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Crl.O.P.(MD)No.15786 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 31/10/2023

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

Crl.OP(MD)Nos.15786 of 2023

and

Crl.MP(MD)Nos.12561 and 12562 of 2023

Musthafa : Petitioner/Sole Accused

Vs.

1.State rep. by
The Inspector of Police,
District Crime Branch,
Thanjavur District.
(In Crime No.21 of 2022) : R1/Complainant

2.Sayifullah : R2/De-facto Complainant

PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records pertaining to the case in Impugned Charge Sheet in CC No.96 of 2022 on the file of the Judicial Magistrate Court No.III, Thajavur and to quash the same as illegal and to pass such further orders.

For Petitioner : Mr.KPS.Palanivel Rajan
Senior counsel
for Mr.V.Malaiyendran

For 1st Respondent : Mr.M.Vaikkam Karunanithi
Government Advocate
(Criminal side)

For 2nd Respondent : Mr.R.L.Dhilipan Pandian



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O R D E R

WEB COPY This criminal original petition has been filed seeking quashment of the case in CC No.96 of 2022 on the file of the Judicial Magistrate No.III, Thanjavur.

2.This case is a long history. Before we go into the maintainability of the petition at the fag end of the trial process, the background facts and the conduct of the petitioner is also worth to be noted.

3.The petitioner is facing the charges for the offences under sections 406, 420 and 421 IPC, in CC No.96 of 2022 on the file of the Judicial Magistrate No.III, Thanjavur.

4.The long and short of the prosecution case is that this petitioner instigated the 2nd respondent, who is the de-facto complainant to invest money in his business so that he can earn huge profit. One Crore was paid in the presence of A2 and A3. Towards the above said transaction, 4 cheques were issued for Rs.25,00,000/- each. An agreement mortgage was also entered. Later this petitioner filed IP No.2 of 2021 to declare him as Insolvent. The cheques issued were dishonoured. Suppressing the mortgage, this petitioner alleged to have



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executed a settlement deed regarding the property pledged or mortgaged in favour of his own brother namely Mohammed Abdullah. Stating that he has been cheated, the above said complaint was filed. Based upon which, a case in Crime No.21 of 2022 was registered for the offences stated above. After completing the process of investigation, final report was filed before the concerned court namely the Judicial Magistrate No.III, Thanjavur and it was taken cognizance in CC No.96 of 2022. Now the trial started and about to be completed. He was arrested during the course of investigation and remanded to custody.

5.At one point of time, this petitioner moved interim bail before me, promising and undertaking to settle the issue, if released on bail. Considering the genuine attempt made by the petitioner to settle the issue, interim bail was granted by me. In the meantime, Crl.MP Nos.1722 and 1723 of 2023 was filed before the trial court. But however, he did not keep his promise and failed to settle the issue.

6,Again the matter came up for passing final orders. At that time, the learned counsel appearing for the petitioner went to the extent of arguing before this



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court stating that this court has no jurisdiction to pass interim bail orders. When that argument was rejected by me, but however, considering the fact that the trial process is in the midway, there is no purpose for cancelling the bail, but stringent condition was imposed upon the petitioner to appear before the trial court in the alternative daystill the conclusion of the trial process. Further, it was directed to complete the trial process within a period of three months, by order, dated 24/06/2023. Now the trial goes on. The petitioner filed several applications seeking to recall certain witnesses. But it came to be dismissed by the trial court. Against which, he has also filed Crl.OP(MD)Nos.14939 and 15298 of 2023 before this court. Simultaneously, he has also filed Crl.OP(MD)No.15786 of 2023 seeking quashment of the entire proceedings. This is the background and history of the case indicating the conduct of the petitioner.

7.Now the learned Senior counsel appearing for the petitioner would argue only on that aspect. According to him, even though, the trial process is in the fag end, it is very well maintainable. Even as per the case of the prosecution, money was paid in cash. According to him, it is not legal. He is also referring to the provisions of Prevention of Money Laundering Act and Income Tax Act,



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etc. According to him, absolutely, no evidence or record is placed before this court to prove the payment; Absolutely, there is no document. Even we take that the amount was paid, it is prohibited under the provisions of the Prevention of Money Laundering Act, 2002. Apart from that, he would submit that it is out and out business issue between the parties. For attracting the offence under section 420 IPC, the ingredients are totally lacking. He would also rely upon the following judgments:-

**1.Vesa Holdings Private Limited
and another Vs. State of Kerala and
others [(2015)3 SCC 203];**

**2.Satish Mehra Vs. State of N.C.T
of Delhi and others [(2012)11 SC 0010]**

**3.Satish Mehara Vs. State of N.C.T
of Delhi and another (2012 0
Supreme(SC) 822) .**

8.Per contra, the learned counsel appearing for the 2nd respondent, by relying upon the decision reported in the case of **Central Bureau of Investigation Vs. Aryan Singh Etc. (2023 LiveLaw (SC)292)** would submit that at the stage of exercising power under section 482 Cr.P.C, no mini-trial is permitted. Whether the criminal



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proceedings are malicious in nature cannot be taken into account. The requirement is the materials collected during the course of investigation.

9. Here the trial is in the midway and about to be completed. The copies of the depositions have also been produced by the 2nd respondent, which shows that PW10 is the Investigating Officers; she also examined and cross examined by this petitioner; PW1, PW2 and PW3 were examined in chief and cross. Elaborate cross examination has also been made with regard to the transaction.

10. It is the specific case of the petitioner that before 29/07/2022, PW1 and others broke open the office and took away the documents and filled up the same, forged the signature and filed the case. When such being the defence taken by the petitioner before the trial court, the ground that has been raised by him in this petition cannot be considered at all. He has to take up three defences that are available to him before the trial court only. Adopting diluting tactics and delaying tactics and misdirecting the trial process will amount to clear abuse of the process of court. Abuse of process of court is apparent on the face of record, in the light of the above said conduct of the petitioner during the trial process. So this petition deserves no consideration.



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11. Even though this court is of the opinion that cost must be imposed upon the petitioner, but however, it desist from imposing costs, hoping that the petitioner will cooperate for the completion of the trial process as directed by this court.

12. In the result, this criminal original petition is **dismissed**. Consequently, connected Miscellaneous Petitions are closed.

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Index: Yes/No
Internet: Yes/No

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To,

1. The Judicial Magistrate No. III,
Thanjavur.
2. The Inspector of Police,
District Crime Branch,
Thanjavur District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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