



WEB COPY



Application (IP) No. 38 of 202
and I.P. No. 20 of 2019

Application (IP) No. 38 of 2024
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K.KUMARESH BABU, J.

This application has been filed for a direction to the second respondent not to harass the applicant and his wife, viz., Sinimol John either by summoning or in any manner harassing us, under the garb of investigation /interrogation/ questioning in Crime No. 190 of 2019.

2. The learned counsel for the applicant/Debtor would submit that the applicant had filed the Insolvency Petition as a Petitioning Debtor in which proceedings are pending. Pending these proceedings, the respondents herein are harassing the applicant and his wife by summoning them under the garb of investigation/interrogation/questioning in Crime No. 190 of 2019. He would submit that the continuous harassment of the respondents is causing serious prejudice to the applicant and his wife and therefore, would seek protection of this Court.

3. Mr.M.R.Uma Vijayan, learned counsel appearing on behalf of the first respondent on the other hand would contend that the applicant had played fraud upon the first respondent and pursuant to the same, a criminal case in Crime No. 190 of 2019 had been filed by the first respondent with the second respondent



and he is being summoned by the respondent police, which he is attempting to evade under one pretext or the other.

4. He would further submit that the applicant had approached this Court in Criminal Original Petition No. 10607 of 2024 seeking for an anticipatory bail by contending the very same allegations and the Court having found *prima facie* malice in the conduct of the applicant had rejected the anticipatory bail petition by its order dated 21.06.2024. He would submit that the present application even though filed prior to the order passed by this Court on the criminal side would seek a similar relief, which will hamper the criminal investigation. He would submit that the Insolvency Proceedings cannot be a bar to a criminal investigation of fraud and cheating that had been committed by the applicant. Hence, they seek dismissal of the application.

5. I have considered the rival submissions made on either side and perused the materials placed on record, apart from the pleadings of the parties.

6. It is not in dispute that the criminal case in Crime No. 190 of 2019 is pending investigation with the second respondent police. The prayer sought for in this application is not to harass, i.e., by summoning the applicant and his wife under the garb of investigation/ interrogation/ questioning in Crime No. 190 of 2019. When such investigation by the second respondent police is on-going, it is



the duty of the accused to appear before the Investigating Officer and on the summons issued by him, to make his statement. If an accused in criminal case is protected by the orders of this Court under the guise that the Insolvency Petition is pending, the criminal offence committed by such person cannot be brought to light and they cannot be prosecuted for the offences that had been committed by them.

7. Further, the anticipatory bail filed by the applicant had been dismissed by this Court on 21.06.2024 and if any relief is granted in this application, this would also amount to a grant of protection from any investigation into a criminal offence.

8. For the aforesaid reasons, I do not find any merits in this application and the application is accordingly dismissed. No order as to costs.

9. The Official Assignee is permitted to proceed further in accordance with law.

30.09.2024

Maya



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Dated : 30.09.2024