



Crl.O.P.(MD)No.12186 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on: 08.09.2023	Delivered on: . .2023
-------------------------	-----------------------

CORAM

THE HON'BLE MR.JUSTICE P.DHANABAL

Crl.O.P.(MD)No.12186 of 2020
and

Crl.M.P.(MD)No.5517 of 2020

Sivesh Varshan @ Sivakumar

... Petitioner

Vs.

1.The Inspector of Police,
District Crime Branch,
Karur.

2.Muthu

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to Crime No.13 of 2020 from the file of the first respondent and to quash the proceedings pertaining to the same as an abuse of law.

For Petitioner : Mr.S.Jayavel

For R1 : Mr.R.M.Anbunithi,
Additional Public Prosecutor

For R2 : Mr.T.Dhamodharan



WEB COPY



Crl.O.P.(MD)No.12186 of 2020

ORDER

This criminal original petition has been filed to quash the First Information Report in Cr.No.13 of 2020 pending on the file of the first respondent herein.

2.According to the petitioner, based on the complaint given by the second respondent, the first respondent registered FIR in Cr.No.13 of 2020 for the offence under Sections 465 and 120(B) IPC. The petitioner herein had been helping financially to one Pandian, who is the husband of the second respondent, to carry on the business. On 19.07.2019, the petitioner and the said Pandian entered into an arbitration and agreement to resolve any dispute that may be arise in repayment of the hand loans. Further, the said Pandian issued a cheque bearing No.260655 in favour of the petitioner and the same was dishonored and thereby, the petitioner filed a case in STC.No.799 of 2019 on the file of the learned Judicial Magistrate No.II, Kulithalai for the offence under Section 138 of the Negotiable Instruments Act and the same is pending. The said Pandian died on 12.05.2020 during the pendency of the criminal proceedings. The second respondent, taking advantage of



Crl.O.P.(MD)No.12186 of 2020

COVID-19 lock down, started alienating the properties of the said Pandian. Hence, the arbitration proceedings before arbitrator was commenced at Kulithalai. During arbitration, an interim order of attaching the house property of Pandian was passed on 10.06.2020. Having enmity over the above said proceedings, the second respondent used to file various complaints and also taken adjournments in the arbitration proceedings. On 10.06.2020, the second respondent gave a complaint claiming forgery and attempted to land grabbing then on 27.07.2020, the second respondent along with others have executed sale deed in favour of one Ranganathan. Now the petitioner has preferred execution of arbitration award in EP.No.42 of 2020 on the file of the District and Commercial Court, Karur. The second respondent caused notice to the petitioner dated 01.09.2020 to set aside the arbitration award. In the mean time, based on the complaint forwarded by the learned Judicial Magistrate No.II, Kulithali under Section 156(3) Cr.P.C., the first respondent registered FIR in Cr.No.13 of 2020 as against the petitioner. Therefore, the pending FIR is liable to be quashed.

3.No counter was filed by the respondents.

4.The learned counsel appearing for the petitioner would contend that the maintainability of the registration of FIR by the



Crl.O.P.(MD)No.12186 of 2020

first respondent on the ground that there is no notification issued by the Government for for formation of police station of first respondent. The first respondent has no locostandi to register FIR, since the first respondent has not been notified.

5.The learned counsel appearing for the petitioner would further contend that the husband of the second respondent had many dealing with the petitioner and thereby, he issued cheque to the petitioner. The said cheque was presented for collection and the same was returned for the reason that “insufficient fund” and thereby, he lodged a complaint in STC.No.799 of 2019 on the file of the learned Judicial Magistrate No.II, Kulithalai for the offence under Section 138 of the Negotiable Instruments Act. During the pendency of the said case, the husband of the second respondent died and thereby, the arbitrator was appointed and an interim order passed to attach the property of the said Panidan. In the said arbitration proceedings, the second respondent also participated and only in order to wreck vengeance, the present complaint has been filed before the learned Magistrate and the learned Magistrate forwarded the same to the first respondent and thereafter, the first respondent registered the impugned FIR. Since already matter is pending before the learned Magistrate, the



Crl.O.P.(MD)No.12186 of 2020

second respondent has filed complaint in the same Court with false allegations and the same is liable to be quashed.

6.The learned counsel appearing for the second respondent would contend that the petitioner has filed cheque case as against the husband of the second respondent and the same is pending. While so, after demise of husband of the second respondent, the petitioner created forged documents and created arbitration agreement and thereby, attached the property, in order to sell the same. Further, in the said cheque case, there is no whisper about the alleged arbitration and agreement. The said arbitration agreement itself forged one and created after demise of the said Pandian. Therefore, the second respondent gave a complaint before the learned Judicial Magistrate No.II, Kulithalai and the same was forwarded to the first respondent police and he registered FIR. Now the case is at the stage of FIR and at this stage, without investigation, case cannot be decided, since case is pertaining to the creation of documents and records, elaborate investigation is required. The investigation of the first respondent cannot be scuttled at the initial stage. Therefore, this petition is liable to be dismissed.



Crl.O.P.(MD)No.12186 of 2020

7.The learned Additional Public Prosecutor appearing for the first respondent would contend that the second respondent had filed private complaint before the learned Magistrate and the same was forwarded to the first respondent and thereby, the first respondent registered FIR in Cr.No.13 of 2020 for the offence under Sections 465 and 120(B) IPC. Now case is pending for investigation and at this stage, without investigation case cannot be quashed and even as per FIR, offences are made out. Therefore, this petition is liable to be dismissed.

8.Heard both sides and perused the materials available in the records.

9.On perusal of records shows that the second respondent lodged a private complaint before the learned Judicial Magistrate No.II, Kulithali and the same was forwarded to the first respondent under Section 156(3) Cr.P.C., and based on the same, the first respondent registered FIR in Cr.No.13 of 2020 for the offence under Sections 465 and 120(B) IPC. The contention of the petitioner is that already arbitration proceedings is pending between the parties and the husband of the second respondent borrowed money from the petitioner and thereby, issued cheque to



Crl.O.P.(MD)No.12186 of 2020

discharge the above said liability. When the cheque was presented for collection, the same was returned for the reason that insufficient fund. Hence, the petitioner filed complaint under Section 138 of NI Act before the learned Judicial Magistrate No.II, Kulithalai and the same is pending. During the pendency of the said cheque case, the husband of the second respondent died. There was an arbitration agreement between the deceased and the petitioner with regard to garlic business and thereby, as per arbitration, arbitrator was appointed and award was also passed and based on the arbitration award, execution petition was also filed. At that stage, the second respondent had filed an arbitration O.P. and the same is pending before the District Court, Karur. The contention of the second respondent is that taking advantage of the demise of her husband, the petitioner along with others have created forged document and created arbitration agreement, in order to grab the property of the second respondent and they have also prevented the sale of the property.

10.The main contention of the petitioner is that the respondent police station was not notified and thereby, they cannot register FIR. In this context, the learned Additional Public Prosecutor appearing for the first respondent has produced the



Crl.O.P.(MD)No.12186 of 2020

copy of the notification and the said notification has published in Gazatte on 02.05.1967 by notifying the combined Trichirapalli District and thereafter, the fabrication of Karur District also notified. Therefore, the contention of the learned counsel appearing for the petitioner that the first respondent has no jurisdiction to register FIR is not acceptable.

11.According to FIR, there are prima facie materials available to constitute offence and the case is now initial stage and it requires elaborate investigation and at this stage, the investigation cannot be scuttled by this Court. Further, the petitioner filed cheque complaint under Section 138 of NI Act and after demise of the second respondent's husband, the petitioner initiated arbitration proceedings by appointing arbitrator. There is no reference about the arbitral agreement in the previous cheque complaint. Therefore, it needs elaborate investigation. Therefore, at this stage, this Court need not interfere with the investigation of the first respondent. Even according to the grounds raised by the petitioner, there is no any reasonable ground to quash FIR and this Court is of the opinion that this petition has no merits and deserves dismissal.



Crl.O.P.(MD)No.12186 of 2020

12.In view of the above discussions, this criminal original petition is dismissed. Consequently, connected miscellaneous petition is closed.

. .2023

Index :yes/No
Internet:yes/No
gns



WEB COPY



Crl.O.P.(MD)No.12186 of 2020

P.DHANABAL, J

gns

To

- 1.The Inspector of Police,
District Crime Branch,
Karur.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Pre-Delivery Order
made in
Crl.O.P.(MD)No.12186 of 2020

. .2023