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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:10.06.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.O.P(MD).No.20278 of 2022
and
Crl.R.C.(MD).No.409 of 2023
and
Crl.M.P.(MD).Nos.14059 of 2022 & 6012 of 2023

Crl.O.P.(MD).No.20278 of 2022:

Marrygrace @ Mary Grace ... Petitioner

Vs.

1.The Sub Inspector of Police,
CCIW-CID, Sivagangai Police Station,
Sivagangai,
(In Crime No.1 /2021).
2.Manimegalai ... Respondents

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records more particularly the impugned charge sheet in C.C.No.153 of 2021 on the file of the learned Judicial Magistrate Court No.2, Sivagangai, and quash the same as against the petitioner.

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For Petitioner : Mr.M.S.Parthiban

For Respondents : Mr.R.Sivakumar,
Government Advocate (Crl. Side) for R1

Crl.R.C.(MD).No.409 of 2023:

Marrygrace @ Mary Grace ... Petitioner

Vs.

1.The Sub Inspector of Police,
CCIW-CID, Sivagangai Police Station,
Sivagangai,
(In Crime No.1 /2021). ... Respondent

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records relating to the order dated 22.02.2023 made in Cr.M.P.No.10912 of 2023 in C.C.No.153 of 2021, on the file of the learned Judicial Magistrate Court No.II, Sivagangai, and set aside the same.

For Petitioner : Mr.M.S.Parthiban

For Respondents : Mr.R.Sivakumar,
Government Advocate (Crl. Side)

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COMMON ORDER

The petitioner has filed petition in Crl.O.P.(MD).No.20278 of 2022 to quash the proceedings initiated against her in C.C.No.153 of 2021 on the file of the learned Judicial Magistrate Court No.2, Sivagangai.

2.The petitioner filed this petition in Crl.R.C.(MD).No.409 of 2023 to set aside the impugned order dated 22.02.2023 made in Cr.M.P.No.10912 of 2023 in C.C.No.153 of 2021, by the learned Judicial Magistrate Court No.II, Sivagangai.

3.The allegation in the final report against the petitioner and other accused is that the petitioner and the other accused conspired together and obtained loan of Rs.1,74,000/-. Further allegation is that all the accused conspired together and created false records and obtained loan.

4.According to the revision petitioner, the allegation against the petitioner is that the loan was granted without verifying the existence of the building. There was manipulation of records relating to the disputed property and valuation was also not properly done.

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5.The learned counsel appearing for the petitioner made the following defence submissions:

5.1.The patta is concerned, it was granted at the time of loan in the year 2002 patta stood in the name of one Arumugam S/O.Karuppaya, and the same was affirmed by the statement of the village administrative officer.

5.2.The existence of the building is concerned, all the witnesses stated that the building existed little away from the survey Number. Further, the Sub Registrar's statement was also recorded and he has stated that the registration office has not registered any document relating to the building situated at Poramboke. Hence, it implies that the building was existing.

5.3.The valuation certificate is concerned, he furnished the valuation only on the basis of the available records and the same cannot be doubted. Thus, he wants to discharge the accused and quash the proceedings against him.

5.4.Earlier, the petitioner filed a discharge petition in Cr.M.P.(MD).No. 10912 of 2023 on the file of the learned Judicial Magistrate Court No.II, Sivagangai, and the same was dismissed by the learned trial Judge. Challenging the same, he filed the revision petition. Parallely, he also filed quash petition under Section 482 of Cr.P.C.

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6.The learned Government Advocate (Crl. Side) appearing for the respondent Police on instructions, submitted that sufficient material is available on record. The existence of building in S.No.107/3 little away from the disputed property is a question of fact which is to be decided after appreciation of the evidence. The patta stood in the name of one Arumugam S/O.Karuppaya before or after the occurrence is to be tested during the course of the trial, after the recording of evidence. The valuation is correct or not is to be decided at the time of trial.

6.1.In addition to the above submission, the learned Government Advocate (Crl. Side), on instructions, further submitted that in this case, charge was framed and examination of the witnesses already commenced and 14 witnesses were examined. Hence, at this stage, this quash petition is not maintainable. Apart from that filing of quash petition after dismissal of the discharge petition with same points is not legally maintainable. After dismissal of the discharge petition, no further adjudication is necessary in the quash petition on the ground that the grounds raised in this quash petition was already discussed by the trial Court.

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7.This Court considered the rival submission made by the learned counsel appearing on either side and also perused the materials available on record.

8.The detailed submissions made by the petitioner, as rightly argued by the learned Government Advocate (Crl. Side) is a disputed question of fact and this Court can not go into it at this stage. The Hon'ble Supreme Court in the case of ***State of Maharashtra v. Maroti,*** reported in ***2023 4 SCC 298*** has held that the quashment of the proceeding under Section 482 of Cr.P.C., upon testing veracity in the statement recorded under Section 161 of Cr.P.C., is unjustified. Apart from that, as laid down by the Hon'ble Supreme Court in the case of ***Amar Chand Agarwalla v. Shanti Bose*** reported in ***AIR 1973 SC 799*** after examination of the number of witnesses, the quash petition can not be entertained and also after dismissal of the discharge petition, no further adjudication is necessary in this quash petition for the reason that both the trial Court and this Court find sufficient material to frame the charges against the petitioner and continue the trial.

9. the learned counsel appearing for the petitioner relied the judgment of the Hon'ble Supreme Court in the case of ***Satish Mehra Vs. State of NCT of Delhi and Another*** reported in ***2013 AIR (SC) 506,*** stating that after examination of the witnesses the quash petition can be entertained. The Hon'ble

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Supreme Court in the said case, after considering the absence of the sufficient material to constitute the offence and to proceed with trial, has held that the discharge petition could be entertained even after examination of witnesses. In this case, both trial Court as well as this Court find sufficient materials to proceed with the trial. Hence, the Hon'ble Three Judges Bench of the Supreme Court in the case of ***Amar Chand Agarwalla v. Shanti Bose,*** reported in ***AIR 1973 SC 799*** is squarely applicable to the present facts of the case.

10.In the result, both the Criminal Original Petition and Criminal Revision Case are dismissed confirming the order dated 22.02.2023 made in Cr.M.P.No. 10912 of 2023 in C.C.No.153 of 2021, by the learned Judicial Magistrate Court No.II, Sivagangai. Consequently, the connected criminal miscellaneous petitions are closed.

10.06.2024

NCC : Yes/No
Index : Yes/No
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To

1.The learned Judicial Magistrate Court No.2,
Sivagangai.

2.The Sub Inspector of Police,
CCIW-CID, Sivagangai Police Station,
Sivagangai,

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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K.K.RAMAKRISHNAN, J.

vsg

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