



Crl.O.P.No.17406 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17.03.2025

CORAM:

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

Crl.O.P.No.17406 of 2023
and Crl.M.P.Nos.11320 & 11322 of 2023

Parameswari

... Petitioner

Vs.

1. The State Rep. by
The Inspector of Police,
Central Crime Branch,
EDF-1, Team -1,
Veperry, Chennai – 07.

2. C.Kalyan

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the entire records pertaining to C.C.No.4426 of 2021 pending on the file of the learned CCB/CBCID Metropolitan Magistrate Court, Egmore at Chennai and quash the same as illegal, incompetent and ultra virus.

For Petitioner : Mr.Ma.P.Thangavel

For Respondents

For R1 : Ms.J.R.Archana
Government Advocate (Crl.Side)

For R2 : Mr.A.Palaniappan



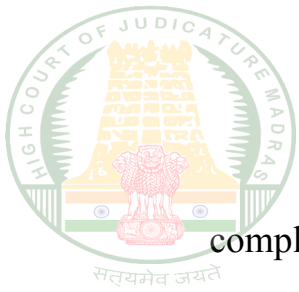
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ORDER

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This Criminal Original Petition has been filed to quash the proceedings in C.C.No.4426 of 2021 pending on the file of the learned Metropolitan Magistrate, CCB/CBCID Court, Egmore, Chennai, thereby taken cognizance for the offences punishable under Sections 406, 408, 420, 468 r/w. 120(B) of IPC.

2. The case of the prosecution is that the first accused is an Auditor of M/s. Perfect Window System and he was appointed by A2 to A4. The second accused is none other than the mother of the first accused. The third accused is his father and fourth accused is the wife of the first accused. The accused 5 & 6 are working in the M/s. Perfect Window System in the accounts section. As instructed by the first accused, all the money transactions are done by the accused 7 & 8. Accordingly, whenever the materials sold from M/s. Perfect Window System, the accused 7 & 8 without accounting the same to the partnership firm account, remitted the money to the personal account of A1 to A4 to the tune of Rs.24,49,800/-. On the said complaint, the first respondent registered FIR in Crime No.244 of 2014 for the offences punishable under Sections 406, 408, 420, 468 r/w 120(b) of IPC. After



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completion of investigation, the first respondent filed final report and the same has been taken cognizance in C.C.No.4426 of 2021, on the file of the learned Metropolitan Magistrate, CCB/CBCID Court, Egmore, Chennai.

3. The learned counsel appearing for the petitioner submitted that the petitioner is arrayed as A7 and he was working in the first accused partnership firm. He is only an employee and nothing to do with the alleged offences. There is absolutely no materials of evidence that A7 and A8 had deposited the amount to the accounts of the A1 to A4. Therefore, no offence is made out as against the petitioner. He further submitted that A1 was only looking after the day-to-day affairs of the company and A2 is the partner of the company having 10% of share. Therefore, the petitioner being an employee, who was working under the first accused, nothing to do with the allegations as against A1 to A4.

4. The learned counsel appearing for the second respondent submitted that the petitioner and A8 alone looking after the entire accounts of the first accused. As instructed by the first accused all the sales proceedings were transferred to the personal accounts of A2 to A4



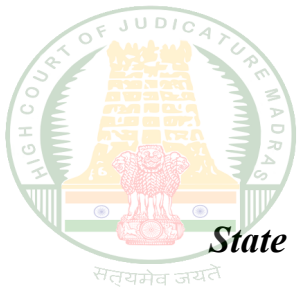
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instead of the partnership account. They looted a sum of Rs.24,49,800/- from the partnership firm. They knew very well that they deposited the entire amount in the personal account of A1 to A4. Therefore, they also played active role in this crime and there are materials to attract the offences under Sections 406, 408, 420, 468 r/w 120(b) of IPC, as against the petitioner.

5. Heard the learned Counsel appearing on either side and perused the materials placed on record.

6. It is seen that on the complaint lodged by the second respondent, the first respondent registered a case in Crime No.244 of 2014 for the offences punishable under Sections 406, 408, 420, 468 r/w 120(b) of IPC. After completion of investigation, the first respondent filed final report and the same has been taken cognizance in C.C.No.4426 of 2021, on the file of the learned Metropolitan Magistrate, CCB/CBCID Court, Egmore, Chennai and it is pending. To quash the said criminal proceeding, the petitioner filed the present petition.

7. The Hon'ble Supreme Court of India in the judgment reported in **2019 (4) SCC 351** in the case of **Devendra Prasad Singh Vs.**



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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 inconsistency statement under Section 161 of Cr.P.C.

8. 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. Therefore, this Court has no power to consider the disputed facts under Section 482 of Cr.P.C.



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9. 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 constitute 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 constitute 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.

10. 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 state. 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.



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11. In view of the above discussions, this Court is not inclined to quash the proceedings in C.C.No.4426 of 2021, on the file of the learned Metropolitan Magistrate, CCB/CBCID Court, Egmore, Chennai. The petitioner is at liberty to raise all the grounds before the trial Court. Considering the facts and circumstances of the case, the personal appearance of the petitioner is dispensed with and he shall be represented by a counsel after filing appropriate application. However, the petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C., and at the time of passing judgment. The trial Court is directed to complete the trial within a period of six months from the date of receipt of copy of this Order.

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

17.03.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
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G.K.ILANTHIRAIYAN, J.

rts

To

1. The Metropolitan Magistrate,
CCB/CBCID Court, Egmore,
Chennai.

2. The Inspector of Police,
Central Crime Branch,
EDF-1, Team -1,
Veperry, Chennai – 07.

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

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