IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.08.2024	Pronounced on: 29.08.2024

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.17096 of 2023
& Crl.M.P.Nos.10978 & 10980 of 2023

Roja .... Petitioner/Accused 3

/versus/

1. State Rep. by,
The Inspector of Police,
Thuraipakkam Police Station,
Adyar, Chennai. .... 1st Respondent/Complainant

2. Saravana Perumal .... 2nd Respondent/De facto Complainant

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records in C.C.No.355 of 2023 pending on the file of Hon'ble Judicial Magistrate-II, Alandur.

For Petitioner : Mr.N.R.Elango, Senior Counsel,
for Mr.A.S.Aswin Prasanna

For R1 : Mr.S.Udaya Kumar,
Government Advocate (Crl.Side)

For R2 : Mr.R.Sunil Kumar

O R D E R

On the complaint given by one Saravana Perumal, the 1st respondent has registered F.I.R in Crime No.459 of 2022 on 28.11.2022. The complaint is that one Pandurangan along with five others have deceived him by showing fabricated documents and cheated a sum of Rs.49,07,000/-. Further, in the complaint it was also alleged that when the complainant met Pandurangan and sought for return of money obtained by inducement, the said Pandurangan threatened him with dire consequence. Hence, they have committed offences under Section 465, 468, 471, 406, 420, 506(1) and 120 B of I.P.C.

2. On completion of investigation, final report filed before the Judicial Magistrate-II, Alandur and the same was taken on file in C.C.No.355 of 2023. The petitioner herein who is mother-in-law of said Pandurangan is arrayed as A3.

3. The substance of the final report states that A1/Pandurangan and the complainant Saravanan Perumal got acquittance in the year 2019 in a function and the Pandurangan, posed himself as a man of affluence and doing a lucrative business as a Realtor and also Managing about 100 acres of land at Koovathur owned by his father-in-law. Being enticed and induced by the words of said Pandurangan, the complainant mobilised Rs.49,07,000/- from his source and two of his friends namely, Ramesh Kumar and Vijayaraman and gave to Pandurangan on various dates expecting lucrative returns for the investment. However, Pandurangan failed to give any returns but showed some fake document as if he owns right over the property and will repay the money, selling the property. Later, the complainant came to know that the money received from the complainant been invested on jewels and properties and later sold by the 1st accused Pandurangan and also the money been transferred to the accounts of the other accused persons.

4. The Learned Senior Counsel appearing for the petitioner (A3) submitted that the entire reading of the statement of witnesses relied by the prosecution and the documents will not disclose any cognizable offence as against this petitioner/A3 to attract offences under Sections 420 and 406 of I.P.C. There is no allegation either in the complaint or in the statement of witnesses, to implicate the petitioner herein for the alleged offences under Section 120B, 465, 468, 471, 506(1) of I.P.C.

5. Pointing out the statement of the complainant and the other witnesses which are relied by the prosecution, the Learned Senior Counsel for the petitioner submitted that the petitioner/A3 being mother-in-law of the said Pandurangan to whom the defacto complainant and his friends Ramesh Kumar and Vijayaraman alleged to have entrusted money, no way connected with their money transaction. Even according to the complainant, the only allegation made against this petitioner is that once when the complainant went to the house of the petitioner herein to met Pandurangan, at that time, the petitioner told the complainant that if you act as per the advice of Pandurangan you can make money. This utterance even if admitted to be true will not satisfy the ingredient to attract offences under Section 406 and 420 of I.P.C.

6. Further, the Learned Senior Counsel for the petitioner submits that the money was transferred allegedly to the account of Roj Leather Exports Private Limited which is the proprietary concern owned by Pandurangan.

Whereas, the petitioner is one of the Director in Roj Leather Exports Private Limited. By mistaken identity, the petitioner been prosecuted as if she has received money from the defacto complainant through A1.

7. The case of the prosecution is that the defacto complainant Saravanan Perumal paid a sum of Rs.11,50,000/- through bank transaction into the account of Pandurangan and Rs.15,37,000/- through cash. His friends Ramesh Kumar paid Rs.11,00,000/- in cash and Vijayaraman paid Rs.11,20,000/- by cash. Admittedly, all the payments were made to Pandurangan (A-1) and not to the petitioner/A3. The final report states that money transferred to the ICICI Bank account of this Petitioner in A/c.No.269405500130. Whereas, in the memo of evidence, the prosecution rely upon 14 witnesses. None from the Bank of the complainant or accused is shown as witness to prove the alleged transaction. Therefore, even if the statements relied by the prosecution and evidence relied by the prosecution presumed to be proved, none of the ingredients to charge the petitioner herein for the offences under Section 465, 468, 471, 406, 420, 506(1) and 120 B of I.P.C would be made out. Therefore, the Learned Senior Counsel for the petitioner would submit that the prosecution without material to charge for any cognizable offence is liable to be quashed.

8. The Learned Government Advocate (Crl.Side) appearing for the 1st respondent submitted that the complaint received on 28.11.2022 disclosing fact that the complainant Saravana Perumal had transferred money through Bank and by cash to the 1st accused Pandurangan in the presence of his mother-in-law/the petitioner herein on her inducement that the money will be invested in the real estate business which will yield good returns. Later, it was found to be fake promise and inducement to deceive the complainant to part away the money. By posing himself as an Administrator of about 100 acres of land at Koovathur Village owned by his father-in-law Thanikachalam Naicker, Pandurangan had induced the complainant to invest money. Believing the words of the Pandurangan and the misrepresentation of this petitioner who runs business in the name of M/s.Roj Leather Exports Private Limited, the complainant/ Saravana Perumal transferred money through Bank and also gave as cash. He also made his friends Ramesh Kumar and Vijayaraman to invest money and accordingly, they have parted a sum of Rs.11,50,000/- each to

Pandurangan. Later, in the course of investigation, it was found that the said Pandurangan had purchased jewels from Challani Jewels and Haryana Jewellers Pvt Limited and sold it to Mugesh Kumar Jain and encashed the same. The money been transferred to the accounts of the accused persons including the petitioner herein and therefore, having gathered evidence for commission of cognizable offence, final report laid against Pandurangan, his wife, mother-in-law (the petitioner herein) and others.

9. Mr.R.Sunil Kumar, Learned Counsel who appeared on behalf of the defacto complainant/A2 submitted that the complainant gave cash to Pandurangan at the residence of this petitioner and in the presence of this petitioner and her daughter. The petitioner is none other than the mother-in-law of the said Pandurangan and she had knowledge of every transaction between the complainant and Pandurangan. Some of the money paid to Pandurangan been transferred to the account of this petitioner. Though the prosecution has failed to examine the Bank Managers of the respective Bank, it is only a defective investigation which can be cured in the course of the trial. Having made out a *prima facie* case against the petitioner for her involvement in the deceptive transaction, which attracts offence under Section 120 B of I.P.C and other substantive offences, it is not a fit case to quash.

10. The Learned Counsel for the defacto complainant rely on the judgment of the Hon'ble Supreme Court rendered in ***State of Andhra Pradesh -vs- Aravapally Venkanna and another*** reported in ***(2009) 13 SCC 443***, wherein, it has held that the inherent power of the High Court under Section 482 of Cr.P.C should not be exercised to stifle a legitimate prosecution. Court should normally refrain from giving a *prima facie* decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot been seen in their true perspective without sufficient material.

11. The Learned Counsel for the defacto complainant referring the above judgment submitted that though this judgment and observation was made in connection with application filed to quash the F.I.R, the principle also apply to petition filed to quash the final report. He would submit that whether the material collected during investigation would be sufficient for holding the accused persons guilty has to be considered only at the time of trial. At the time of framing the charge, what to be considered is whether *prima facie* case has been made out showing a commission of offence and involvement of the charged person. At that stage also evidence cannot be gone into meticulously. Charge can be framed if there are materials showing possibility about the commission of crime as against certainty, hence charge sheet cannot be quashed at the threshold without being tested.

12. Heard the Learned Counsels and records perused.

13. This Court has no doubt about the proposition canvassed by the Learned Senior Counsel for the petitioner based on the dictum laid down by the Hon'ble Supreme Court in ***R.R.Kapur -vs- State of Punjab*** reported in ***AIR 1960 SC 866*** and ***State of Haryana -vs- Bhanjan Lal*** reported in ***1992 SCC (Cri) 426*** as well as the judgment relied the Learned Counsel for the defacto complainant cited supra and other judgments on similar lines. However, it is also the duty of the Court to find out whether even if the prosecution able to prove the content of the statements and evidence relied by them, will it attract the charges proposed to be framed against the accused. If there is no iota of material to attract any cognizable offence, it will not only be futile exercise but also unwanted ordeal to the accused person to face the trial without any element of cognizable offence committed by him.

14. In this case, apparently the money transaction been done in a span of more than a year between 2019-2020. The statement of the defacto complainant discloses that a sum of Rs.11,50,000/- transferred to the account of Pandurangan through Bank and he has paid cash to a tune of Rs.15,37,000/- to Pandurangan. His friend Ramesh Kumar has paid Rs.11,00,000/- by cash during the month of February-2020 and another friend Vijayaraman has paid Rs.11,20,000/- during the month of October-2020. So, out of Rs.49,07,000/ alleged to have been cheated, except Rs.11,50,000/-, for rest of the money allegedly to have been is paid by cash and no document to prove this statement. The statement of Ramesh Kumar and Vijayaraman recorded under Section 161 of Cr.P.C, also only indicate that on the request of the complainant Saravanan Perumal, they invested money with Pandurangan. Except their oral statement, there is no evidence to show that the cash was paid to Pandurangan on the day alleged to have stated by these witnesses. That apart, even for Bank transaction, there is no supporting documents collected by the prosecution. The prosecution wholly rely upon the alleged confession statement of Pandurangan and the statements of jewellers, one who alleged to have been sold some jewels to Pandurangan and another who alleged to have purchased the jewels subsequently. The trail of money not been investigated by the prosecution to establish the offence as against this petitioner who had not been implicated for receiving the money but for being present when the money was given to Pandurangan and also for the alleged recommending the complainant to invest as per the advice of Pandurangan.

15. This Court is of the view that such a vague uncorroborated piece of statement of the defacto complainant which does not carry any ingredient of deceptive inducement or dishonest inducement with intention to cheat will not be sufficient to sustain any prosecution. Particularly, the trail of money alleged to have been paid by the complainant or his friends Vijayaraman and Ramesh Kumar does not point any needle of suspicion towards the petitioner herein. Neither her account nor the account of the defacto complainant and his two friends been collected to show the money fell into the account of the petitioner maintained in ICICI Bank bearing A/c.No.269405500130.

16. Further, the statement of the defacto complainant/Saravana Perumal recorded under Section 161 of Cr.P.C., discloses that he has made the following payments through Bank transfer on the respective dates from his City Union Bank account bearing A/c.No.51090901028611:-

(i)	03.10.2019	Rs.50,000/-
(ii)	03.10.2019	Rs.4,50,000/-
(iii)	25.10.2019	Rs.1,00,000/-
(iv)	20.12.2019	Rs.4,00,000/-
(v)	18.01.2020	Rs.1,50,000/-

The defacto complainant has also transferred a sum of Rs.5,000/- and Rs.95,000/- through online to the account of Suganya, staff in the office of Pandurangan. For this averment, neither the complainant has produced his Bank statement nor the Investigating Officer has collected the Bank statement of Saravana Perumal or the statement of Pandurangan to verify whether really these transactions were made. Apart from these transactions through Bank, other transactions are alleged to have been made in cash. Even assuming money was paid by the complainant and his friends, it will at the most implicate only Pandurangan. He alone is liable to respond for the said payment and not the petitioner herein, just because she is the mother-in-law of Pandurangan. The petitioner run a business and Director in M/s.Roj Leather Exports Pvt Ltd, a Company incorporated under the Companies Act. She cannot be held criminally liable for the money paid by the complainant and his friends to Pandurangan either by cash or by Bank transfer to the account of M/s.Roj concern, a Proprietor concern. Therefore, this Court finds force in the submission made by the Learned Senior Counsel for the petitioner.

17. In view of the above, the ***Criminal Original Petition is Allowed.*** The complaint in C.C.No.355 of 2023 on the file of Judicial Magistrate-II, Alandur insofar as this petitioner/Roja (A3) stands quashed. Consequently, connected Miscellaneous Petitions are closed.

29.08.2024

Index :Yes/No.
Internet :Yes/No.
Speaking Order/Non-Speaking Order.
bsm
To:-
1. The Judicial Magistrate-II, Alandur.
2. The Inspector of Police, Thuraipakkam Police Station, Adyar, Chennai.
3. The Public Prosecutor, High Court, Madras.

DR.G.JAYACHANDRAN,J.

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Pre-delivery order made in
Crl.O.P.No.17096 of 2023

29.08.2024