IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.11.2023
PRONOUNCED ON : 20.11.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1677 of 2023

G.Sendil ... Petitioner

Vs.

The State of Tamil Nadu,
Represented by Inspector of Police,
CCB Team XXI A, EDF-III,
Vepery, Chennai – 600 007. ... Respondent

PRAYER: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order dated 11.09.2023 in Crl.M.P.No.27722 of 2023 on the file of Chief Metropolitan Magistrate Court, CCB & CBCID Cases, Egmore, Chennai and direct the respondent Police u/s.156(3) of CrPC to conduct fair, proper and thorough investigation to take action and file charge sheet in accordance with law within a period stipulated by this Court.

For Petitioner	:	Mr.S.Ananthanarayanan, Senior Counsel for Mr.B.Natarajan
For Respondent	:	Mr.A.Damodaran, Additional Public Prosecutor

ORDER

The petitioner filed a petition under Section 156(3) Cr.P.C., in Crl.M.P.No.27722 of 2023 before the learned Metropolitan Magistrate, CCB & CBCID Cases, Egmore, Chennai. The learned Magistrate, *vide* order, dated 11.09.2023 dismissed the petition finding that the complaint does not disclose *prima facie* offence, it is civil in nature. Aggrieved over the same, the present Criminal Revision Case.

2.The learned Senior Counsel appearing for the petitioner submitted that the impugned order is erroneous, mechanical, non-application of mind, error apparent on the face of the record and liable to be set aside. He further submitted that the named proposed accused in the petition are the petitioner's father R.Ganesan, elder sister Selvi Tamilvanan, elder brother G.Natarajan and brother-in-law K.Tamilvanan. The petitioner is a B.Com., graduate, who married one Eswari in the year 1995, which is a love marriage against the wishes of their parents. After the marriage, the petitioner along with his wife had gone USA, lived there for ten years, they have also got a son Sheshadhiri who is presently studying 9th std in Don Bosco School. During the year 1997-2008, they lived in USA and worked as System Analyst. During his stay in USA, the petitioner sent his earnings to his NRI Bank Account No.1055 of Canara Bank a sum of Rs.1.30 Crores. The petitioner had also given power of attorney in favour of his father and also handed over signed blank cheques and documents enabling his father to invest his money for his benefit and also to purchase plot, construct house. Further, the petitioner gave money for construction of house in a vacant place of his mother's property which was promised to be settled to the petitioner later. A property was purchased in Kancheepuram district in the name of the petitioner's elder sister and a house was constructed. Though the petitioner's elder sister was willing to settle the property in the petitioner's name, her husband i.e., the petitioner's brother-in-law K.Tamilvannan resisted and refused the same. Thereafter, the petitioner came to know that out of the money, he sent to his account a sum of Rs.25.50 lakhs transferred by the petitioner's father in favour of the petitioner's elder brother G.Natarajan, Rs.13.10 lakhs in favour of the petitioner's mother, Rs.12.60 lakhs transferred by the petitioner's father to his own account, Rs.5 lakhs in favour of the petitioner's younger sister's and Rs.3 lakhs in favour of the petitioner's elder sister. These transactions made to deceive and cheat the petitioner and thereby misappropriated the petitioner's funds.

3.On 15.10.1999, in the name of the petitioner's elder sister Selvi, a property purchased in document No.2020 of 1999 and promised to re-convey in the name of the petitioner thereafter. Contrary to the same, in the year 2016, the property settled in favour of the petitioner's father. Further, the petitioner constructed a house at Annamalai Colony, Virugambakkam, Chennai in the ground floor, the parents were staying and in the first floor, the petitioner was staying. In the year 2008, when the petitioner left to USA, thereafter, he was not allowed to stay in his house. On 19.05.2010, jewels to the value of Rs.30 lakhs of the petitioner sold and amount of Rs.5 lakhs from in the City Union Bank account and his Canara Bank, NRI Account, Anna Salai funds diverted. Further, 15 sovereigns of gold jewels of the petitioner's wife were given to the petitioner's elder sister. When the money and jewels were asked by the petitioner to be returned, it was refused and thereby, they committed the offence of misappropriation and cheating. He further submitted that this arrangement of power of attorney to handle the bank account as well as purchasing the property in the name of his sister is for the reason that there was matrimonial discord between the petitioner and his wife. The petitioner's father, mother and siblings who not approved the intercaste marriage between the petitioner and his wife, took advantage of the situation, they advised that no property should be in the name of the petitioner, otherwise everything will be ordered to be handed over to his wife and son. Hence, on the motivated, ill-advice, the petitioner gave power to his father who deceived and misappropriated petitioner's property.

4.The learned Senior Counsel further submitted that contrary to the power of attorney, using the blank signed cheques and documents, forgery and misappropriation committed in conspiracy with each other. In view of the same, the petitioner lodged a complaint to the Commissioner of Police on 03.01.2023 which was forwarded to the respondent Police on 20.03.2023. During enquiry, a short statement of the petitioner recorded by the respondent Police on 29.03.2023, thereafter, closure report, dated 12.04.2023 sent to the petitioner. Thereafter, the petitioner filed a petition under Section 156(3) Cr.P.C., before the Court below disclosing cognizable offence committed by the accused giving details of the transaction along with the relevant documents. The Court below terming it to be civil dispute is contrary to law. He further submitted that interpreting the power of attorney and observing that as per Clause 5 of the power of attorney, arbitration clause is there, hence, to approach the civil Court is not proper. This arbitration clause is only for the dispute between the power agent and the third persons and not between the principal and his agent i.e., the petitioner and his father. The petitioner's stay in USA, transfer of funds through Canara Bank, NRI bank account, withdrawal of the same are against the conditions of the power of attorney, clearly proved the offence of cheating, misappropriation and forgery committed by the accused. Now, the petitioner is without any job and without any roof, even for paying the fees to his son, he is facing difficultly and now, he is in rented house finding it difficult to meet the ends. The learned Senior Counsel further submitted that the order of the Court below is not sustainable in law on the above facts and circumstances. Hence, he prayed for setting aside the impugned order.

5.In support of his submissions, the learned Senior Counsel relied on the judgment of the Hon'ble Apex Court in the cases of "***Sakiri Vasu Versus State of Uttar Pradesh and others*** reported in ***(2008) 2 SCC 409***" and "***Dilawar Singh Versus State of Delhi*** reported in ***(2007) 12 SCC 641***" and "***State of Bihar and another Versus J.A.C.Saldanha and others*** reported in ***AIR 1980 SC 326***" wherein it had held that if the respondent Police not acted in registering the case under Section 154 Cr.P.C., the Magistrate is empowered under Section 156(3) Cr.P.C., to direct the Police to register the case and also to monitor whether proper investigation is being conducted and the Magistrate can take suitable steps and pass orders. The above dictum not followed by the Court below, on the other hand, finding the dispute civil in nature, is not proper. Further, in support of his submissions, the learned Senior Counsel referred to the complaint, power of attorney, dated 26.04.2000, the complaint of the Commissioner of Police, dated 03.01.2023, closure report of the respondent Police, dated 12.04.2023 and typed copy of the bank account.

6.The learned Additional Public Prosecutor appearing for the respondent Police opposed this criminal revision case and submitted that the impugned order is detailed one wherein all the details recorded, right from the petitioner's stay in USA during the period 1997-2008, the petitioner's allegation of Rs.1.30 Crores being misappropriated by his father, mother and his siblings, quantum of amounts transferred from his account, property purchased in the name of petitioner's elder sister in Kancheepuram and other details. It is admitted by the petitioner that he executed power of attorney, dated 06.02.2001 in favour of his father R.Ganesan. Referring to the power of attorney, dated 06.02.2001, the learned Additional Public Prosecutor submitted that the petitioner gave blanket power to his father to manage the petitioner's property and also transact, make investments, deposits, draw, endorse or sign any cheque or other negotiable instruments. The admission of the petitioner is that the petitioner handed over signed blank cheque leafs and blank stamp whenever he came to India from USA for vacation. Once the petitioner gives authority by handing over the signed documents and cheques, now he cannot make a complaint that his father purchased property in the name of family members and withdrew money on his own. In the power of attorney, dated 06.02.2001 produced to the respondent Police, the petitioner authorized his father to deal with his money as well as to purchase properties and to develop the same.

7.He further submitted that the registered document which is filed along with this petition, not produced before the respondent Police during enquiry. This registered document is dated 26.04.2000. This power of attorney pertains to the property comprising 1,980 sq.ft at door No.7E/4, Kalandar Street, Kancheepuram Town 4th Division, Kancheepuram. This power of attorney records that on 24.04.2000, the petitioner's elder sister gave settlement in favour of the petitioner and in view of that settlement, how the property to be maintained and what to be done are recorded. The petitioner neither produced this power of attorney nor the settlement, dated 24.04.2000 before the respondent Police. Further, it is not part of the complaint either before the respondent Police or before the Court below while filing the petition under Section 156(3) Cr.P.C.

8.He further submitted that the statement which is produced, is a statement of account, which has been typed by the petitioner, not a certified true statement from the bank. In any event, the petitioner's own admission that he handed over signed blank cheques periodically to his father and his father transferred some amount to his sons and daughters, are now blown out of proposition without any material to project that the misappropriation and cheating had been committed in conspiracy with others, which is not sustainable. In this case, there is no forgery, cheating and misappropriation in any manner. The Court below considering all these aspects, had rightly dismissed the petition which needs no interference.

9.Considering the submissions and on perusal of the materials, it is seen, the petitioner initially lodged a complaint to the Commissioner of Police on 03.01.2023 which was forwarded to the respondent Police on 20.03.2023. Thereafter, the petitioner was called for enquiry, statement recorded on 29.03.2023. It is seen that the petitioner had love marriage in the year 1995, thereafter, he and his wife lived in USA during the period 1997-2008. The petitioner was employed as System Analyst in

USA. During his stay in USA, he executed registered two power of attorney on 26.04.2000 with regard to the property at Kalandur Street, Kancheepuram Town 4th Division, Kancheepuram and another, power of attorney dated 06.02.2001 both in favour of the petitioner's father Ganesan.

10.The petitioner's father was given unequal rights to develop the property as well as to deal with the petitioner's funds. It is the admitted case of the petitioner that he was having NRI bank account No.1055 in Canara Bank and he handed over signed blank cheque leafs and stamp papers and other documents to his father to deal with the same as per requirement. He also admitted that during the vacation, whenever the petitioner comes to India, he used to give signed cheque leafs to his father and thereby, petitioner's father to act as his power of attorney in all manner and further to operate NRI bank account. The petitioner can very well have access to his bank account wherever he is maintaining the account or else, he could have collected the statement of account from the bank, the NRI bank account is accessible outside the country also.

11.The statement of accounts which now the petitioner produced is without any authentication. It is self prepared statement. The petitioner's complaint is that his father transferred some amount to the account of the petitioner's mother, sister and brother. In view of the admission that the petitioner handed over signed blank cheque leafs and blank stamp whenever he came to India from USA for vacation and now the petitioner terming it as an action without his authority by his agent i.e., father who is a septuagenarian cannot be proper.

12.It is to be seen that the petitioner was in USA from 1997-2008, thereafter, he was in chennai. While that being so, there is inordinate delay and the complaint has been lodged on 03.01.2023. In the complaint, there is no reason given for the such delay. The complaint is against his father and siblings. The Court below finding that the complaint of the petitioner is civil in nature is reasonable. Hence, this Court is not inclined to entertain this criminal revision case.

13.In the result, this Criminal Revision Case stands dismissed confirming the impugned order of the Court below, dated 11.09.2023.

14.It is made clear that the observations made herein is only for limited purpose of disposal of the present criminal revision case, which cannot be looked against the petitioner in any other proceedings. The petitioner is at liberty to file a private complaint if so advised and desired.

20.11.2023

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

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To

1.The Metropolitan Magistrate Court,
CCB & CBCID Cases, Egmore.

2.The Inspector of Police,
CCB Team XXI A, EDF-III,
Vepery, Chennai – 600 007

M.NIRMAL KUMAR, J.

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3.The Public Prosecutor,
High Court, Madras.

PRE-DELIVERY ORDER IN
Crl.R.C.No.1677 of 2023

20.11.2023