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CrI.OP.No.23533 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2023

CORAM:

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

CrI.OP.No.23533 of 2021

and

CrI.MP.No.12916 of 2021

Dr.Paul Gladson

... Petitioner

Vs.

1.The State, represented by
The Inspector of Police,
Central Crime Branch,
EDF Wing, 4th Team, Vepery,
Chennai 600 007

2.S.David

3.E.Selloth Raj

(R3 impleaded as per order dated 02.06.2023
in CrI.MP.No.5303 of 2022 in
CrI.OP.No.23533 of 2021)

... Respondents

PRAYER:

Criminal original petition is filed under Section 482 of Cr.P.C. to call for the records in CC.No.7484 of 2016 pending on the file of the CCB-CBCID Metropolitan Magistrate, Egmore, Chennai and to quash the same as against the petitioner.



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For Petitioner	: No appearance
For Respondents	
For R1	: Mr.A.Gopinath, Government Advocate(crl.side)
For R2	: Mr.C.P.Hemkumar for M/s.Ganesh and Ganesh
For R3	: Mr.V.K.Sathiamurthi for Mr.C.Rajan

ORDER

This Criminal Original Petition has been filed to quash the proceedings in in CC.No.7484 of 2016 pending on the file of the CCB-CBCID Metropolitan Magistrate, Egmore, Chennai thereby taken cognizance for the offence under Sections 406, 408, 471, 420 & 506(1) of IPC as against the petitioner.

2. The case of the prosecution is that the petitioner had received a sum of Rs.25 lakhs from four victims in order to get loan under the category of NRI. Thereafter, the petitioner failed to arrange any loan and also refused to return the amount which was received by him. On the complaint, the first respondent registered FIR in crime No.20 of 2014 for the offence under Sections 406, 408, 471, 420 & 506(i) of IPC. After completion of



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investigation, final report was filed and the same has been taken cognizance.

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3. It is seen that while pending trial, the second respondent who is being one of the victim had entered into compromise with the petitioner. While pending this quash petition, the third respondent is also one of the victim has been impleaded as the third respondent and it is stated that he paid a sum of Rs.32 lakhs out of the total amount cheated by the petitioner. Without any knowledge of the third respondent, the petitioner and the second respondent had entered into compromise and filed this quash petition.

4. That apart, already trial commenced and PW1 to PW7 were already examined. In fact, the third respondent was examined as PW5. Therefore, after commencement of trial, the entire proceedings cannot be quashed. That apart there are specific allegations as against the petitioner in order to attract offence under Sections 406, 408, 471, 420 & 506(i) of IPC. Though the petitioner had entered into compromise with the second respondent, offences committed by the petitioner are as against the society and no question of compounding offence committed by the petitioner arises.



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It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***CrI.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.

6. The Hon'ble Supreme Court of India dealing in respect of the very same issue in ***CrI.A.No.1572 of 2019*** dated 17.10.2019 in the case of ***Central Bureau of Investigation Vs. Arvind Khanna***, held as follows:



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“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.”

7. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** passed in **CrI.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



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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. Therefore, the impugned proceedings cannot be quashed under Section 482 of Cr.P.C. on the strength of the compromise entered between the petitioner and the second respondent. Accordingly, this criminal original petition is dismissed. Consequently, connected connected miscellaneous petition is closed.

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Index : Yes/No

Internet : Yes/No



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Speaking order/non-speaking order
lok

To

- 1.The learned CCB-CBCID Metropolitan Magistrate,
Egmore, Chennai
- 2.The Inspector of Police,
Central Crime Branch,
EDF Wing, 4th Team, Vepery,
Chennai 600 007
- 3.The Government Advocate,
High Court of Madras



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G.K.ILANTHIRAIYAN, J.

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