



Crl.R.C.No.1833 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

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Gopalakrishnan

... Petitioner

Vs.

1.The Inspector of Police,
G-3 Kilpauk Police Station,
Chennai – 600 007.

2.The Deputy Commissioner of Police,
G-3 Kilpauk Police Station,
Kilpauk, Chennai – 600 007.

3.M/s.RBP Investments Private Limited,
Plot NO.459, Freedom Road,
Viduthalai Road, S.Kolathur,
Kovilambakkam, Chennai – 600 129.

4.Ramesh

5.Anitha

6.Bhuvaneshwari

... Respondents

PRAYER: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to call for the records pertaining to the order dated 14.06.2023 made in Crl.M.P.No.22632 of 2023 passed by the learned II Metropolitan Magistrate Court at Egmore, revise and set-aside the same and allow this Crl.R.C.



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For Petitioner : Mr.R.Rajarathinam, Senior Counsel for
Mr.Ramgopal Lakshmi Ratan
For R1 & R2 : Mr.A.Damodaran,
Additional Public Prosecutor
For R3 to R6 : Mr.P.Subbiah Subash

ORDER

This Criminal Revision Case has been filed to set aside the impugned order, dated 14.06.2023 in Crl.M.P.No.22632 of 2023 passed by the learned II Metropolitan Magistrate, Egmore, Chennai.

2.This Court on 02.11.2023, 16.11.2023 and 13.12.2023 passed the following orders:

Order, dated 13.12.2023:

“Earlier Mr.Jayakumar learned counsel representing the respondents 3 to 6 on 24.11.2023, sought time to make his submission and to file a counter if any. Thereafter the case has been adjourned today.

2.The learned Senior Counsel for the petitioner was present in the morning, when the case was called. Learned Additional Public Prosecutor was also present and ready. Since there is no representation on the side of the respondents 3 to 6, the case was passed over.

3. Again in the afternoon, the case was called. Since



there is no representation for the respondents 3 to 6 and the name of their counsel is also posted in the scrolling. Despite the same, there is no representation.

*4. Learned Senior counsel for the petitioner by referring to the judgment of the Apex Court in the case of **Santhakumari & Others vs. State of Tamil nadu & another** (Paragraph 5 & 6) submitted that no doubt, the opportunity to be given to the respondents to be heard in the teeth of the provisions per sub section 2 of section 401 which does not give them a licence to keep away and to protract the proceedings. In such circumstances, the Apex Court had directed the proceedings can further proceeded and disposed of.*

5. In the interest of justice, one more opportunity to be given to the respondents 3 to 6. In the event of no representation for them on the next hearing date, orders to be passed.

6. Post the matter on 21.12.2023 for orders.”

Order, dated 16.11.2023:

“Mr.P.Subbiah Subash, learned counsel appearing for the respondents 3 to 6 submits that he is yet to be served with the copy of the petition and typed set of papers.

2.The learned Senior counsel appearing for the petitioner undertook to serve all papers to the petitioner's



counsel.

3.The learned Additional Public Prosecutor appearing for the respondents 1 and 2 seeks small accommodation to file status report with regard to CSR No.128 of 2023.

4.It is reminded that the pendency of the above revision will not preclude the police to proceed with the enquiry of the case and if cognizable offence is made out, can proceed with the case further.

5.Post on 24.11.2023.”

Order, dated 02.11.2023:

“This Criminal Revision Case has been filed seeking to set aside the order passed by the learned II Metropolitan Magistrate, Egmore in Crl.M.P.No.22632 of 2023 dated 14.06.2023.

2. The contention of the petitioner is that the petitioner was cheated by M/s.RBP Investments Private Limited, Kovilambakkam, Chennai. One Bhuvaneshwari, Ramesh and Anitha, who claiming to be the Directors of M/s.RBP Investments Private Limited, induced the petitioner and thereby received Rs.18 lakhs drawn on SBI, Rs.5 lakhs drawn on SBI and Rs.2 lakhs received by projecting that they have been collecting funds from depositors and investors and they are having branch at Plot No.459, Freedom Road, Viduthalai



Nagar, S.Kolathur, Kovilambakkam, Chennai – 600 129 with deposits of more than 500 investors and they intent to start a branch office at Coimbatore as well as in Kilpauk, Chennai. They promised the petitioner that his investment would get 30% profit as return on investment. Further, promised that petitioner would be the part of their business in Kilpauk branch. On their promise, the petitioner transferred the amount. Thereafter changing their colour, M/s.RBP Investments from Dhanalakshmi Bank through the cheques. In total, Rs.25 lakhs have been Private Limited and its directors became evasive and unable to be contacted. Hence, the petitioner lodged a complaint with the first respondent on 07.02.2023. Since the first respondent failed to act on the complaint, the petitioner lodged a complaint to the second respondent/Commissioner of Police. Thereafter, the first respondent assigned CSR No.128 of 2023. Thereafter too, no action has been taken, hence, the petitioner filed a complaint under Section 156(3) Cr.P.C. before the learned II Metropolitan Magistrate, Egmore, Chennai in Crl.M.P.No.22632 of 2023 seeking a direction to the respondent police to register an FIR. The learned II Metropolitan Magistrate by an order dated 14.06.2023, dismissed the above petition observing that the dispute is purely civil in nature and could be resolved before the Civil



Court. Aggrieved against the same, the present revision has been filed.

3. Learned Senior Counsel appearing for the petitioner submitted that the impugned order of the learned Metropolitan Magistrate is perverse. On the face of it, it has to be set aside. He submits that petitioner making payment through bank transfer is not denied. Rs.25 lakhs have been paid and M/s.RBP Investments Private Limited received the same. The Bank statement has been produced before the lower Court. Further, M/s.RBP Investments Private Limited on their own created a document as though the transaction is for loan agreement and not for any business purpose, which would clearly on the face of it show the criminal intent of cheating at the time of inception by M/s.RBP Investments Private Limited. This vital fact has not been considered by the lower Court but the Court termed as civil in nature. He further submitted that the petitioner approached the respondent police who were hesitant to take further action. Thereafter, he approached the higher officials. Even after assigning CSR number, no worthwhile investigation conducted. He further submitted that not only the petitioner but also other similar persons nearly 500 depositors have lost their money. M/s.RBP Investments Private Limited in a deceitful manner, cheated the petitioner as well as public.



Failure of the police in taking effective and immediate steps would further permit and allow M/s.RBP Investments Private Limited to cheat several other public and innocent depositors. In support of his contention he filed the relevant documents.

4. Learned Additional Public Prosecutor, who takes notice on behalf of the respondents submits that CSR No.128 of 2023 is still pending consideration. During enquiry, summons were issued to Ramesh, Anitha and Bhuvaneshwari but only Ramesh appeared and for queries he sought some time and that he would appear shortly. Thereafter he failed to appear. Still CSR pending and enquiry is progressing. From the reply notice of the M/s.RBP Investments Private Limited it is seen that RBP denies issuance of cheque. Further the petitioner has got remedy under Section 138 of the Negotiable Instruments Act. He seeks some time to file his response in this regard.

*5. Learned Senior Counsel, further relied on the decision of the Hon'ble Apex Court in the case of **Srinivas Gundluri vs. SEPCO Electric Power Construction Corpn.** reported in (2010) 3 SCC (Cri) 652, wherein, it is held that to proceed under Section 156(3) of the Code, what is required is a bare reading of the complaint and if it discloses a cognizable offence, then the Magistrate instead of applying his mind to the complaint for deciding whether or not there is*



sufficient ground for proceeding, may direct the police for investigation. In this case, the learned Magistrate instead had conducted an enquiry and given a finding as though it is civil in nature, when there is a prima-facie material that cognizable offence is made out.

6. In view of the same, this Court suo-motu impleads (i) M/s.RBP Investments Private Limited, Plot No.459, Freedom Road, Viduthalai Nagar, S.Kolathur, Kovilambakkam, Chennai – 600 129, (ii) Mr.Ramesh, Plot No.459, Freedom Road, Viduthalai Nagar, S.Kolathur, Kovilambakkam, Chennai – 600 129, (iii) Ms.Anitha, D/o.Palani, No.166/9, 8th Street, NSK Nagar, Arumbakkam, Chennai – 600 106 and (iv) Mrs.Bhuvaneshwari, W/o.Ramesh, No.18/28, Ma.Po.C.Nagar, 1st Street, Narayanapuram, Pallikaranai, Chennai – 600 100 as respondents 3 to 6 in this case.

7. In view of the same, notice ordered in Criminal Revision Case.

8. Issue notice to the newly impleaded respondents 3 to 6 returnable by 16.11.2023. Private notice is also permitted.

9. Learned Additional Public Prosecutor is directed to inform the newly impleaded respondents about the pendency of the above case through the jurisdictional police.

10. Post the matter on 16.11.2023.”

3. In continuation and conjunction to the above orders, this Court is



passing the following orders.

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4.Today, the learned counsel for the respondents 3 to 6 filed counter as well as typed set of papers and submitted that initially, the petitioner gave Rs.20,00,000/- on 22.08.2022 and thereafter, Rs.5,00,000/- on 27.08.2022 as loan, the respondent paid interest of Rs.95,000/- on 22.09.2022, Rs.1,00,000/- on 22.11.2022 and Rs.25,000/- on 01.12.2022. On 01.12.2022, there was a balance of Rs.60,000/- to be paid, which was also paid with a delay of six days. For such delay, the petitioner got enraged and approached the Police and lodged the complaint. During enquiry, the private respondents were called for enquiry and they appeared. At that time, two signed cheques were forcibly received by the petitioner. Subsequent to it, a legal notice was issued on 11.01.2023, for which, a reply was sent on 16.02.2023. Till such time, the case of the petitioner is that it is a business transaction. Later, a complaint was lodged before the Commissioner of Police, Vepery, Chennai, in which the petitioner projected a case of misappropriation and cheating. This was complaint was again forwarded to the 1st respondent Police Station and C.S.R.No.128 of 2023 assigned. On



behalf of the other private respondents, the 4th respondent appeared before the 1st respondent Police on 28.02.2023, on which day, the petitioner not appeared and what had happened thereafter, the private respondents are not aware.

5.He further submitted in his counter that the object of the 3rd respondent is that the amount received is only for fixed deposit, mutual fund and share trading purpose. Knowing about the same, the petitioner invested the money with the 3rd respondent for share market. It is common that the share market is volatile and the returns cannot be assured. Taking advantage of the same, now it has been projected as though the petitioner was cheated by the private respondents. He further submitted that the private respondents already filed civil suit in O.S.No.2856 of 2023 before the learned VII Assistant City Civil Judge, Chennai seeking injunction restraining the petitioner or his men for acting in any way of threatening or harassing in the guise of collecting money. When the civil suit is pending, the petitioner to short circuit the same, filed a criminal case and given a criminal colour to the issue. The lower Court on the materials available gave



a finding that the dispute is civil in nature and dismissed the petition which needs no interference.

6.The learned Additional Public Prosecutor appearing for the respondents 1 and 2 filed status report and submitted that on the complaint of the petitioner, initially an enquiry was conducted and the private respondents and the petitioner were summoned. Both the parties had private negotiation which the Police not involved in it. The duty of the Police is only for enforcing the law and to investigate the criminal case but not to involve in the private dispute between the parties. Thereafter, the petitioner lodged a complaint to the Commissioner of Police, Vepery, Chennai which was again forwarded to the 2nd respondent Police who issued notice to the petitioner as well as the private respondents. On behalf of the other private respondents, the 4th respondent appeared but the petitioner failed to appear. He further submitted the private respondents approached this Court and obtained anticipatory bail in Crl.O.P.No.8780 of 2023 on 27.04.2023 with a direction not to take any coercive steps. Thereafter, the petitioner filed a petition before the lower Court under Section 156(3) Cr.P.C., which was dismissed



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on 14.06.2023. In view of the same, the respondent Police now are in a predicament whether to register an FIR and proceed with the investigation or not.

7.Considering the submissions and on perusal of the materials, it is not in dispute that the private respondents received Rs.25,00,000/- from the petitioner. It is to be seen that the business proposal put forth was by way of a deception. Such being the position, now the private respondents propounded a different theory and projected a different case stating that the amount received from the petitioner invested in share market. Hence, the complaint of the petitioner to be investigated and also to find out any other persons have been lured and cheated with the same business profile.

8.The Hon'ble Apex Court in the case of “*Srinivas Gundluri vs. SEPCO Electric Power Construction Corpn.*, reported in (2010) 3 SCC (Cri.) 652” issued guidelines to the limited extent of the lower Court to look into the complaint of the complainant. In this case, the lower Court had gone beyond that requirement and given a finding as though the dispute is



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civil in nature and the same is not proper.

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9.In view of the above, the impugned order, dated 14.06.2023 in Crl.M.P.No.22632 of 2023 passed by the learned II Metropolitan Magistrate, Egmore, Chennai is set aside and this Criminal Revision Case stands allowed.

10.The 1st respondent Police is directed to proceed with the complaint of the petitioner, register FIR and take the investigation to its logical end, without delay. The petitioner to cooperate with the investigation and produce the materials to substantiate his claim.

21.12.2023

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

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To

1.The II Metropolitan Magistrate Court,
Egmore.

M.NIRMAL KUMAR., J.



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- 2.The Inspector of Police,
G-3 Kilpauk Police Station,
Chennai – 600 007.
- 3.The Deputy Commissioner of Police,
G-3 Kilpauk Police Station,
Kilpauk, Chennai – 600 007.
- 4.The Public Prosecutor,
High Court, Madras.

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