IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Orders Reserved On 28.06.2023	Orders Pronounced On 14.07.2023

Crl.O.P.No.9917 of 2022
and
Crl.M.P.No.5857 of 2022

A.Nandaa Kumar ... Petitioner

Vs.

1.State of Tamil Nadu
Rep. by Dy. Superintendent of Police,
Crime Branch CID, Organised Crime Unit-I,
Chennai – 600 008.
(FIR in Crime No.2 of 2021)

2.R.Sundaresan ... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records of the FIR in Crime No.2 of 2021, on the file of the Deputy Superintendent of Police, Branch CID, Organised Crime Unit-I, Chennai and quash the same.

For Petitioner	:	Mr.P.Wilson Senior Counsel for Mr.Richardson Wilson
For R1	:	Mr.A.Gokulakrishnan Additional Public Prosecutor
For R2	:	Mr.R.John Sathyan Senior Counsel for Mr.N.Anand

ORDER

This petition has been filed to quash the F.I.R. in Crime No.2 of 2021, on the file of the first respondent herein.

2. The case of the prosecution is that the second respondent/de-facto complainant - R.Sundaresan is a Sugarcane Technologist. The allegation against the petitioner is that, on his instigation, the second respondent/de-facto complainant went to Cambodia to work at a Sugar Factory in Cambodia and thereafter, the petitioner did not pay the salary to the second respondent/de-facto complainant as well as the other 58 employees and cheated them by violating the provisions of the Immigration Act. Based on

the complaint given by the second respondent/de-facto complainant, a case in Crime No.2 of 2021 was registered by the first respondent Police on 15.02.2021 for the offences under Sections 420 and 506 (i) of IPC and Sections 10 and 24 of the Immigration Act.

3. Learned Senior Counsel appearing for the petitioner would submit that the second respondent/de-facto complainant had given the very same complaint before the Sanjay Nagar Police Station, Bengaluru, and based on that complaint, a case was registered in Crime No.2269 of 2019 and a detailed enquiry was conducted by the Bengaluru Police and it was closed. Thereafter, the second respondent/de-facto complainant has been giving repeatedly similar complaints before various Police Stations and ultimately, the first respondent Police had registered the case.

4. Learned Senior Counsel would submit that the petitioner was arrested and taken for remand and at that time, the learned Magistrate, stating that no case for offence under Section 420 I.P.C. are made out, refused to remand him under Section 420 I.P.C. and granted bail in respect of the offence under the Immigration Act. Later, the second respondent/de-

facto complainant filed an application to cancel the bail and later, it was also dismissed.

5. Learned Senior Counsel would submit that the allegations in the F.I.R. are vague, bereft of material particulars such as, dates/details etc. and do not make out any case warranting registration of the case against the petitioner and investigation of the same on the basis of such F.I.R., is bad in law.

6. Learned Senior Counsel for the petitioner would submit that any offence if at all has been committed, it is in Cambodia and any dues if at all payable, it is payable by KVCL, a Company incorporated in Cambodia and in such case, the first respondent do not have any jurisdiction to deal with the issue, which is said to have occurred in Cambodia. Furthermore, the impugned complaint was filed with an inordinate delay of about 7 years. This inordinate and unexplained delay coupled with the fact that the issue alleged being an act, which is of civil in nature, it is clear that the second respondent in order to give a criminal colour to a civil dispute, lodged the present complaint with an inordinate and unexplained delay of more than 7 years. In a case of this nature, where a civil issue is tried to be given a

criminal colour and there is an inordinate delay in lodging of the complaint, the Hon'ble Supreme Court as well as this Court have categorically held that the prosecution agency should be slow and cautious in registering the crime and a thorough preliminary enquiry needs to be conducted before registering the crime. Insofar as the present case is concerned, the first respondent Police without any proper preliminary enquiry, registered the impugned F.I.R. implicating the petitioner herein as an accused, which is bad in law.

7. Learned Senior Counsel would submit that the present F.I.R. is a counter blast due to the complaint of embezzlement of KVCL against the second respondent and his associates. To make out a charge under Section 420 I.P.C., there has to be specific allegation of deception, false promise, or inducement right at the inception by the offender and pursuant to such inducement, any wrongful loss should have been caused to the person, who is said to have been deceived. In the present case, nowhere in the complaint, the second respondent has made allegations against the petitioner that he made any inducement, on such inducement, the second respondent was deceived and at the same time, the petitioner made any wrongful gain

by deceiving the second respondent. Hence, the allegations in the complaint clearly lacks of those essential ingredients to make out any offence under Section 420 I.P.C. The grievance of the second respondent was a salary claim, which is a civil dispute to be decided before the appropriate civil forum.

8. Learned Senior Counsel for the petitioner would submit the law is well settled that to make out an offence under Section 506(i) I.P.C., the threat which is said to have been caused is a real one and not by a mere word when the person uttering it does not exactly mean what he says and also when the person at whom the threat is launched does not feel threatened actually. In the present case, it is only a mere oral statement made in the complaint by the second respondent without any proof and without any feel of threat in his mind. There can be no scope of feel of threat in the second respondent's mind after the passage of about seven years from the date of alleged commission of offence. Hence, no case under Section 506(i) I.P.C. could lie in the present impugned crime.

9. Learned Senior Counsel would submit that the Emigration Act,

1983 does not apply to M/s.KVCL or the petitioner, as he is not a recruiting agency and has no business connections of recruitment in India in any manner as envisaged under the Act. Even if the second respondent/de-facto complainant has any claim whatsoever, it can be claimed against the Company, which recruited him and not the petitioner, who is a Director in the Company. Further, no appointment orders show that the petitioner recruited the second respondent/de-facto complainant or any other persons and all recruitments were done by the Company. Therefore, the provisions of Emigration Act, 1983 cannot apply to the petitioner herein when he is not a recruiting agent. Further, the second respondent never made any complaint on the alleged illegal recruitment for several years and also confirmed that he has been paid salary increment and promotion, which de-stabilizes the allegation of the second respondent.

10. Learned Senior Counsel would submit that once the siphoning of funds done by the second respondent/de-facto complainant came to light and action was taken against him in Cambodia, he has now clandestinely escaped to India, lodged the false impugned complaint. The dispute

between the second respondent and the petitioner is clearly a dispute with regard to the alleged dues of salary not paid to him by KVCL. If at all the same is due and payable to the second respondent for his employment with KVCL till the year 2014, the same is payable by only KVCL and it is purely a civil dispute between KVCL and the second respondent and no criminal offence could be made out insofar as the petitioner herein is concerned.

11. Learned Senior Counsel for the petitioner would submit that this Court categorically held in several cases that if the entire allegation in the F.I.R. taken as face value, the same would not constitute any criminal offence against the petitioner, then the complaint is liable to be quashed. Therefore, in the present case, in the absence of any allegation as to the deception or fraudulent activities, the offence under Section 420 of I.P.C. cannot be targeted against the petitioner.

12. Learned Senior Counsel for the petitioner would further submit that the petitioner is not running any recruitment agency for recruiting persons and the second respondent and others have joined on their own volition with a Company registered under Cambodian laws in order to

camouflage their acts are erroneously projecting Immigration Act of India, which is not applicable for the Company registered under the Cambodian laws when their employment is by contract in Sugar Industry. Further, the petitioner cannot be vicariously liable for the alleged salary dues as well as the appointment made by KVCL and the present F.I.R. is an attempt to preempt and counter-blast on the various illegalities committed by the second respondent and his Associates at Cambodia, which resulted in criminal proceedings and to extract money from the petitioner.

13. Learned Senior Counsel would also submit that the petitioner is an innocent and law abiding citizen and has never committed any offence much less than the offence as alleged and he has been falsely implicated in this case with ulterior motive and there is no specific overt act being attributed as against the petitioner in the complaint and therefore, he prayed for quashing the F.I.R. in Crime No.2 of 2021, on the file of the first respondent Police.

14. In support of his submissions, the learned Senior Counsel for the

petitioner relied on the following decisions:-

(i) State of Haryana and others vs. Bhajan Lal and others reported in 1992 Supp. (1) SCC 335

(ii) Dr.Subramanian Swamy vs. C.Pushparaj reported in 1998 (I) CTC 300

(iii) T.T.Antony vs. State of Kerala and others reported in 2001 (6) SCC 181

(iv) Rajan vs. State, Rep. by Inspector of Police, Central Crime Branch, Tiruppur reported in 2008 (2) MWN (Cr.) 258

(v) V.P.Shrivastava vs. Indian Explosives Limited and others reported in 2010 (10) SCC 361

(vi) Moosa Ahmed vs. The Inspector of Police, Central Crime Branch, Team No.IV, Egmore, Chennai – 8 and another reported in 2010 (2) CTC 153

(vii) M/s.LG Electronics India Pvt. Ltd. vs. State of Rajasthan and others reported in 2011 SCC Online Raj 2805

(viii) Sri Angishetty Chandra Sekar vs. The State of Andhra Pradesh, Rep. by its Public Prosecutor, High Court of Andhra Pradesh, Hyderabad and another reported in 2012 SCC Online AP 333

(ix) S.Selva Kumar vs. State reported in 2015 (2) MWN (Cr.) 195

(x) Mohit C.Murgai and another vs. State reported in 2015 (2) MWN (Cr.) 214

(xi) Satheesh and another vs. State of Kerala reported in 2016 SCC Online Ker 17747

(xii) Anwar Hussain vs. State of Kerala reported 2017 SCC Online Ker 3931

(xiii) S.J.Overseas vs. Union of India and another reported in 2019 SCC Online Del 7674

(xiv) Mitesh Kumar J. Sha vs. State of Karnataka and others reported in 2021 SCC Online 976

(xv) Vijay Kumar Ghai and others vs. State of West Bengal and others reported in 2022 (7) SCC 124

15. Per contra, the learned Additional Public Prosecutor for the first respondent would submit that in the complaint, it was stated that the petitioner recruited 100 persons from India without any valid Visa for his Sugar Mill, situated in Cambodia during the period between 2012 and 2016

and also failed to pay their remuneration and thereby, cheated them. Subsequently, the Under Secretary, OE-II, Ministry of External Affairs, New Delhi, addressed a letter to the Director General of Police, Tamil Nadu, dated 03.09.2019, stating that M/s.Kamadenu Ventures is not registered for carrying out overseas recruitment and requested to take action against the complaint received from the second respondent/de-facto complainant. Accordingly, an enquiry was conducted by the Assistant Commissioner of Police, EDF-II, Central Crime Branch, Chennai, and found the allegation is true. Hence, it is recommended to transfer the investigation to C.B.C.I.D.

16. The learned Additional Public Prosecutor would submit that the second respondent/de-facto complainant while working as Senior General Manager (Cane Operation) at M/s.Sakthi Sugars Ltd., Odisa, the petitioner approached him for working in his Sugar Mill namely, Kamadenu Ventures situated at Cambodia and thereby, the second respondent/de-facto complainant was interviewed in Chennai by the petitioner. Further, the petitioner forced the second respondent/de-facto complainant to travel Cambodia in a tourist Visa and thereby, he travelled to Cambodia and

assumed charge as General Manager (Operation) on 23.01.2013. As per the appointment letter issued by the petitioner, work permit was not arranged and salary was not paid from October 2013 to 19.07.2014. Hence, the second respondent/de-facto complainant resigned his job and he was relieved on 19.07.2014. Further, the petitioner did not arrange work permit for the employees recruited by him and also not paid salary to them. All the recruited employees were returned to India on their own arrangement and some of them were detained at Repatriation Camp and deported to India. After returning to India, the second respondent/de-facto complainant approached the petitioner and requested the dues of the salary. At that time, the petitioner threatened and criminally intimidated him. Hence, the second respondent/de-facto complainant preferred an Email complaint before the Protector of Emigrants, Chennai. During the course of investigation, 53 witnesses (recruited employees) were examined and documents relating to appointment order issued by the petitioner and other connected documents relating to the aforesaid case were collected.

17. The learned Additional Public Prosecutor would further submit

that the petitioner was not an authorized person for carrying out overseas recruitment and he filed the present Criminal Original Petition to evade and escape from the clutches of law and the investigation is in crucial stage and prayed for dismissal of the Criminal Original Petition.

18. The learned Senior Counsel for the second respondent would submit that it is a case of cheating involving many victims, the petitioner has been continuously committing the offences clandestinely for years together. With respect to delay in lodging the F.I.R. is concerned, it is a continuing offence and only the second respondent was able to register the F.I.R. after coming from Cambodia and collecting the materials. Further, the complaint was based on contemporaneous overt acts and therefore, considering the nature of offences, the delay is not fatal to the case. Moreover, the same cannot be decided at the F.I.R. stage and investigation is ongoing.

19. The learned Senior Counsel for the second respondent would further submit that to constitute the offence punishable under Sections 420

and 506(i) I.P.C. read with Section 24 of the Immigration Act are clearly made out in the complaint and only upon satisfaction of the same, the first respondent Police registered the F.I.R.

20. The learned Senior Counsel would further submit that the allegation against the petitioner is that, he approached the second respondent and informed that he was in the process of commissioning a Sugar Factory at Cambodia, claimed that M/s.Kamadenu Ventures [Cambodia] Ltd., registered for overseas recruitment, gave false promise that salary will be paid in U.S. Dollars, given appointment order with service terms and conditions, he had also authorized issuance of appointment orders to other employees, thereby, deceived the second respondent and other employees, further, by not obtaining proper Visa, make the victims vulnerable to penal action in a foreign land, in fact some of the victims were lodged at Camps. The complaints lodged with Protector of Emigrants were forwarded to the Director General of Police, Karnataka and Tamil Nadu. The case in Karnataka was closed finding that already Tamil Nadu Law Enforcement Department initiated enquiry and also

finding many people from many States have lodged complaints against the petitioner. Further, finding no Company is running in the name and style of "M/s.Kamadenu Ventures" in Sanjaynagar Police Station limits. Thus, the registration and investigation of the above case is proper. Further, the investigation is at the crucial stage. The present Criminal Original Petition is too premature, as the petitioner has cheated several crores of money involving several persons and by misrepresenting two Governments and subjecting the Indian Citizens to an imminent prosecution in a foreign land and therefore, he prayed for dismissal of the Criminal Original Petition.

20. I have heard the learned Senior Counsel for the petitioner, the learned Additional Public Prosecutor for the first respondent and the learned Senior Counsel for the second respondent and perused materials on record.

21. It is not in dispute that the petitioner is one of the Directors of M/s.Kamadenu Ventures, with whom the second respondent had interactions. It is also an admitted fact that appointment orders issued by the petitioner to the second respondent with terms and conditions, the promise was to pay salary in Dollars, likewise, for the other victims,

appointment orders with terms and conditions were issued on the approval of the petitioner. The terms and conditions not complied. Further, all the 58 victims were provided with Tourist Visa only contrary to the promise and undertaking, due to which, the victims were made to cross the border of Cambodia after the stipulated time and again, re-enter Cambodia, these promises and undertaking made at the inception stage.

22. The dispute as regards the quantum of salary to be paid is a fact to be verified during investigation and during trial, not in a quash petition. Likewise, the contention of the petitioner about embezzlement case pending against the second respondent and others is also a contentious fact. The contention of the petitioner that the above case is a counter-blast for the misdeeds committed by the petitioner and others is the defence of the petitioner, which cannot be considered at this stage. In the absence of any materials of sterling quality, the Protector of Emigrants opined that non-payment of salaries and other dues in Cambodia is beyond the purview of Section 10 of the Emigration Act, 1983, proves the fact that the second respondent and the victims employed in Cambodia were not paid their salaries. Further, it is seen that "M/s.Kamadenu Ventures" had issued

appointment orders to the victims with service conditions directly, not through any registered recruitment agency. It is only during investigation, the veracity and contention of the petitioner can be found. Further, there is no multiple F.I.R. and any forum hunting.

23.The Apex Court in plethora of judgments has held that investigation cannot be thwarted and interfered with and issued guidelines in **State of Haryana and others** vs. **Bhajan Lal and others** reported in **1992 Supp. (1) SCC 335** and recently, in the case of **Neeharika Infrastructure Pvt. Ltd.** vs. **State of Maharashtra and others** reported in **2021 SCC OnLine SC 315**.

24.In view of the above, this Court is not inclined to entertain the above petition. Hence, the quash Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. It is made clear that the discussions and reference made herein are to the limited purpose for deciding the above petition. The Investigating Agency to proceed with its investigation independently based on the materials collected.

14.07.2023

Index : Yes/No
Internet: Yes/No
Neutral Citation: Yes/No
smn2/vv2

To

1.The Deputy Superintendent of Police,
Crime Branch CID,
Organised Crime Unit-I,
Chennai – 600 008.

2.The Public Prosecutor,
High Court, Madras.

M.NIRMAL KUMAR, J.

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Pre-delivery order made in

Crl.O.P.No.9917 of 2022

14.07.2023