THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.03.2023
Pronounced on : 10.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.O.P.No.24927 of 2019
and
Crl.M.P.No.13319 of 2019

T.G.Santhosh ... Petitioner/5th accused

Vs.

1.State by
Inspector of Police
District Crime Branch
Coimbatore.

2.J.Johnson …Respondents

Prayer: This Criminal Original Petition has been filed to call for the records in C.C.No.239 of 2018 on the file of the Judicial Magistrate No. VI, Coimbatore and quash the same.

For Petitioner : Mr.P.Saravana Sowmiyan

For R1 : Mr.A.Damodaran
Additional Public Prosecutor

For R2 : No appearance

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.239 of 2018 on the file of learned Judicial Magistrate No. VI, Coimbatore for the offences under Sections 120 (b), 420, 506 (ii) and 294 (b) of I.P.C.

2.It is the case of the prosecution that the accused, five in number, had collected Rs.23,45,000/- (Rupees Twenty Three Lakhs Forty Five Thousand only) from the defacto complainant; that A1 had invested the said amount in his concern called Rajkumar and Co; that money collected from the other witnesses were also kept in the account of Rajkumar and Co; that the first accused had represented that he would use the money for redeeming the jewels of persons who are unable to redeem the jewels from financial institutions; that after they make payment to him with interest, he would hand over the redeemed jewels to the respective owners; that the interest and profit earned could be shared by all the persons; that A1 did not repay the money taken from the victims and when questioned A2 abused him in filthy language; that the petitioner who is arrayed as A5 and the son of A2 was present when his father had abused the defacto complainant; that A5 had also assured the defacto complainant and others that their money would be safe and he would stand as Guarantor as he had means and earning a sum of Rs.1,00,000/- (Rupees One Lakh only) per month as salary.

3.The learned counsel for the petitioner would submit that admittedly the transaction took place only between the first accused and the defacto complainant. The second accused was a tenant under the first accused and he had nothing to do with the alleged transactions between A1 and the defacto complainant and other persons. In fact, A2, the petitioner's father had lodged a complaint against the first accused when they came to know that he had indulged in fraud. However, no action was taken by the police. The petitioner was employed in Bangalore and he rarely visited Coimbatore. Even, if the allegations in the charge sheet are accepted to be true, no offence is made out. The learned counsel pointed out the statements recorded by the Investigating Officer which are parrot like in nature. In the said statements, except for stating that the petitioner had assured the defacto complainant and others that he would stand as a Guarantor, nothing has been stated against him. The learned counsel therefore submitted that none of the offences are made out as against the petitioner.

4.The learned Additional Public Prosecutor submitted that it is the case where the defecto complainant and others had invested in the concern run by A1 namely Rajkumar and Company and A2/Guruswamy had induced the defacto complainant to invest in the said company. They had promised to give returns at the rate of Rs.7/- per month for every Rs.100/- invested by the defacto complainant and victims. The second accused, the father of the petitioner had also made representation to induce the defacto complainant and others to invest in the company. The petitioner also had made representation stating that since he was employed and had sufficient means, he would guarantee the due repayment of the principal amount and the returns as promised by A1 and A2. Further, it is alleged that when A2 had abused the de-facto complainant and other victims, A5 was present. Therefore, the learned Additional Public Prosecutor submitted that these are issues which have to be decided only in the trial and prayed for dismissal of quash petition.

5. Though notice was served on the 2nd respondent, there is no representation for the 2nd respondent.

6.This Court has perused the impugned charge sheet and the materials filed along with the charge sheet before the learned Magistrate. The allegation is that A1 was running a concern in the name of Rajkumar and Company. The said concern was doing the business of redeeming the jewels of those persons who were unable to redeem the jewels pledged with financial institutions and thereafter either returning it to the owners after receiving the loan amount discharged by them with interest or sell the jewels and appropriate the profit for themselves, after paying the money that is due to the owners. The first and second accused, it is alleged had promised a return of Rs.7/- per month for every Rs.100/- invested by the defacto complainant and others. It is further alleged that they did not keep up the promise and when the defacto complainant and others went and questioned the accused, A2 had abused them in filthy language in the presence of A4/his wife and A5/the petitioner.

7. As regards the offence of Section 420 I.P.C., there is nothing in the impugned chargesheet to suggest that the petitioner/A5 had made any false representation to the defacto complainant and others to induce them to invest in the company. The reading of the final report would show that the defacto complainant and others were lured by the promise of high returns by other accused. The only allegation against the petitioner/A5 is that he had assured the defacto complainant and others that the money would be safe and he would ensure its return as he had means. This Court is of the view that such an allegation against A5 appears to be an improbable version. The petitioner/A5 admittedly was employed elsewhere and had nothing to do with the business run by A1. In any event, even assuming that he had given such an assurance, it would not amount to a deception, so has to constitute the offence of cheating. It would only be a breach of promise. Admittedly, even according to the defacto complainant, the money collected from the defacto complainant and others was invested in the concern run by A1. There is no allegation that the petitioner was directly benefited by these transactions. This Court finds that hence the offence of Section 420 of I.P.C., is not made out as against the petitioner/A5.

8.As regards the offence under Section 506 (1) of IPC is concerned, the statements of the witnesses show that A2/Guruswamy had abused the defacto complainant and others and the petitioner asked them to go out of the house as otherwise he would shoot them to death. This Court has time and again reiterated that in order to constitute the offence of criminal intimidation, the threat has to be real. Mere words could not constitute the offence of criminal intimidation. The reading of final report shows that the allegations as against the petitioner is inherently improbable and do not constitute the offences as alleged.

9.For the above reasons, the impugned final report as against the petitioner/A5 is alone liable to be quashed and hence quashed.

10.Accordingly, the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

10.03.2023

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

To

1.The Judicial Magistrate No. VI,
Coimbatore

2.The Inspector of Police
District Crime Branch,
Coimbatore.

3.The Public Prosecutor
High Court of Madras,
Chennai.

SUNDER MOHAN, J

dk

Pre-delivery order in

Crl.O.P.No.24927 of 2019

and

Crl.M.P.No.13319 of 2019

10.03.2023