



WEB COPY



Crl.OP.No.5093 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.OP.No.5093 of 2021 and
Crl.MP.Nos.3246 & 3247 of 2021

M.Shanmugam

... Petitioner

Vs.

1.The State rep. by
The Inspector of Police,
Central Crime Branch,
Coimbatore City,
Coimbatore 641 018
(crime No.12/2020)

2.N.Thirumalaisamy

... Respondents

PRAYER: Criminal original petition is filed under Section 482 of Cr.P.C. to call for the records relating to CC.No.1775 of 2020 on the file of the Judicial Magistrate-VII, Coimbatore and to quash the same as far as the petitioner is concerned.

For Petitioner

: Mr.I.Abrar Mohamed Abdullah

For Respondents

For R1

: Mr.A.Gopinath,
Government Advocate(Crl.side)

For R2

: Mr.S.D.Venkateswaran



WEB COPY



CrI.OP.No.5093 of 2021

ORDER

This Criminal Original Petition has been filed to quash the proceedings in charge sheet in CC.No.1775 of 2020 on the file of the Judicial Magistrate-VII, Coimbatore taken cognizance for the offences under Sections 120B, 406, 420 and 506(1) of IPC as against the petitioner

2. The case of the prosecution is that the defacto complainant N.Thirumalaisamy is in the business of supply of materials to foundries and due to his old age, his son Rajeswarakumar is doing agriculture and with an aim to set up some business for his son, he had informed one C.Kanagaraj who lives nearby his house about the same. The said Kanagaraj is said to have stated that he knows the petitioner i.e.Shanmugam who is doing vegetable vending commission business in Mettupalayam which yields large profits and that the said Kanagaraj had promised to purchase the said commission mandi from Shanmugam and since the same would yield atleast Rs.20,000/- per day, He had agreed to the same. The said Kanagaraj is stated to have promised huge profits if the investment was huge. Further, the said Kanagaraj and Shanmugam jointly on 06.05.2019 at 7.00 p.m had asked Thirumalaisamy and his son to come to Shanmugam's house with advance of Rs.1 Lakh and they



CrI.OP.No.5093 of 2021

had also done so along with 2 other persons namely Pradeepkumar and Markandan and was introduced to Shanmugam by Kanagaraj who was already present there. At that time, it is stated that Shanmugam had promised that he will give the vegetable commission mandi for a sum of Rs.31,00,000/- only by cash and had stated that the split up for the said amount was (1) lease Rs.11 Lakhs, (2) Refurbishing Rs.2 Lakhs, (3) balance from dealers Rs.7 Lakhs, (4) Royalty Rs.10 Lakhs and (5) Kanagaraj's commission Rs.1 Lakh and in furtherance an advance amount was paid in front of Shanmugam's wife and daughter. Further on 08.05.2019, a sum of Rs.8 Lakhs was given to Shanmugam in presence of Shanthi, Haripriya, Pradeepkumar and Markandan by cash. Further since Shanmugam had asked to send amounts to the tune of Rs.22 Lakhs to various persons through RTGS, totally a sum of Rs.31 Lakhs has been paid to Shanmugam and persons indicated by him. Cheque issued in favour of Haripriya for a sum of Rs.2 Lakhs was returned for some corrections and in turn, a cheque was issued in favour of Shanmugam which has realized.

2.1 The further case of the prosecution is that when Thirumalaisamy demanded a receipt for the payments made, Shanmugam is said to have stated that he will land in trouble if done so. Without any option, he had signed the Loan Agreement for only Rs.11 Lakhs and for the remaining amount sum of



CrI.OP.No.5093 of 2021

Rs.20 Lakhs, Shanmugam is stated to have promised that he will give later but

has not given till date and had also promised that he will refund the entire amount if there was any difficulty with respect to the said transactions.

Thereafter on 08.05.2019, when they had gone to the vegetable mandi, they had met Syed Abutakir who is arrayed as the 2nd accused and he is stated to have said that if they wanted to take the said shop on lease, had demanded a sum of Rs.17 Lakhs. On hearing that, Thirumalaisamy without any option had arranged for Rs.16,23,000/- in favour of Syed Abutakir and was doing business for a period of only 25 days after which the bank officials had come and stated that the said premises was to be sold in an auction. On enquiry, revealed that the said property was mortgaged with Axis Bank and thereafter the same was sold to one Shakilabanu and due to the same, the above persons jointly cheated Thirumalaisamy and when Syed Abutakir was questioned for the sum of Rs.16,23,000/- he is said to have stated that he should not enter the said shop and had asked Thirumalaisamy to claim it from Shanmugam itself. Therefore during June 2019 Thirumalaisamy is stated to have asked for return of the money paid to Shanmugam and others totaling a sum of Rs.47,23,000/-, Further it is stated that when asked for return of the amounts, Thirumalaisamy and his son are being threatened. Therefore, he had sought for investigation for the above reasons and the said case was registered as stated above in Crime



Crl.OP.No.5093 of 2021

No.12/2020 on 17.06.2020 on the file of the first respondent Police against 5

persons. After the investigation, the first respondent herein has filed charge sheet and the same was taken on file on 04.11.2020 for the offences under Sections 120B, 406, 420 and 506 (1) of IPC against 3 accused

3 The learned counsel for the petitioner submitted that even according to the second respondent, loan agreement was entered between them. As per the loan agreement, he borrowed a sum of Rs.11 lakhs for which the second respondent also filed suit for recovery of the said amount in OS.No.596 of 2020 and it is pending for trial. Therefore, purely all the allegations are civil in nature. In fact, no offence made out under Sections 120B, 406, 420 and 506 (1) of IPC. Even according to the second respondent, he is in possession and enjoyment of the subject property and running market. There was no deception at the inception and there was no inducement for delivery of any property in order to attract offence under Section 420 of IPC. He also relied upon loan agreement entered between them dated 08.05.2019.

4. Heard, the learned counsel appearing on either side.

5. On perusal of records revealed that the petitioner is arrayed as A1.

There are totally three accused. The petitioner is the lessee of the subject



CrI.OP.No.5093 of 2021

premises. The third accused is a friend of the defacto complainant. He stated that his friend is running market and canvassed to purchase the said vegetable market in favour of the second respondent. Therefore, the defacto complainant approached the first accused and he also agreed to transfer the bogium in his favour. On believing his words, he paid a sum of Rs.31,00,000/- to the petitioner. Though he paid a sum of Rs.31 lakhs , in order to avoid further complications, they entered into a loan agreement as if he borrowed a sum of Rs.11,00,000/- . The petitioner also assured to execute another document in respect of balance amount of Rs.20 lakhs. Whey they visited the market, the second accused was there and he also demanded a sum of Rs.17,00,000/- to hand over the possession of the market. Believing the said words, he also paid further sum to the second accused. Thereafter, he verified with the encumbrance certificate and found that the property was also mortgaged with Axis Bank and borrowed loan by the accused persons. Further, the first accused and the second accused had entered into a bogium agreement in which there is specific clause not to sublet the subject property to anybody. Therefore, at the time of receiving the amount, the petitioner with dishonest intention, deceived the defacto complainant and received a huge amount. Therefore, offences are clearly made out as against the petitioner. Though the second respondent filed suit for recovery of amount, as per the loan agreement, it does



Crl.OP.No.5093 of 2021

not amount that all the allegations are civil in nature. Therefore, there are ingredients to attract the offences under Sections 120B, 406, 420 and 506(1) of IPC.

6. 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.***, wherein it is held 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 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. The Hon'ble Supreme Court of India dealing in respect of the very

same issue in **Crl.A.No.1572 of 2019** dated 17.10.2019 in the case of **Central**

Bureau of Invstigation Vs. Arvind Khanna, held 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, 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** passed in **Crl.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



WEB COPY

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) 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....."

9. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.1775 of 2020 in Crime No.12 of 2020 on the file of the first respondent. However, the petitioner is at liberty to raise all the grounds before the trial Court. Considering the age of the petitioner, the personal appearance of the petitioner is dispensed with and he shall be represented by a



CrI.OP.No.5093 of 2021

counsel after filing appropriate application. However, the petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment. The trial Court is directed to complete the trial within a period of six months from the date of receipt of copy of this Order.

10. Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petitions are also closed.

03.11.2023

Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order
lok

To



CrI.OP.No.5093 of 2021

- 1.The Judicial Magistrate-VII,
Coimbatore
- 2.The Inspector of Police,
Central Crime Branch,
Coimbatore City,
Coimbatore 641 018
- 3.The Government Advocate,
High Court of Madras

G.K.ILANTHIRAIYAN, J.

lok



WEB COPY



CrI.OP.No.5093 of 2021

CrI.OP.No.5093 of 2021

03.11.2023