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Crl.O.P.No.14820 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.02.2023

PRONOUNCED ON : 03.03.2023

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.14820 of 2022

and

Crl.M.P.No.8235 of 2022

D.S.Sathyasai

...

Petitioner

Vs.

P.S.Raghunathan

...

Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for records pertaining to the C.C.No.2 of 2022 on the file of the Special Court under TNPID (in Fin.Estts.) Act, 1997 at Coimbatore, for the offences under Sections 120(B), 406, 420, 506 (ii) IPC & 5 of TNPID Act, 1997 and quash the same.

For Petitioner : Mr.M.Mohammed Riyaz
for M/s.V.C.Vinoth Kumar

For Respondent : Mr.K.R.Sankaran



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ORDER

This Criminal Original Petition has been filed to call for the records pertaining to C.C.No.2 of 2022, on the file of the Special Court under TNPID (in Fin.Estts.) Act, 1997, Coimbatore, for the offences under Sections 120(B), 406, 420, 506 (ii) IPC & 5 of TNPID Act, 1997 and quash the same.

2.The learned counsel for the petitioner submitted that the case in C.C.No.15 of 2015 is pending on the file of the Special Court under TNPID (in Fin.Estts.) Act, 1997, Coimbatore, against one M/s.Keyes Mercantile and seven others. The sum and substance of the allegations made in the final report are that the accused collected deposit amounts from various depositors to the tune of Rs.21,64,82,450/- and cheated them. The deposits were said to have been collected over a period of time from 2009. Based on the complaint given by one Baladhandayutham, FIR in Crime No.4 of 2010, under Sections 3 and 4 of Prize Chits and Money Circulation Scheme (Banning) Act, 1978 and 420 IPC and 5 of TNPID Act, was registered in Economic Offences Wing – II Unit, Coimbatore. After filing of the final report, the case was taken on file in C.C.No.15 of 2015 and the case is pending for trial. For the similar offences, respondent has filed a private complaint in C.C.No.2 of 2022, on the



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file of the Special Court under TNPID (in Fin.Estts.) Act, 1997, Coimbatore.

A1 to A7 in C.C.No.15 of 2015 are shown as accused in C.C.No.2 of 2022.

A8 Dhanasekaran is not shown as an accused in C.C.No.2 of 2022. Instead of A8 Dhanasekaran, respondent had shown Sathyasai, petitioner herein as A8 in C.C.No.2 of 2022. On the basis of this private complaint, the learned Trial Judge framed charges against the petitioner. The only charge against the petitioner is that he made criminal intimidation against respondent and his family members.

3.The learned counsel for the petitioner challenged filing of C.C.No.2 of 2022, mainly on the ground that filing of a private complaint in the year 2022 for the alleged offences that had happened on 17.12.2009 is nothing but a gross abuse of process of law. Anybody can give a complaint of criminal intimidation against anybody. The complaint allegations did not make out a cognizable offence as against the petitioner for trying petitioner under Section 506 (ii) IPC. The allegations are not supported by any material evidence.

4.In support of his submissions, he relied on the judgment in ***Vikram Johar Vs. State of Uttar Pradesh and another*** reported in (2019) 14 SCC



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207 for the proposition that unless the ingredients of the offences under Section 506 are made out, accused cannot be prosecuted.

5.He also relied on the judgment of the Hon'ble Supreme Court in ***Crl.A.Nos.1047-1048/2021, dated 27.09.2021, in Ravindranatha Bajpe Vs.Mangalore Special Economic Zone Ltd. & Others Etc.,*** for the proposition that summoning of an accused in a criminal case is a serious matter. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise, and then examine, if any offence is prima facie committed by all or any of the accused.

6.He further relied on the judgment in ***Crl.A.No.283 of 2021 dated 08.03.2021 in Krishna Lal Chawla & Ors. Vs. State of U.P. &Anr.,*** for the proposition that filing a private complaint without any prelude, after a gap of six years from the date of giving information to the police, smacks of mala fide on the part of complainant. The sword of Damocles cannot be allowed to forever hang on their heads, falling unpredictably at the whims of a litigant



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seeking to harass and persecute at will. It is the constitutional duty of the Court to quash the criminal proceedings that were instituted by misleading the Court and abusing its process of law, only with a view to harass the hapless litigants.

7.In response, the learned counsel for respondent submitted that the respondent tried to give complaint in C.C.No.2 of 2022 immediately after the occurrence, however, complaint could not be given for the reason that the accused came forward with a proposal to settle the amount, several times. They also convinced the respondent not to give police complaint. By the time respondent realized that the accused would not settle the amount, the case in C.C.No.15 of 2015 proceeded to a long distance. Therefore, respondent filed a private complaint in C.C.No.2 of 2022. Mere delay in filing the complaint is not a ground for quashing the complaint. In C.C.No.2 of 2022, trial is almost completed and the case is now pending for arguments. At this juncture, this petition has been filed for quash. In support of his submissions, he relied on the judgment in ***Ram Babu Vs. State of Madhya pradesh and others*** reported in **(2009) 7 SCC 194** for the proposition that if the allegations made in the complaint makes out a commission of cognizable offences or offences had been alleged to have been committed by the accused persons, there is no



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option available to the Court to quash the complaint. The allegations made in the complaint clearly makes out a cognizable offence of criminal intimidation against the petitioner. Therefore, the complaint cannot be quashed.

8.Considered the rival submissions and perused the records.

9.It is not in dispute that as against the accused A1 to A7 in C.C.No.2 of 2022 a case is already pending in C.C.No.15 of 2015 for cheating the depositors to the tune of Rs.21,64,82,450/-. The complaint allegations in C.C.No.2 of 2022 shows that respondent was made to deposit along with his family members a sum of Rs.3,82,00,000/- on the promise of giving 200% dividend in 45 days after deposit and thereafter 90% dividend on completion of every 35 days. The details of the amount deposited by respondent and his family members are given in a tabular column. When they were not paid any amount after the completion of 45 days, they met the 3rd accused. As per the instructions of the 3rd accused, on 17.12.2009, at about 11 am, respondent and his relatives visited the house of 3rd accused at Nehru Nagar, Kalapatti, Coimbatore. When they visited, they found a Innova Car bearing No.TN 28 BB 2995 with 10 henchmen along with 8th accused/petitioner herein. Petitioner and 10 henchmen took them to the rooms of 3rd and 4th accused.



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Petitioner had a knife and his henchmen had wooden logs and sticks.

Weapons were also stocked in the Innova Car. Petitioner told, as instructed by A3 and A4, that they would issue fresh cheques in lieu of old cheques and money would not be given. When respondent and his relatives protested saying that they were asked to come on the promise of paying money and now nothing is paid, petitioner said to have made a death threat by showing the knife that if they don't take the cheques, they would not live. Since petitioner, 3rd and 4th accused were with 10 henchmen and weapons, respondent and his relatives had no option, but to receive the cheques. However, on the promise of A3 and A4 that they would pay the amount, cheques were not presented for collection and therefore, they became time barred. Later, respondent came to know about the registration of criminal case against the accused by EOW. When they met accused 3, 4 & 5 and demanded money, they convinced them not to give complaint, on the promise of settling the amount. Therefore, the complaint was not given. Respondent and his family members were not aware of the pending case details and whereabouts of the accused. On 30.09.2022, he met 3rd accused and asked about money. Thereafter, private complaint was given.

10.From the reading of this complaint, it is seen that, for the amount



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that is said to have been paid in the year 2009, private complaint was given only in 2022 i.e., nearly after 13 years. Long delay in giving the complaint is one of the grounds for quashing the complaint. The only allegation made in the complaint against petitioner is that he along with the henchmen said to have criminally intimidated the respondent and his family members to receive the cheques as told by A3 and A4, else, they would be eliminated. There are no details available about the other 10 henchmen who were present there. As rightly pointed out by the learned counsel for petitioner, the allegation that one had made criminal intimidation against another can be made by any person against anybody.

11.It is seen from the typed set of papers filed by respondent that PWs 1 to 7 were examined on the side of respondent. DW1 was examined on the side of petitioner. The case status extracted from the E-court website shows that the case was pending for arguments from 16.11.2022 to 21.12.2022 and thereafter, it appears that it was re-opened for further evidence and it is pending for evidence on 03.01.2023 and 23.01.2023. Though PW1 supported his complaint, in his evidence in chief examination, reading of his cross examination shows that he has not produced any evidence like voucher, bond,



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receipt, etc., to show the investment made. He did not give complaint even after knowing the address of the accused and Senthilkumar. He has no evidence like photo, video, call details to show that he has met of the accused. He has no details regarding the date on which he and his relatives made investment. When there is no material produced in support of the investment alleged to have been made by PW1 and his relatives, this Court is of the view that foundational basis for this case is not established.

12.Considering the fact that there is a long delay in prosecuting the case in C.C.No.02 of 2012, especially, against petitioner and that there are no details given with regard to 10 henchmen who were present along with petitioner, the fact that there is no possibility of producing a knife alleged to have been used by petitioner, it is no doubt that it is difficult to prove the charge framed against petitioner under Section 506(ii) IPC. The possibility of recording a conviction against petitioner is remote. It is observed in ***Satish Mehra vs State Of N.C.T. Of Delhi And Anr, dated 22 November, 2012, reported in (2012) 13 SCC 614*** that the power of quashing can be exercised even at the advanced stage i.e., after framing of charges.



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13.In the light of the long delay in giving the complaint, insufficient materials available against the petitioner, this Court is of the view that the prosecution of the petitioner for the charge under Section 506 (ii) IPC cannot be sustained and continuation of the proceedings in C.C.No.2 of 2022 as against the petitioner, on the file of the Special Court under TNPID (in Fin.Estts.) Act, 1997 at Coimbatore, is an abuse of process of law and harassment to him.

14.In this view of the matter, this Criminal Original Petition is allowed and the proceedings in C.C.No.2 of 2022, on the file of the Special Court under TNPID (in Fin.Estts.) Act, 1997, Coimbatore, as against the petitioner is quashed. Consequently, connected miscellaneous petition is also closed.

03.03.2023

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Internet:Yes
Index:Yes/No
Speaking/Non speaking order

To:

10/12



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1.The Special Court under TNPID
(in Fin.Estts.) Act, 1997,
Coimbatore.

2.The Public Prosecutor,
High Court of Madras.



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G.CHANDRASEKHARAN, J.
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Pre-delivery Order in
Crl.O.P.No.14820 of 2022
and
Crl.M.P.No.8235 of 2022

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