IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.Nos.1335 and 1336 of 2024
and
Crl.M.P.Nos.11424 and 11425 of 2024

1.V.L.Narayanan
2.Jothi Narayanan
3.Caroline Echarista
4.V.F.Soundararajan ... Petitioners in both Crl.R.Cs.

Vs.

The State represented by
The Inspector of Police,
Central Crime Branch,
Vepery, Chennai – 600 007.
(Cr.No.103 of 2021) ... Respondent in both Crl.R.Cs.

Prayer: Criminal Revision Petitions filed under Sections 438 and 442 of Bharatiya Nagarik Suraksha Sanhita Act, 2023, praying to call for the records relating to the order dated 01.08.2024 made in Crl.M.P.Nos.44815 & 44813 of 2024 in C.C.No.8297 of 2022, respectively, passed by the learned Metropolitan Magistrate (CCB & CBCID) Court, Egmore, Chennai and set aside the same.

For Petitioners
in both Crl.R.Cs. : Mr.C.S.K.Sathish

For Respondent : Mr.R.Vinothraja
in both Crl.R.Cs. Government Advocate (Crl. Side)

COMMON ORDER

These petitions have been filed challenging the order dated 01.08.2024 made in Crl.M.P.Nos.44815 & 44813 of 2024 in C.C.No.8297 of 2022, respectively, passed by the learned Metropolitan Magistrate (CCB & CBCID) , Egmore, Chennai.

2.The petitioners/accused 2, 4, 5 and 6 in C.C.No.8297 of 2022 had filed Crl.M.P.Nos.44815 and 44813 of 2024 under Section 243 of Cr.P.C. seeking to reopen the defence side witnesses and to issue summons to the Assistant Commissioner of Income Tax, which were dismissed by the Lower Court, against which, the present revisions have been filed.

3.The contention of the learned counsel for petitioner is that the petitioner and the de-facto complainant in this case were doing business together and there was difference of opinion between them and the de-facto complainant projected the business dispute of civil nature into a criminal case and lodged a complaint. The respondent police not considering the civil nature of the case, filed charge sheet. In the meanwhile, A3, one of the partners of A1-Company independently entered into an understanding with the de-facto complainant, projected as though he paid some money and also produced a Memorandum of Understanding binding the petitioner's herein, who are third parties to the Memorandum of Understanding. It is also shown that there was huge transaction in cash, for that purpose, they needs to examine the Income Tax officials.

4.The learned Government Advocate (Crl. Side) on the other hand strongly opposes the petition stating that the petitioner is in the habit of filing one petition or other and protracting the proceedings of the case, which is now at the stage of arguments. In this case, after completion of prosecution witnesses, defence witnesses examined and documents marked. In such circumstances, filing of this petition is only to protract the proceedings. He further submitted that earlier, the petitioner filed a similar petition in Crl.R.C.No.1100 of 2024, wherein, this Court, by order dated 28.06.2024 permitted the petitioner to examine Bank Manager on his side. Finding that the case has reached penultimate stage, directed the trial Court to dispose of C.C.No.8297 of 2022 within the stipulated period. Thereafter, the present petitioner filed further to protract the case.

5.Mr.R.C.Paul Kanagaraj, learned counsel appearing for the de-facto complainant submits that the petitioner cross examined the witnesses in detail. He marked Exs.D1 to D8. The cheque, Memorandum of Understanding and other details were marked. The petitioner's contention is that the same was not shown in the Income Tax Returns, which is not the issue involved in the trial. The petitioner himself disputes the payment made by A3. In such circumstances, no purpose would be served, if Income Tax Returns is produced and Income Tax officials are examined. He further submits that the petitioner cannot take two stands, viz. (i) A3 not paying any cash and (ii) cash received but not shown in the Income Tax Returns. This would only expose the petitioner's double standard mind only for the purpose of protracting the trial.

6.In reply, the learned counsel for petitioner submits that the Bank Manager, whom he examined, had clearly stated that Rs.50,00,000/-, which is shown in Memorandum of Understanding/Ex.D8 not transacted in his bank account.

7.The learned counsel for de-facto complainant opposes the same stating that the Bank Manager evidence is clear that it by on-line transaction.

8.Be that as it may. The primary contention of the petitioner is that the impugned order is nothing but verbatim cut and paste with regard to paragraph 4 of the order. He referred to paragraph 4 in the impugned order and paragraph 5 of the counter filed by the de-facto complainant. The contention of the petitioner needs consideration. It is seen that this practice of verbatim repetition found in the impugned order amounts to cut and past. The learned counsel for petitioner further relied upon the judgment of Hon'ble Apex Court in the case of *Union Public Service Commission vs. Bibhu Prasad Sarangi and others* reported in *(2021) 4 SCC 516* in support of his contention. Further in the analysis portion, there is no discussion to show on what grounds the trial Court had come to such conclusion. It lacks reasoning and satisfaction to arrive at such conclusion.

9.In view of the same, this Court set asides the order dated 01.08.2024 made in Crl.M.P.Nos.44815 and 44813 of 2024 in C.C.No.8297 of 2022 by the learned Metropolitan Magistrate (CCB & CBCID) Court, Egmore, Chennai. The trial Court is directed to pass orders afresh in Crl.M.P.Nos.44815 and 44813 of 2024. It is made clear that this Court not gone into the merits of the either parties submissions. It is for the trial Court to independently decide on its own merits.

10.The petitioner is directed to appear before the trial Court on 14.08.2024 and advance their arguments and the trial Court on hearing either side, pass appropriate orders on merits.

11.With the above directions, these Criminal Revision Cases are allowed. Consequently, connected Criminal Miscellaneous Petitions are closed.

12.08.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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Note: Issue order copy on 13.08.2024.

To

1.The Inspector of Police,
Central Crime Branch,
Vepery, Chennai – 600 007.

2.The Metropolitan Magistrate (CCB & CBCID Cases),
Egmore, Chennai.

3.The Public Prosecutor,
High Court, Madras.

M.NIRMAL KUMAR, J.

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