IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.11511 of 2021

S. Kavitha ... Petitioner / A2

Versus

1.The State rep. by
The Inspector of Police,
CCB – Coimbatore City,
Coimbatore. 1st Respondent / Complainant

2.D. Udayakumar
Assistant General Manager,
Maxwell Logisticts (P) Ltd.,
No.27-G, Kasthuribai Ganthi Nagar,
3rd Street, Uppilipayam Post,
Coimbatore – 641 015. ... 2nd Respondent / Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the proceedings in C.C.No.838 of 2021 on the file of the Judicial Magistrate – VII, Coimbatore and to quash the same.

For Petitioner	: Mr. L. Thiyagaiya
For R1	: Mr. A. Damodaran, Additional Public Prosecutor
For R2	: Mr. T. Venugopal For Mr. A. Mohamed Ismail

ORDER

This Criminal Original Petition has been filed seeking to quash the impugned proceedings in C.C.No.838 of 2021 on the file of the learned Judicial Magistrate No.VII, Coimbatore, filed for the alleged offences under Sections 408, 468, 471, 420, 109 and 477A of IPC

.

2.It is alleged in the final report that A1 was running a company by M/s. K. K. Transport, in the name of his wife / A2. He had created false documents to make it appear that, he had sent goods on behalf the defacto complainant and received a sum of Rs.1,07,46,540/- in the name of his wife and from which, he had transferred a sum of Rs.83,00,000/- to his son's account and thereafter, created documents to make it appear that he had made payments to certain customers; that A1 had returned a sum of Rs.83,00,000/- and he had caused loss of Rs.41,85,141/- to the defacto complainant. The 1st accused has been charged for other offences under Sections 408, 468, 471, 420, 109 and 477A of IPC. The allegation against A2, that she had abetted her husband by aiding him in the commission of the aforesaid offences.

3.The learned counsel for the petitioner would submit that the allegations are against A1 and even according to the prosecution, he had used the name of A2 in obtaining payments from the defacto complainant. There is no allegation that the petitioner had intentionally aided A1 in the commission of the alleged offences. Further, the first accused is also facing prosecution under Section 138 of Negotiable Instruments Act in C.C.No. 2995 of 2019 on the file of the XI Additional Chief Metropolitan Magistrate, Secunderabad, for dishonoring of the cheque issued by him to the defacto complainant. The learned counsel further submitted that the marriage between the petitioner and her husband (A1) was dissolved in H.M.O.P.No.1394 of 2020 on the file of the Additional Principal Family Court, Coimbatore. The main reason for divorce was due to the harassment / humiliation suffered by her due to the conduct of A1 in the transactions referred to in this impugned final report.

4. The learned counsel further submitted that even as per the FIR, it is seen that A1 had admitted the alleged fraud committed by him and hence, the alleged fraud cannot be attributed to the petitioner. Hence, he prayed for quashing of the impugned proceedings.

5.The learned counsel for the defacto complainant submitted that there are transactions to show that the money was received to the petitioner's account. The question as to whether the petitioner had aided her husband or she was used by her husband as a name lender has to be adjudicated only before the trial Court and prayed for dismissal of the quash petition.

6.The learned Additional Public Prosecutor submitted that there are allegations in the impugned final report and the same has to be adjudicated only before the trial Court.

7.This Court on perusal of the impugned final report that all the allegations are directed only against A1. Even according to the prosecution, A1 had used the account maintained in the name of A2 to collect money from the defacto complainant. Further, it is the case of the prosecution that the said concern by name K.K. Transport was run by A1 in the name of A2. However, there is no material in the final report to show that the petitioner had abetted A1. In the absence of evidence to show that the petitioner had aided her husband in the commission of the offences, the petitioner cannot be prosecuted. Further it is seen that the marriage between the petitioner and the 1st accused was dissolved by an order passed by the learned Additional Principal Family Judge, Coimbatore in H.M.O.P.No.1394 of 2020.

8.Therefore, this Court is of the view, that the petitioner / A2 cannot be implicated merely because certain money transactions were made by A1 in her account. Hence, the impugned final report in C.C.No.838 of 2021 on the file of the learned Judicial Magistrate No.VII, Coimbatore, is quashed insofar as the petitioner herein is concerned. Accordingly, this Criminal Original Petition is allowed.

9.However, it is made clear that the learned Judicial Magistrate No.VII, Coimbatore, may proceed with the trial against the first accused in accordance with law without being influenced by any of the observations made in this order. The learned Magistrate may also expedite the trial and preferably conclude it within a period of three months from the date of receipt of a copy of this order.

16.06.2023

smv

Index: Yes/No
Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No

To

1.The Inspector of Police,
CCB – Coimbatore City,
Coimbatore.

2.The Judicial Magistrate No.VII,
Coimbatore.

3.The Public Prosecutor,
High Court of Madras.

SUNDER MOHAN, J

smv

Crl.O.P.No.11511 of 2021

16.06.2023