement of the petitioner will get more clear and hence, the final report was taken cognizance even as against the petitioner(A3).

8.In the considered view of this Court, there are no strong materials against the petitioner (A3) to add him as an accused in this case. There is a general statement made by the de facto complainant to the effect that the petitioner was also involved in the transaction. There is no material to substantiate the same. Hence, adding the petitioner as an accused in the final report will result in an abuse of process of Court.

9.If ultimately during the course of trial, the involvement of the petitioner (A3) is established, it will always be left open to the Court below to add the



petitioner as an accused u/s 319 of Cr.PC., by following the proper procedure. The name of the petitioner cannot be added at this stage only on the ground that the involvement of the petitioner will come to light only after the conclusion of the trial. Such a finding rendered by the Court below is unsustainable.

10. In view of the above discussion, the order passed by the Court below in CMP.No.3513 of 2019, dated 28.9.2021, issuing summons against the petitioner (A3) is hereby set aside. It is left open to the Court below to proceed further with the proceedings as against A1 and A2. Ultimately, during the course of trial, if any strong materials are coming forth against the petitioner (A3), it will be left open to the Court below to exercise its jurisdiction u/s 319 Cr.PC.

11. In the result, this criminal original petition stands allowed in the above terms. Consequently, connected Miscellaneous petition is closed.

09.08.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
KP



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To

- 1.Judicial Magistrate No.II,
Tindivanam.
- 2.Inspector of Police
District Crime Branch
Villupuram District.
- 3.Public Prosecutor
High Court of Madras.

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