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CrI.O.P.No.23495 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2023

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

CrI.O.P.No.23495 of 2018
and CrI.M.P.No.13179 of 2018

1. C.Kalyan

2. D.Baskar Babu

... Petitioners

-Vs-

Venkatesh Prabhu

... Respondent

Prayer:- Criminal Original Petition filed under Section 482 of Cr.P.C to call for all the records pertaining to private complaint in C.C.No.2886 of 2018 pending on the file of the XI Metropolitan Magistrate Court at Saidapet and quash the same.

For Petitioners : Mr.Palaniappan.A

For Respondent : Mr.R.Balachandran

ORDER

This Criminal Original Petition has been filed to quash the private complaint in C.C.No.2886 of 2018 pending on the file of the XI Metropolitan Magistrate Court at Saidapet.



2. Heard the learned counsel for the petitioners and the learned counsel for the respondent and perused the materials available on record.

3. The petitioners are arrayed as A2 and A6. On the private complaint filed by the respondent, the Trial Court had taken cognizance in C.C.No.2886 of 2018 as against A2, A6 and A7 for the offences under Sections 166A, 467, 471, 474 r/w 120B of IPC.

4. The crux of the complaint is that the first accused is running an architect firm M/s TAAMAESEK Engineering Consortium. The first accused had also started M/s Window System. During the month of January, 2011, M/s German Lite Weight Block partnership firm was started with the third accused and one Kannan, who is the father of the respondent. In the month of April 2011, the second accused was inducted as a partner. Likewise, M/s Perfect Window System, another partnership firm was formed during the month of May, 2011 by the second and third accused, in which the mother of the respondent was inducted as a partner. The respondent's father is a retired Income Tax Officer, who was made as a partner in German Lite Weight Block firm which was to manufacture and sell blocks along with first and second accused. His mother is also a Senior Citizen who was made as a partner in M/s



Perfect Window System, which was to manufacture and sell UPVC windows

along with second and third accused. The entire business operation of these firms depended upon the business of M/s TAAMA ESEK Engineering Consortium. The first and second accused were controlling the entire business of all the firms. On the request made by the first accused, the parents of the respondent had invested huge money and got inducted as partners of those two partnership firms. The first accused colluded with the Banker and had obtained loan to the tune of Rs.75 Lakhs, which was disbursed as working capital loan based on the property which was given as security by the respondent without his knowledge. It was executed without his knowledge in complete violation of banking norms and procedure, since the first accused is closely acquainted with the Manager of the Bank. The sister of the first accused viz., third accused had been controlling the entire firms who has major shares of 65% and authorized signatory for all bank transactions. Though the parents of the respondent had invested huge money, the first accused had not taken any steps to run the factory as agreed by them. The entire business of the first accused was being controlled by the third accused. Therefore, the father of the respondent issued notice for his retirement from the partnership and requested to settle the balance amount. The letter was duly accepted and acknowledged the retirement of the respondent's father. In fact, the third accused also admitted



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and agreed to pay back the total amount to the tune of Rs.1,05,85,661/- in favour of the father of the respondent herein. Simultaneously, the mother of the respondent also had written a letter for her retirement from the partnership firm for the reason that the third accused did not take any steps to run the factory as per the statutory rules and regulations. They also kept the respondent's mother away from the business transactions. The said letter was also acknowledged and accepted her retirement. By the letter dated 10.05.2014, the third accused had admitted and agreed to pay her due to the tune of Rs.1,76,33,676/- and the payment should be made on or before 31.07.2014.

5. While being so, on 23.05.2014, when the respondent and his family members were in Madurai for their summer vacation, the 2nd and 5th accused accompanied the 7th accused and its team of five Policemen had come to Madurai and the entire family members were taken into their custody. They were compelled to travel in a Tempo Traveller vehicle. The 2nd and 5th accused went to Chennai by flight. The entire family members of the respondent were produced before the 8th accused and on his direction, they kept them in illegal custody. They pressurized and threatened to settle the issues with the accused. In fact, a 7 year old daughter was alone handed over to the father-in-law of the respondent, on 23.05.2014, at about 09.00 p.m. Under the compulsion and



coercion, signatures were obtained in several stamp papers, cheques, blank papers etc., from the respondent, his wife and his parents. Using the said cheques and bank papers, the amount lying in the credit of bank accounts of respondent and his family members were swindled by the accused with the help of Police Personnels. Hence, the complaint.

6. On receipt of the complaint, the learned Magistrate had examined the respondent and two other supportive witnesses, in order to comply with the provisions under Section 202 of Cr.P.C. Therefore, the learned Magistrate had rightly taken cognizance as against A2, A6 and A7 for the offences under Sections 166A, 467, 471, 474 r/w 120B of IPC and issued summons to them. Insofar as the other accused are concerned, no prima facie case is made out and as such, no cognizance was taken as against them.

7. Therefore, this Court finds no infirmity or illegality in taking cognizance by the Trial Court. The grounds raised by the petitioners as well as the documents produced by them can be considered only before the Trial Court during the Trial. Those documents cannot be tested before this Court that too under Section 482 of Cr.P.C.



8. In this regard, it is relevant to rely upon the judgment of the Hon'ble

Supreme Court of India passed in ***Crl.A.No.579 of 2019*** dated ***02.04.2019*** in

the case of ***Devendra Prasad Singh Vs. State of Bihar & Anr.***, 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.



9. Recently, the Hon'ble Supreme Court of India dealing the very same issue in ***Crl.A.No.1572 of 2019*** dated 17.10.2019 in the case of ***Central***

Bureau of Invstigation Vs. Arvind Khanna, as follows:

“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.”



10. Further the Hon'ble Supreme Court of India also held in the order

dated **02.12.2019** in **Crl.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 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....."



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The above judgments are squarely applicable to this case and as such, the points raised by the petitioners are mixed question of facts and it cannot be considered in a quash petition under Section 482 Cr.P.C.

11. The provisions of inherent jurisdiction under Section 482 Cr.P.C can be invoked only to meet out the ends of justice and to prevent the abuse of process of law.

12. The learned counsel appearing for the petitioners submitted that the second petitioner died and the entire charges as against the second petitioner itself is abated.

13. Accordingly, this Criminal Original Petition stands dismissed as abated as against the second petitioner and this Court is not inclined to quash the proceedings in C.C.No.2886 of 2018 pending on the file of the XI Metropolitan Magistrate Court at Saidapet. However, the personal appearance of the first petitioner is dispensed with and he shall be represented by a counsel after filing appropriate application. However, the first petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment.



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Accordingly, this Criminal Original Petition is dismissed as against the first petitioner. Consequently, connected Miscellaneous Petition is closed. The trial Court is directed to complete the trial, within a period of three months from the date of receipt of a copy of this order, without influence on any of the observations made by this Court.

21.11.2023
(1/2)

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

1. The XI Metropolitan Magistrate Court at Saidapet.
2. The Public Prosecutor,
High Court, Madras.

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and
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