IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.03.2025

Pronounced on : 28.03.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.6967 of 2024
and
Crl.MP.Nos.5089 and 5090 pf 2024

P.Praveen Kumar ... Petitioner

Vs.

1. The State Represented by
Inspector of Police,
Forgery Investigation Wing Team-33,
CCB-II, Vepery, Chennai-600 007.

2. R.Devendran ... Respondents.

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the proceedings against the petitioners in C.C.No.6446 of 2022 pending on the file of the learned Metropolitan Magistrate for Exclusive Trial of CCB Cases, Egmore.

For Petitioner : Mr.P.Praveen Kumar
(Party-in-Person)

For Respondents : Mr.A.Gopinath
Government Advocate (Crl.Side)
for R1
: Mr.R.Vivekanandan for R2

O R D E R

This petition has been filed to quash the proceedings in C.C.No.6446 of 2022 on the file of the learned Metropolitan Magistrate for Exclusive Trial of CCB Cases, Egmore, Chennai.

2. The petitioner is arrayed as first accused in C.C.No.6446 of 2022. On the complaint lodged by the second respondent, the first respondent has registered an FIR in Cr.No.158 of 2021 for the offences punishable under Sections 420, 465, 468 r/w120B of IPC as against two accused persons. The first accused is the son and the second accused is the father. Now, the father died and all the charges abated as against the second accused.

3(i). The second respondent has lodged the complaint alleging that he is father-in-law of the petitioner's brother Prem Kumar and married his daughter Charulatha and they are settled in London. On the strength of power of attorney executed by his son-in-law, he has lodged a complaint alleging that the petitioner's mother Baby Perumal was running a proprietrix firm in the name and style of "M/s.National Security Agency" at Chennai. It is a proprietorship concern and it is providing security for the property maintained by the official liquidator appointed by the Courts. She was running the said security services in several States including Kerala, Andhra Pradesh, Kolkatta and Tamilnadu.

3(ii). While being so, his son-in-law was appointed as General Manager for the said agency by his mother on 15.06.2017 and also as authorized signatory of the cheque. Be that as it may, on 21.07.2018, his mother died. However, suppressing the said fact, the petitioner and his father in order to grab the entire amount from the said account of his mother, dealt with the account and misappropriated to the tune of Rs.5.5 crores for his personal use.

3(iii). The petitioner also fabricated a letter dated 11.02.2019 as if his father was authorized as additional signatory to operate the account maintained by Baby Perumal. Further, they have fabricated document to run the proprietrix firm called "M/s.National Security Agency" such as declaration of ownership by forging the signature as well as the seal of Notary Public. Thereby, both the accused had gained more than Rs.5.5 crores. Hence, the complaint.

4. On receipt of the complaint, the first respondent police has registered the FIR in Cr.No.158 of 2021 and after completion of investigation filed final report. The said final report has been taken cognizance by the learned Metropolitan Magistrate for Exclusive Trial of CCB Cases, Egmore, Chennai for the offences punishable under Sections 420, 465, 468 r/w120B of IPC in C.C.No.6446 of 2022.

5(i). The petitioner, who appeared party in person submitted that after the demise of his mother on 21.07.2018, the proprietrix firm called " National Security Agency" Chennai was being taken over by the the petitioner's father in order to provide continue service to the clients and to pay pending salary to their staff. Since the petitioner is one of the sons, he had no objection to continue the said agency by his father Perumal.

5(ii) He further submits that while filing income tax returns for the financial year 2018-2019, his father came to know that TDS is remitted to his deceased mother and therefore as per their Auditor's advice to change the ownership of the firm, the petitioner's father had taken new registration and continued the agency by providing securities to the clients. Thereafter, the petitioner's father had sent a communication to their banker namely Union Bank of India, Kollathur Branch, Chennai on 26.12.2019. Thereby, informed the demise of the petitioner's mother and also produced the death certificate.

5(iii) He also submits that the petitioner's father being the kartha of family, without opening new account, he operated the said account by changing the proprietorship. Infact, the second respondent also filed a partition suit in O.S.No.123 of 2022 on the file of the learned Additional District Judge, Ponneri and it is pending, in which, the petitioner's brother prayed that by dividing the suit properties into two equal shares and allotted ½ share separately to the petitioner's brother. Therefore, no offence is made out as against the petitioner. He further submitted that his father already died and charges levelled against him are now abated.

5(iv) The petitioner also submits that the second respondent has no locus to lodge any complaint, since the power of attorney executed in his favour was not adjudicated so far. It is settled law that the criminal law can be set in motion by any person. The submission made by the petitioner cannot be countenanced.

6(i). The learned counsel for the second respondent submits that without informing the demise of his mother Baby who died 21.07.2018, operated the account of his mother and misappropriated to the tune of Rs.5.5 crores. They also produced forged documents as if the accused permitted to operate the account and change the ownership.

6(ii). The learned counsel for the second respondent further submits that even according to the petitioner, they have produced letter to the bank as well as change of proprietrix firm. Immediately after demise of the petitioner's mother, they had operated the account without informing the demise of account holder and had withdrawn the amount to the tune of Rs.5.5 crores. Therefore, the charges are clearly made out as against the petitioner.

7. The learned Government Advocate (Crl. Side) appearing for the respondent police reiterated the prosecution case and submitted that immediately after the demise of the petitioner's mother they

have operated the account without informing the demise of account holder and had withdrawn the amount to the tune of Rs.5.5 crores. He further submitted that the first accused involved in this case is no more.

8. It is seen that on the complaint lodged by the second respondent, the first respondent registered a case in Crime No.158 of 2021 for the offences under Sections 420, 465, 468 r/w 120B of IPC. After completion of investigation, the first respondent filed final report and the same has been taken cognizance in C.C.No.6446 of 2022 by the trial Court and it is pending. In view of the above, there are specific allegations and materials are available to attract all the charges against the petitioner.

9. The Hon'ble Supreme Court of India in the judgment reported in ***2019 (4) SCC 351*** in the case of ***Devendra Prasad Singh Vs. State of Bihar & Anr., (Crl.A.No.579 of 2019*** *dated* ***02.04.2019)*** while dealing with the petition to quash the entire criminal

proceedings held that the High Courts have no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and therefore, there was no *prima facie* case made out as against the accused. It could be done only by the trial Court while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order that the charge sheet has been laid on the basis of the inconsistentency statement under Section 161 of Cr.P.C.

10. Further, the Hon'ble Supreme Court of India in the judgment reported in ***2019 (10) SCC 686*** in the case of ***Central Bureau of Investigation Vs. Arvind Khanna, (Crl.A.No.1572 of 2019*** dated 17.10.2019) held that the High Courts cannot record the findings on the disputed facts. The defence of the accused is to be tested after appreciation of evidence by the trial Court during the trial. Therfore, this Court has no power to consider the disputed facts under Section 482 of Cr.P.C.

11. The Hon'ble Supreme Court of India in another judgment dated ***02.12.2019*** passed in ***Crl.A.No.1817 of 2019*** in the case of ***M.Jayanthi Vs. K.R.Meenakshi & anr,*** held that while considering the petition for quashment of complaint or charge sheet, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that consititue certain offences complained of. Further, the Court can also see whether the preconditions requisite for taking cognizance have been complied with or not and whether the allegations contained in the complaint, even if accepted in entirety, would not consititue the offence alleged. Whether the accused will be able to prove the allegations in a manner known to law would arise only at a later stage i.e., during trial.

12. Further this Court cannot observe at this stage that the initiation of criminal proceeding itself is malicious. Whether the criminal proceeding is malicious or not, is not required to be

considered at this stage. The same is required to be considered at the conclusion of the trial. Therefore, the ground raised by the petitioner to quash the final report/charge sheet cannot be entertained to quash the entire proceedings.

13. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.6446 of 2022 on the file of the learned Metropolitan Magistrate for Exclusive Trial of CCB Cases, Egmore. The petitioner is at liberty to raise all the grounds before the trial Court. The trial Court is directed to complete the trial within a period of three months from the date of receipt of copy of this Order.

14. Accordingly, the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are also closed.

28.03.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
Vv

To

1. The Metropolitan Magistrate for
Exclusive Trial of CCB Cases, Egmore.

2. The Inspector of Police,
Forgery Investigation Wing Team-33,
CCB-II, Vepery, Chennai-600 007.

3. The Public Prosecutor,
Madras High Court,
Chennai.

G.K.ILANTHIRAIYAN, J.

Vv

Pre-delivery Order
made in
Crl.O.P.No.6967 of 2024

28.03.2025