



CrI.O.P.Nos.18136 & 19227 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2023

CORAM:

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

CRL.O.P.Nos.18136 & 19227 of 2021 and
CrI.MP.Nos.9957 & 9958 of 2021

CrI.OP.No.18136 of 2021

S.Mohankumar

... Petitioner

Vs.

1.The State rep. By the Inspector of Police,
Central Crime Branch Team II,
Egmore, Chennai 600 0008
(crime No.357 of 2018)

2.D.V.Sivakumar Reddy

... Respondents

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records relating to the against proceedings in CC.No.4680 of 2021 on the file of the learned Metropolitan Magistrate, Special Court for CCB Cases and CBCID, Egmore, Chennai and to quash the same.

For Petitioner

: Mrs.AL.Ganthimathi,
Senior Counsel
for Mr.C.Santhosh Kumar

For Respondents

For R1

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

For R2

: Mrs.R.Aparna



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D.V.Sivakumar Reddy

... Petitioner

Vs.

The Inspector of Police,
Central Crime Branch-I,
Office of the Commissioner of Police,
Vepery,
Chennai 600 007

... Respondents

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code to direct the respondent to alter the FIR in the above crime No.357 dated 23.08.2018 on the file of the respondent as per the complaint dated 11.01.2021 and 31.08.2021.

For Petitioner : M/s.R.Aparna

For Respondent : Mr.A.Gopinath,
Government Advocate(crl.side)

COMMON ORDER

The criminal original petition in Crl.OP.No.18136 of 2021 has been filed to quash the proceedings in CC.No.4680 of 2021 on the file of the learned Metropolitan Magistrate, Special Court for CCB Cases and CBCID, Egmore, Chennai taken cognizance for the offences under Section 420 of IPC. The criminal original petition in Crl.OP.No.19227 of 2021 has been filed to direct the respondent to alter the FIR in crime No.357 dated 23.08.2018 on the



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file of the respondent as per the complaint dated 11.01.2021 and 31.08.2021.

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In respect of the criminal original petition in Crl.OP.No.18136 of 2021, the case of the prosecution is that the defacto complainant is a permanent resident of U.S.A. and during the 1st week of July, 2014 he visited Chennai from USA and he had met one Ranganathan of Chennai and informed him that he was desirous of investing in immovable properties in Chennai and requested him to identify one such property through his contacts. It is further alleged that the said Ranganathan introduced the Petitioner and at that time, the Petitioner represented that he was a Power of Attorney holder in respect of the property belonging to a company by Anush Infrastructure Private Ltd. and the said company owns an extent of 26.71 acres of land at Payyanur and that it was further represented by the Petitioner that the said company had passed suitable resolutions duly signed by all the Directors of the Company authorizing the Petitioner to sell the property in question as their Power of Attorney Agent. It was further represented by the Petitioner that the above said property was free from all encumbrances and there were several persons who have shown keen interest for the purchase of the property in question and asked the Defacto Complainant to mobilize a sum of Rs.90,00,000/- and pay the same as advance and that the Petitioner would reserve the property for the



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Defacto Complainant. It is further alleged in the said complaint that the

Defacto Complainant has transferred a sum of Rs.84,00,000/- by way of RTGS to the account of the Petitioner and the balance sum of Rs.6,00,000/- was paid by cash to Ranganathan and after receipt of the payment of the sum of Rs.90,00,000/- from the Defacto Complainant, the Petitioner evaded to execute the sale deed to and in favour of the Defacto Complainant and on demand for repayment of the said sum of Rs.90,00,000/- the Petitioner alleged to have threatened the defacto complainant with dire consequences and thereby the Petitioner cheated the Defacto Complainant with a dishonest intention to defraud him.

3. The learned Senior Counsel appearing for the petitioner submitted that the occurrence took place in the year 2014, whereas the complaint has been lodged only in the year 2018 and there is no proper explanation for the belated complaint from the second respondent. That apart, there was a money transaction with the said Ranganathan and as against him, the second respondent initiated proceedings under Section 138 of Negotiable Instruments Act, which is pending. In the said complaint, the second respondent categorically stated that he owes to give money to him. Therefore, no offence



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is made out as against the petitioner for the offence under Section 420 of IPC.

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4. On perusal of records, revealed that the petitioner also filed a suit in OS.No.2927 of 2020 on the file of the City Civil Court, Chennai for declaration declaring that he does not owe money to the second respondent and he also sought for injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the subject property. Further, the second respondent had paid a sum of Rs.84,00,000/- in order to purchase the property which was shown by the petitioner by the power attorney through RTGS. Thereafter, the second respondent found that the petitioner had sold the property in favour of Arunavel Kumar and Rajasekar by two separate sale deeds. Utilising the circumstances that the second respondent is living in USA, the petitioner also suppressed the fact that he did not possess any valid power of attorney to sell the property. Therefore, the offence under Section 420 of IPC is clearly made out and the grounds raised by the learned Senior Counsel appearing for the petitioner cannot be considered under Section 482 of Cr.P.C. and the same can be considered only during the trial before the trial court.



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In this regard, 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.



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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 Investigation 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.”



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7. 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 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....."

8. In view of the above discussion, this Court is not inclined to quash the impugned proceedings. However, the petitioner is at liberty to raise all the grounds before the trial Court. Accordingly, the criminal original petition in Crl.OP.No.18136 of 2021 is dismissed.

9. Insofar as the criminal original petition in Crl.OP.No.19227 of 2021 has been filed by the defacto complainant in respect of the above crime No.357 of 2018 for further alteration of Sections of IPC. However, the first respondent completed investigation and filed final report in crime No.357 of 2018 and the same was taken cognizance by the trial court in CC.No.4680 of 2021 on the file of the learned Metropolitan Magistrate, Special Court for CCB Cases and CBCID, Egmore, Chennai. Therefore, the question of alteration of offences does not arise since already investigation was completed and filed final report. If at all any ingredients available to attract the other offences, the petitioner can very well invoke provision under Section 216 of Cr.P.C. As such, the prayer sought for in this petition has become infructuous.



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WEB COPY 10. Accordingly, the criminal original petition in Crl.OP.No.19227 of 2021 is dismissed as infructuous.

Consequently, connected miscellaneous petitions are closed.

11.10.2023

Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order
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To

- 1.The learned Metropolitan Magistrate,
Special Court for CCB Cases and CBCID, Egmore, Chennai
- 2.Inspector of Police,
Central Crime Branch Team II,
Egmore, Chennai 600 0008
- 3.The Inspector of Police,
Central Crime Branch-I,
Office of the Commissioner of Police,
Vepery,
Chennai 600 007
- 4.The Government Advocate,
High Court of Madras



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G.K.ILANTHIRAIYAN, J.

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