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Crl.O.P.No.32290 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2023

CORAM:

THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

Crl.O.P.No.32290 of 2019

and

Crl.M.P.Nos.17745 & 17747 of 2019

K.M.Saravana Kumar

...Petitioner/2nd Accused

-Vs-

1.The State rep.by

The Sub-Inspector of Police,
District Crime Branch,
Coimbatore District.
(Crime No.10 of 2001)

.. 1st respondent / Complainant

2.The Assistant Manager,

Tamil Nadu Industrial Investment Corporation Ltd.,
Tiruppur.

... 2nd respondent / De-facto Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for records relating to the proceedings in C.C.No.67 of 2019 on the file of the Judicial Magistrate Court – II, Tiruppur and to quash the same.



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For Petitioner : Mr.S.Sriram
For R1 : Mr.A.Damodaran,
Additional Public Prosecutor
For R2 : Mr.K.Mahesh

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.67 of 2019 on the file of the Judicial Magistrate Court – II, Tiruppur, filed for the offence under Sections 120(B) and 406 IPC r/w Section 109 IPC.

2.The petitioner herein is arrayed as A2.

3.The allegation in the final report is that A1 had taken a loan from the de-facto complainant. He had hypothecated the machinery imported from Germany with the 2nd respondent. He failed to repay the loan amount and had removed the hypothecated machineries and thus committed misappropriation of the said machineries. It is further alleged that A2 had abetted and conspired with A1 for removal of the machineries.



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4.The learned counsel for the petitioner would submit that admittedly the petitioner was only working as a manager. He did not take the loan from the 2nd respondent and he was not a signatory to the Hypothecation Agreement entered into between the 1st accused and the 2nd respondent. Hence, he cannot said to be a conspirator, even if the allegations that he along with the 1st accused had removed the machineries is accepted to be true. Hence he prayed for the quashing of the impugned final report in C.C.No.67 of 2019.

5.The learned Additional Public Prosecutor would submit that it is the case of conspiracy and there are specific allegations to show that A1 and A2 had conspired to remove the hypothecated machineries and committed misappropriation of the same, to deprive the 2nd respondent of the loan amount.

6.The learned counsel for the 2nd respondent would submit that, since it is a case of conspiracy, the matter has to be adjudicated only before the trial Court. The learned counsel pointed out the statement of witnesses in which, it is stated that the petitioner had misled the officials



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of the 2nd respondent stating that the machineries available in the premises of the company were the machineries hypothecated to the 2nd respondent. The said inspection took place on 13.06.2000. Hence, he prayed for dismissal of the quash petition.

7.This Court on perusal of the impugned final report and the materials filed in support of the same finds that admittedly the loan was taken by the 1st accused and he had hypothecated machineries in favour of the 2nd respondent. The statement by one of the witnesses that the petitioner had told the officers of the 2nd respondent that the machineries available in the premises were the machineries actually hypothecated, when it is not so, cannot be the basis to conclude that the petitioner is guilty of the offence of conspiracy. There is no other material against the petitioner. This Court also finds that the alleged inspection took place on 30.06.2000 and the FIR which culminated in the impugned final report was lodged on 20.12.2001. The chances of conviction of the petitioner on the basis of such material is bleak.



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8.Thus, on the basis of such vague material the petitioner cannot be asked to face the ordeal of trial. Hence, this Court is inclined to quash the impugned final report in C.C.No.67 of 2019 insofar as the petitioner / A2 alone is concerned. However, the trial Court may conduct the trial in respect of the other accused as expeditiously as possible.

9.With the above observations, this Criminal Original Petition is allowed. Consequently, connected Criminal Miscellaneous Petitions are closed.

10.04.2023

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Index : Yes/No
Speaking order: Yes/No
Neutral citation : Yes/No

To,

1.The Sub-Inspector of Police,
District Crime Branch,
Coimbatore District.

2.The Judicial Magistrate Court – II, Tiruppur.

3.The Public Prosecutor,
High Court of Madras.



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SUNDER MOHAN,J.

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