



Crl.O.P.No.25395 of 2023

In the High Court of Judicature at Madras

Reserved On : 19.3.2024	Delivered on 21.3.2024
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Criminal Original Petition No.25395 of 2023
& Crl.M.P.No.17605 of 2023

B.Gajendran

...Petitioner

Vs

T.Arunachalam

...Respondent

PETITION under Section 482 of the Criminal Procedure Code praying to call for the records in Crl.M.P.No.37894 of 2023 dated 11.9.2023 on the file of the Chief Metropolitan Magistrate, Egmore, Chennai and set aside the same.

For Petitioner : Mr.V.Ramamurthy
For Respondent : Mr.B.Varadaraj

ORDER

This is a petition filed by the petitioner challenging the order dated 11.9.2023 passed by the learned Chief Metropolitan Magistrate,



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Egmore, Chennai-8 (for short, the Court below) in Crl.M.P.No.37894 of 2023 dismissing the petition filed for transfer of the case in C.C.No. 4492 of 2013 pending on the file of the Second Metropolitan Magistrate, Egmore, Chennai-8 (for brevity, the Trial Court).

2. The petitioner (A1) along with three others are facing trial before the Trial Court in C.C.No.4492 of 2013 for offences under Sections 379, 406, 420, 463, 465, 467 and 478 read with Section 34 of the Indian Penal Code.

3. The case of the respondent - complainant is that he was having a company, in which, the petitioner (A1) was the founder-director along with the respondent. Both of them had 25,000 equity shares each and were into the business of real estate. It is alleged that the accused persons forced the respondent to give up his position as a director by illegally transferring the shares in favour of the fourth respondent, who is none other than the mother of the petitioner. That apart, the shares and the jewellery were stealthily removed from the locker and by forging the share transfer application, the shares were also transferred in favour of the mother of the petitioner.



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4. All the accused persons filed a discharge petition before the Trial Court. Thereafter, charges were framed against the accused. This was put to challenge before this Court in Crl.R.C.Nos.1138 & 1140 of 2023. This Court took into consideration the various grounds raised by the accused persons and dismissed both the revisions by a common order dated 30.8.2023 confirming the charges that were framed by the Trial Court.

5. Subsequently, Crl.O.P.No.22838 of 2023 came to be filed before this Court by the second accused to quash the same private complaint filed by the respondent in C.C.No.4492 of 2013 on the very same grounds that were taken in the said revisions. Crl.O.P.No.22838 of 2023 is also listed today along with this criminal original petition and when this Court is not inclined to entertain the same, it is withdrawn and a separate order is passed in that criminal original petition today.

6. The petitioner filed the transfer petition before the Court below mainly on the ground that the Trial Court adopted wrong procedure while framing the charges, that the Trial Court was insisting for the appearance of the accused persons in spite of the interim order



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granted by this Court during the pendency of the revisions, that the accused persons were not given sufficient opportunity to defend themselves effectively, that the procedure contemplated under Chapter XIX-B of the Criminal Procedure Code (Code) was not followed, that the steps taken by the accused persons to send the alleged forged documents for an expert opinion were not even entertained by the Court below and that therefore, the petitioner alleged that he would not get fair justice before the Trial Court.

7. The Court below dealt with the grounds raised by the petitioner and found that no strong grounds were made out for transferring the case in C.C.No.4492 of 2013 from the file of the Trial Court and accordingly, dismissed the petition for transfer. Aggrieved by that, the present criminal original petition has been filed before this Court.

8. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent.



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9. In so far as the first ground that was raised by the petitioner to the effect that the charges were not properly framed, is concerned, the same is unsustainable since the framing of charges by the Trial Court was confirmed by a learned Single Judge this Court while dismissing the said revisions in Crl.R.C.Nos.1138 & 1140 of 2023 by the common order dated 30.8.2023. In so far as the plea with regard to insistence of the Trial Court for the appearance of the accused persons is concerned, the Court below found that the Trial Court did not conduct the proceedings after the memo was filed and the case was adjourned from 18.7.2023 to 11.8.2023 and thereafter to 08.9.2023. Ultimately, the revisions were dismissed by the said common order dated 30.8.2023. Hence, this ground raised by the petitioner also no longer survives.

10. The Trial Court is expected to follow the procedure under Chapter XIX-B of the Code. While doing so, after the charges are framed, the Trial Court, under Section 246(4) of the Code, must inquire as to whether the accused persons want to cross examine any of the witnesses, whose evidence has already been recorded under Section 244(1) of the Code. If the accused persons express their wish



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to cross examine the witnesses already examined in chief, those witnesses can be recalled. At that stage, there is no question of calling the witnesses, who have not been examined by the prosecution at the stage of recording statements under Section 244(1) of the Code. If the prosecution wants to examine any other witnesses, at that point of time, the accused persons will also be given an opportunity to cross examine those witnesses. The Trial Court shall keep the above procedure in mind while proceeding further with the case and sufficient opportunity should be given to the accused persons to put forth their defence.

11. It is seen that this Court, while dismissing Crl.O.P.No.2362 of 2015 filed by the third accused, by order dated 01.2.2019, directed that the entire proceedings in C.C.No.4492 of 2013 should be completed within a period of three months. This period is already over long back. C.C.No.4492 of 2023 has been filed in the year 2013 and nearly 11 years have lapsed. Therefore, some time frame should be fixed for completion of the entire proceedings pending before the Trial Court.



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12. In view of the above discussions, this Court does not find any illegality or infirmity in the impugned order passed by the Court below warranting interference of this Court while exercising the jurisdiction under Section 482 of the Code.

13. Accordingly, the above criminal original petition is dismissed and there shall be a direction to the Trial Court namely the learned Second Metropolitan Magistrate, Egmore, Chennai-8 to complete the proceedings in C.C.No.4492 of 2013 within a period of three months from the date of receipt of a copy of this order and a report shall be submitted to the Registrar - General of this Court after completion of the entire proceedings. Consequently, the connected Crl.M.P. is also dismissed.

21.3.2024

To

- 1.The Chief Metropolitan Magistrate,
Egmore, Chennai-8.
- 2.The Second Metropolitan Magistrate,
Egmore, Chennai-8.
- 3.The Public Prosecutor,
High Court, Madras.



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N.ANAND VENKATESH,J

RS

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