In the High Court of Judicature at Madras

Reserved on : 28.8.2023	Delivered on : 30.8.2023

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Criminal Original Petition No.16424 of 2023
& Crl.M.P.Nos.10500 & 10502 of 2023

Kaushik Palicha ...Petitioner

Vs

1.State rep.by the Inspector
of Police, G-3 Kilpauk
Police Station (Crime),
Kilpauk, Chennai-10.

2.Amit Kumar, Branch Manager,
Punjab National Bank,
Purasawalkam Branch,
Plot No.4/5, B Block,
Tower Block, Villivakkam,
Chennai-49. ...Respondents

PETITION under Section 482 of the Criminal Procedure Code praying to call for the records in C.C.No.3241 of 2023 on the file of the Second Metropolitan Magistrate, Egmore and quash the same and all further proceedings involving the petitioner.

For Petitioner : Mr.Sanjay Pinto

For Respondent-1 : Mr.A.Damodaran, APP

ORDER

The petitioner (A10) has filed this petition seeking to call for the records in C.C.No.3241 of 2023 on the file of the Second Metropolitan Magistrate, Egmore, Chennai and quash the same in so far as the petitioner is concerned.

2. The case of the prosecution is as hereunder :

(i) On 22.9.2021 at about 12 hours, a person came to Punjab National Bank, Purasawalkam Branch along with two other persons. They were also joined by some more persons including a lady. One such person presented a cheque to the then Operational Manager of the Branch for a sum of Rs.9,99,91,000/- in favour of one M/s.Ramcharan Company. The said cheque was drawn on one M/s.Dillip Buildcon Limited. The then Operations Manager of the Branch got suspicion and called up the concerned company and he was informed that they never issued any cheque for the said amount, that the relevant cheque in question was only for a sum of Rs.8,737/- favouring one Mr.Sachin Sen and that the said cheque was issued way back on 05.10.2019. Immediately, the bank officials alerted the police and the Branch Manager of the Punjab National Bank, Purasawalkam Branch gave a complaint, based on which, a first information report came to be registered in Cr.No.422 of 2021 on 22.9.2021.

(ii) Thereafter, the investigation was taken over by the first respondent and in the course of investigation, the first respondent identified ten persons to have been involved in this scam. As per the final report, A1 to A9 joined together and attempted to deal with a bogus cheque at the Punjab National Bank, Purasawalkam Branch. The then Operations Manager compared the signature found in the cheque with the sample signature and found that the same did not tally. Immediately, the company in Madhya Pradesh named as M/s.Dillip Buildcon Limited was contacted over telephone and they, in turn, informed that they did not give any such cheque.

(iii) The petitioner (A10) was roped as an accused in this case only based on the confessions made by the other accused persons on the ground that they got in touch with the said M/s.Ramcharan Company, which was run by the petitioner (A10), that he promised that if the cheque in question got encashed, he would pay Rs.5 Crores to the other accused persons and that it was only based on this understanding, they proceeded further to present the cheque.

Pursuant to that, the charge sheet came to be filed before the Court below. Challenging the same, the petitioner (A10) alone is before this Court.

3. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the first respondent. This Court also perused the materials available on record.

4. When the matter came up for hearing on 25.7.2023, this Court passed the following order :

> *"Mr.A.Damodaran, learned Additional Public Prosecutor, takes notice for first respondent.*
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> *2. The petitioner has been arrayed as A10 in the final report. The petitioner is the partner of a dormant partnership firm called as M/s.Ram Charan Company. It is seen from records that the accused persons had attempted to make use of this dormant account in order to carry out their illegal transaction. The accused persons have attempted to deposit a forged cheque into an inactive account and the second respondent became suspicious about the same. Hence, the complaint was given and the investigation was carried out and it came to light that the accused persons were attempting to deposit a forged cheque to the tune of more than Rupees Nine Crores. Except the fact that the account stood in the name of the partnership firm in which the*

petitioner is a partner, there is absolutely no other material against the petitioner in this case. This Court is convinced that the petitioner ought to have been made as a witness but he has been arrayed as an accused [A10].

3. A prima facie case has been made out. The presence of the petitioner before the Court below is dispensed with pending disposal of the present Criminal Original Petition.

Post this case under the caption 'for orders' on 08.08.2023."

5. The learned Additional Public Prosecutor appearing for the first respondent relied upon the statements recorded from L.W.4 and L.W.5 to substantiate that the petitioner (A10) is also involved in this crime.

6. The final report has been taken cognizance by the Court below for offences under Sections 471 and 420 read with Section 511 and also read with Section 34 of the Indian Penal Code.

7. It has to be seen as to whether any offence is made out against the petitioner (A10) to make him undergo trial before the Court below.

8. It is not in dispute that the petitioner is the partner of the said

M/s.Ramcharan Company. It is a matter of fact that there was a huge data leak in the Punjab National Bank, as a result of which, the sensitive details of customers got exposed and it was taken advantage by many on-line fraudsters. This fact becomes material since the dormant accounts, which were not put to use by the customers concerned for a long time, were also identified and an attempt was made to transact money through such dormant accounts.

9. In the instant case, the incident was said to have taken place on 22.9.2021. The same was informed to the petitioner and in turn, he also met the Circle Head of the Punjab National Bank at Chennai and informed the bank officials that the bank account of the partnership firm remained dormant and an attempt was made to move the funds to this account and to duplicate the cheques of the issuer. The petitioner (A10) also made it clear that the firm was not aware of this attempt made by the other accused persons. An e-mail was also sent on 27.9.2021 by the petitioner (A10) to the Punjab National Bank about the discussions held by him with the bank officials. This e-mail clarified the stand that was taken by the petitioner at the earliest point of time.

10. It must also be borne in mind that the branch of the Punjab National Bank is situated/located in the very same building where the defunct partnership firm used to do its business. That apart, the firm was maintaining a 'zero balance' in the account on the date of alleged occurrence. Thus, the account of the partnership firm had almost become defunct. It is this account, which had been targeted by the scamsters. The petitioner (A10) was contacted by the concerned officials of the Punjab National Bank and the petitioner (A10), in turn, informed them that he was not aware of the attempt made by the other accused persons. He also further clarified the same by sending an e-mail.

11. There is nothing on record except the so-called confession statements given by the other accused persons to rope in the petitioner (A10) as an accused just because the other accused persons had attempted to make use of a dormant account standing in the name of the partnership firm namely M/s.Ramcharan Company and that will not, by itself, automatically make the petitioner (A10) as an accused. It is exactly for this reason this Court expressed its view

while passing the earlier order on 25.7.2023 to the effect that the petitioner (A10) should have been made as a witness in this case. This Court finds that no offence has been made out against the petitioner and the continuation of the criminal proceedings against the petitioner will result in abuse of process of court, which requires interference of this Court in exercise of its jurisdiction under Section 482 of the Criminal Procedure Code.

12. In the result, the proceedings in C.C.No.3241 of 2023 on the file of the Second Metropolitan Magistrate, Egmore, Chennai is hereby quashed in so far as the petitioner is concerned. The above criminal original petition is allowed. The Court below is directed to proceed further against the other accused persons and complete the proceedings as expeditiously as possible. Consequently, the connected Crl.M.Ps. are closed.

30.8.2023

To
1.The Second Metropolitan Magistrate, Egmore, Chennai.
2.The Inspector of Police, G-3 Kilpauk Police Station (Crime),
Kilpauk, Chennai-10.
3.The Public Prosecutor, High Court, Madras.

RS

N.ANAND VENKATESH,J

RS

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