



Crl.R.C.No.573 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2023

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

CRL.R.C.NO.573 OF 2023

&

Crl.M.P.No.4283 of 2023

Abdullah Basha

.. Petitioner

Vs

State, represented by
the Inspector of Police,
District Crime Branch,
Perambalur.
(Cr.No.10 of 2012)

... Respondent

Prayer: Criminal Revision Case filed under section 397 r/w.401 Cr.P.C. to allow the Criminal Revision Case by setting aside the order dated 24.01.2023 passed in Crl.M.P.No.7373 of 2022 in C.C.No.57 of 2019 on the file of the Judicial Magistrate Court, No.1, Prambalur.

For Petitioner : Mr.S. Sriram

For Respondent : Mr. R. Vinothraja, GA (Crl.side)



Crl.R.C.No.573 of 2023

ORDER

WEB COPY

This Criminal Revision case has been filed challenging the order of dismissal, dated 24.01.2023 passed by the Judicial Magistrate Court No.1, Perambalur in Crl.M.P.No.7373 of 2022 seeking discharge of the petitioner from the case in C.C.No.57 of 2019.

2. The learned counsel for the petitioner submitted that the respondent police, in pursuance of the complaint lodged by one Peer Mohammed, registered a case in Cr.No.10 of 2012, for the offences punishable under sections 120(b), 406, 420 and 506(i) IPC. After investigation, a charge sheet was filed against the petitioner and three others before the Judicial Magistrate No.1, Perambalur for the offences punishable under sections 406, 420 and 506(i) IPC and the petitioner was arrayed as A2 in the said case.

3. He further submitted that the petitioner is the brother of A1-Nafeesa Banu and he had not received any amount from any person on the assurance of getting job from abroad. In the final report, there is no material and evidence against this petitioner/A2 to implicate in the offence. The



Crl.R.C.No.573 of 2023

WEB COPY

prosecution relied upon the statement of one Badrudeen, son of Mohammed Ali, who is cited as LW7 and in his statement, he had stated that he had deposited a sum of Rs.20,000/- on 20.07.2011 in the A/c.No.704010100011422 , Axis Bank, Trichy belonging to the petitioner. This statement is not supported by any documents and to prove the same, the prosecution has not seized any bank statement, and it also neither examined the concerned Bank Manager of Trichy who maintained the accounts of this petitioner/A2, nor got his statement. In the absence of any materials to support the statement of Badruddin-LW7, there is no case made out against the petitioner to proceed against him along with other accused. The trial court, having failed to consider the above fact, dismissed the petition, which is unsustainable. In such circumstances, there is no prima facie case made out to proceed against the petitioner. Hence he seeks to set aside the impugned order and discharge the petitioner from the criminal proceedings initiated against him.

4. Considered the arguments advanced on either side and perused the material evidence available on record.



Crl.R.C.No.573 of 2023

WEB COPY

5. The learned Govt. Advocate (crl.side) submitted that a case has been registered in pursuance of the complaint given by one Peer Mohammed in Cr.No. 10 of 2012 for the offence under sections 120(b), 406, 420 and 506(i) IPC. After investigation, the police laid charge sheet against the petitioner along with other persons for the offences punishable under sections 406, 420 and 506(i) IPC. The police recorded the statement of one Badrudeen who was cited as LW7. In his statement, he deposed that he had deposited Rs.20,000/- at the petitioner's Axis Bank Account at Trichy on 20.07.2011. Therefore, the statement of the abovesaid Badrudeen is enough to proceed against the petitioner/A2. Therefore, the impugned order passed by the court below is in order and the same does not suffer from any infirmity. Thus he seeks to dismiss the revision.

6. On perusal of materials on record, it is seen that one Peer Mohammed gave a complaint to respondent police against the accused persons on the allegation that Nafeesha Banu-A1, collected the amounts from various persons from the period between 20.10.2010 and 24.10.2011, on the assurance of getting job from abroad and thereby, they collected from 58 persons, the amount to the tune of Rs.40,31,500/-. After



Crl.R.C.No.573 of 2023

WEB COPY

investigation, the respondent police filed charge sheet / final report for the offence punishable under sections 406, 420 and 506(i) IPC. Now the petitioner is challenging the criminal proceedings initiated against him and seeks to discharge from the criminal proceedings on the ground that there is no material collected by the prosecution as against the petitioner.

7. Perusal of statement recorded under section 161(3) Cr.P.C., reveals that on instruction of A1-Nafeesha Banu, LW7 had deposited a sum of Rs.20,000/- on 20.07.2011 at the petitioner's account No.704010100011422, Axis Bank, Trichy. This statement is not supported by any materials collected by the prosecution during the course of investigation. In the final report, the prosecution has filed the bank account particulars of said Nafeesha Banu/A1. All the materials filed by the prosecution pertains to the amount deposited into the account of A1 Nafeesa Banu. Further, the prosecution has also examined the Bank Manager of Axis Bank Perambalur who maintained the bank account of first accused Nafeesa Banu. However, the prosecution has not examined the Manager of the Axis Bank, Trichy Bank, who maintained the account of the petitioner in A/C.No.704010100011422 and it has not recorded any



CrI.R.C.No.573 of 2023

WEB COPY

statement or collected any evidence regarding whether, LW7-Badrudeen had deposited Rs.20,000/- on 20.07.2011 in the account of the petitioner at the Axis Bank Trichy.

8. Further, the prosecution has failed to get the bank statement pertaining to the bank account No.704010100011422 of the petitioner maintained at Trichy. In the circumstances, the statement of LW7 Badrudeen is not supported by any materials pertaining to the bank account . The prosecution has not filed any document to show that the statement of said Badrudeen is a true one. The statement of Badrudeen that he had deposited the amount of Rs.20,000/- on 20.07.2011 at the Axis Bank Account of the petitioner is not supported by any material evidence, it becomes a verifiable fact and makes the statement unbelievable.

9. The trial court failed to consider the fact that whether the statement of Badrudeen is supported by any material document produced by the prosecution, i.e., statement of accounts obtained from the petitioner's Bank account, Axis Bank, Trichy. Thus, based upon the unbelievable statement of Badrudeen and in the absence of any supportive materials, the trial court



Crl.R.C.No.573 of 2023

WEB COPY

dismissed petitioner's petition seeking discharge from the criminal proceedings. In view of the above discussions, this court is of the view that no prima facie case is made out against the petitioner to proceed against him in trial. In such circumstances, the petitioner is entitled for discharge from the criminal proceedings initiated against him in C.C.No57 of 2019. Therefore, the impugned order passed by the court below is unsustainable and the same is liable to be set aside.

10. In the result, the impugned order dated 24.01.2023 in Crl.M.P.No.7373 of 2022 in C.C.No.57 of 2019 passed by the trial court is hereby set aside and the Criminal Revision Case is allowed. The petitioner is discharged from the criminal proceedings initiated in C.C.No.57 of 2019 on the file of Judicial Magistrate I, Perambalur. Consequently, the connected miscellaneous petition is closed.

28.03.2023

msr
Index: yes/no
Internet:yes/no

To

7/9



Crl.R.C.No.573 of 2023

WEB COPY

1. The Judicial Magistrate No.1,
Perambalur.
2. The Inspector of Police,
District Crime Branch,
Perambalur.
3. The Public Prosecutor,
Madras High Court.



WEB COPY



Crl.R.C.No.573 of 2023

V. SIVAGNANAM, J.

msr

**CRL.R.C.NO.573 OF 2023
&
Crl.M.P.No.4283 of 2023**

28.03.2023