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CrI.R.C.No.1422 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.10.2024
PRONOUNCED ON : 31.01.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

**CrI.R.C.No.1422 of 2024
and
CRLM.P.No.12004 of 2024**

Shibu K ... Petitioner / Proposed Accused

Vs.

1. C.S.Padam Chand ... 1st Respondent / Defacto
Complainant

2.The Commissioner of Police,
Office of the Commissioner of Police,
Veppery,
Chennai – 600 007

3.The Inspector of Police,
Forgery Team – 27,
Vepery,
Chennai- 600 007

... Respondents 2 and 3 / R1 & R2

Criminal Revision Petition filed under Section 442 of BNSS, 2023, against the order dated 23.07.2024 made in CrI.M.P.No.17288 of 2024, on the file of Metropolitan Magistrate For Exclusive Trial of CCB Cases (Relating to Cheating Cases in Chennai) and CBCID Metro Cases, Egmore, Chennai-08.



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CrI.R.C.No.1422 of 2024

For Petitioner : Mr.N.Manokaran
For Respondent-1 : Mr.C.P.Sivamohan
For R-2 & R3 : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

The Criminal Revision Case is filed against the order, dated 23.07.2024, in CrI.M.P.No.17288 of 2024, passed by the learned Metropolitan Magistrate For Exclusive Trial of CCB Cases (Relating to Cheating Cases in Chennai) and CBCID Metro Cases, Egmore, Chennai-08.

2. Mr.N.Manokaran, the learned counsel appearing for the petitioner would submit that the petitioner is a Film Producer. In 2018, he produced a film titled, 'Saamy 2,' directed by Hari and acted by Vikram. He invested a lot for the production of the said film. Thereafter, he gave area wise distribution right to various distributors who approached him to buy the film. The petitioner gave Chengalpat area to one M/s.Volmart rep. by Mr.Sai Baba for the consideration of Rs.6,00,00,000/-. For that purpose, a Minimum Guarantee Agreement,



dated 27.08.2018, was executed with him. The 1st respondent also entered into a Minimum Guarantee Agreement, dated 05.09.2018, with the petitioner's Thameems Films for distribution of "Saamy 2" in Chennai City area. Similarly, the petitioner entered into an agreement dated 20.09.2018 with C.S. Padam Chand by giving him distribution right of the said film for the areas of Coimbatore, Erode, Nilgiris and Tiruppur District for Rs. 4.50 crores, and 1st respondent paid Rs. 2,00,00,000/- only. He failed to pay the balance Rs.2,50,00,000 as agreed under the said agreement. The petitioner is not having a copy of the said agreement, since it was signed during late night on 20.09.2018 and retained by the 1st respondent.

3. The petitioner submits that later, he demanded the outstanding dues from the 1st respondent in person and by e-mail. While so, M/s. HR Pictures produced a film titled as 'Thugs' acted by the petitioner's son as a hero. On smelling that, the 1st respondent appears to have issued a Notice for Arbitration, dated 18.02.2023, to the petitioner's previous office address, which was closed in April, 2019 itself, wherein the 1st respondent referred Clause 17 of the bogus Temporary Transfer of Copy Rights Agreements, dated 20.09.2018. It was not served on the petitioner due to wrong address given by the 1st respondent. In order to prevent the



release of the film 'Thugs', the 1st respondent filed O.A. Nos.130 and 131 of 2023 before this Court against the petitioner, projected two different fraudulent Temporary Transfer of Copy Rights Agreements, dated 20.09.2018. In which, he prayed for an order of interim injunction restraining the petitioner from releasing the film 'Thugs'. This Hon'ble Court was pleased to grant an order of exparte ad interim injunction on 21.02.2023. Immediately, after receipt of the notice, the petitioner filed a counter affidavit *inter alia* disputing the agreement dated 20.09.2018 relied upon by the 1st respondent, as forged and Impersonated.

4. The petitioner's wife Mumthas Muhammad, Managing Partner of M/s. HR Pictures filed Application Nos.70 and 71 of 2023 to Implead herself and also to vacate the order of interim injunction dated 21.02.2023 made in O.A. Nos.130 and 131 of 2023 and the said petitions were allowed on 23.02.2023. Aggrieved against, the 1st respondent filed OSA (CAD) No.18 of 2023 before the Division Bench and conditional orders have been passed. Subsequently, the Division Bench was pleased to pass an order dated 14.03.2023, by partly allowing OSA(CAD)No.18 of 2023 on 24.03.2023, and directed the parties to go before the Arbitrator. Pursuant to the order dated 27.07.2023 in Arb.O.P. (Com. Div) No.319 of 2023, this Court was appointed The Hon'ble Mr.Justice V.Bharathidasan,



as the sole Arbitrator. Soon after receiving the interim injunction order dated 21.02.2023, the petitioner came to know the fraudulent creation of the document dated 20.09.2018 containing Arbitration Clause. Immediately, the petitioner gave a complaint dated 13.03.2023 to the 2nd respondent, who in turn, forwarded the complaint to the SHO, Valasaravakkam PS. The Inspector enquired forwarded the petitioner's complaint to the 3rd respondent, since the amount involved is beyond their pecuniary jurisdiction of the said police station, who in turn, after enquiry, closed the petitioner's complaint on 18.07.2023 as if, the petitioner has not produced the original copy of the fraudulent agreements dated 20.08.2018.

5. Aggrieved over the same, the petitioner filed Crl.O.P. No. 25917 of 2023 and directed the 3rd respondent to register the FIR and conduct investigation in accordance with law instead of closing the complaint without examination of the complainant. Pursuant to the direction of this Court, dated 01.12.2023, the 3rd respondent registered a case in Crime No. 27 of 2024, on 14.02.2024 under Sections 465 and 468 IPC. However, no investigation was done and the accused/1st respondent was not arrested. In fact, the 1st respondent filed Crl.O.P.No.4400 of 2024 to quash the FIR in Crime No.27 of 2024, and the same was closed on 26.04.2024.



The 1st respondent filed Crl.O.P. No.5168 of 2024 for anticipatory bail and it was dismissed on 03.04.2024 by observing that "the petitioner has involved in serious offence and the investigation is still going on, enlarging the petitioner on anticipatory bail at this point of time, when the offence is serious in nature and there is likelihood of the petitioner indulging in activities which would be prejudicial for investigation, this Court is not inclined to grant anticipatory bail to the petitioner". Thus, the first respondent received an adverse order.

6. The learned Magistrate not considered the consequence test "before passing the order under Section 156(3) Cr.P.C., since the 1st respondent deliberately withheld the material facts during the course of hearing in Crl.M.P. No. 17288 of 2024. The complaint filed under Sec. 156 (3) Cr.P.C., without complying with the pre-requisite procedures contemplated under Sections 154 (1) and 154(3) Cr.P.C., is not maintainable in law. The complaint under Sec.156(3) Cr.P.C., was filed on 21.03.2024 in respect of the alleged occurrence dated 21.09.2018, with an ulterior motive of harassing the petitioner. The version given in the affidavit filed in Crl.M.P. No. 17288 of 2024 need not be accepted for referring the matter under Sec.156(3) Cr.P.C. A complaint U/s. 156(3) Cr.P.C., was filed in a routine manner without taking any responsibility.



Even though the 1st respondent has filed an affidavit as contemplated in ***Priyanka Srivastava case (2015 (6) SCC 287)***, he has not made any conscious effort to check his claim, but filed a false affidavit. Further, in the Judgment in ***Divine Retreat Centre Vs. State of Kerala and Ors*** reported in ***2008 3 SCC 542*** the Apex Court held that no judicial order can ever be passed by any court without providing a reasonable opportunity of being heard to the person likely to be affected by such order and particularly when such order results in drastic consequences of affecting one's own reputation.

7. In the meantime, without disclosing the above facts and events, the 1st respondent/accused in Crime No.27 of 2024 adopted a novel method of filing a criminal complaint in Crl.M.P.No.17288 of 2024 on the file of the learned Metropolitan Magistrate for Exclusive Trial of CCB and CBCID Metro Cases, Egmore, Chennai under Sec. 156(3) CrI.P.C. on 21.03.2024. It was kept pending for four months. While so, the learned Magistrate allowed the said Crl.M.P. No.17288 of 2024, on 23.07.2024 and forwarded the complaint to the Deputy Commissioner of Police, Central Crime Branch, Vepery, Chennai-7, directing to appoint Inspector of Police to enquire the matter and register FIR, on the basis of the complaint dated 31.01.2021, within 15 days from the date of receipt of



that order and investigate into the matter and file Report within a period of 3 months, otherwise, an explanation should be provided. The Inspector of Police, who nominated by the Deputy Commissioner of Police, was directed to enquire the matter and register an FIR." Against which, the petitioner filed the present Criminal Revision Case.

8. The learned counsel further submitted that the petition filed under Section 156(3) CR.P.C in CrI.M.P.No17288/2024 the quash application filed in CrI.O.P.No.4400 of 2024 and the anticipatory bail application filed in CrI.O.P.No.4400 of 2024 is the same counsel in all the three applications, he is the counsel for the 1st respondent herein also. Hence, suppression is very apparent. Hence, it is well established that any order after obtaining by suppression of false particulars is *non est* in law. In view of the same, the impugned order is liable to be set aside.

9. Mr.C.P.Sivamohan, the learned counsel appearing for the 1st Respondent / Defacto complainant would submit that the 1st respondent is in Film Industry for more than 4 decades and produced three films and distributed more than 100 films, besides having financed for more than 400 films. The Petitioner/Proprietor of M/s.Thameens Film, produced the film titled 'SAAMY', starring Chiyan Vikram and others. The Petitioner



approached the 1st Respondent/Defacto Complainant, for distributorship and entered into a Minimum Guarantee Agreement, dated 05.09.2019 with the defacto complainant. The Temporary Transfer of Copyrights Agreement for the film 'SAAMY' entered into and executed between 1st respondent and the petitioner for the CENT area on 20.09.2018 and Temporary Transfer of Copyrights Agreement for Chengalpet areas also on 20.09.2018 late in the night. In respect of the Temporary Transfer Copy Rights Agreement for CENT (Coimbatore, Erode, Nigiris and Thirupur) Areas, the 1st respondent paid Rs.2,00,00,000/- and later he also paid a sum of Rs.2,50,00,000/-, totalling to Rs.4,50,00,000/-, as refundable deposit amount and similarly, under Temporary Transfer of Copyrights Agreement for Chengalpattu Distribution Area, the Petitioner paid a sum of Rs.4,25,00,000/-, as refundable deposit amount.

10. The learned counsel for the defacto complainant further submitted that the film, 'SAAMY²' (Saamy Square) was not a box office success. As per the agreement, the defacto complainant is entitled to get refund of the total sum of Rs.4,80,31,024/- from the petitioner. As per Clause 12 of the Agreement, the petitioner has to refund the shortfall amount of Rs.4,80,31,024/- to the defacto complainant within a period of 45 days from the date of the general release of the said Film, with interest



at the rate of 36% per annum. but the petitioner failed to repay the amount. Hence, the defacto complainant issued an Arbitration Notice, dated 18.02.2023 to the petitioner seeking his expressed consent for appointment of a Sole Arbitrator to adjudicate the dispute. The defacto complainant filed a case in O.A.No.130 of 2023 and O.A.No.131 of 2023 against the petitioner and M/s.H.R. Pictures from restraining the release of the movie named 'Thugs' without paying the amount and in the said case, a common order was passed dismissing the applications on 23.02.2023. Aggrieved over the same, the defacto complainant preferred O.S.A.No.(CAD)No.18/2023 and that was allowed and another O.S.A.No.(CAD) No.31 of 2023 still pending. He filed Arbitration O.P.No.319 of 2023 for appointment of a sole Arbitrator and the same was allowed on 27.07.2023 and the Hon'ble Mr. Justice V. Bharathidasan, (Retd..) was appointed as the Sole Arbitrator.

11. It is the further contention of the defacto complainant that the petitioner wantonly and deliberately cheated and defrauded the defacto complainant. The petitioner convinced the defcto complainant that he was in need of money as the movie was said to be released on the next day i.e..21.09.2018 in the Chengalpet area and accordingly, thereafter late in the evening, another Temporary Transfer of Copyrights Agreement was



signed on the same day and only the Colour photo copies of agreements were given to the defacto complainant and the petitioner promised the defacto complainant that after release of the said film, the original agreements would be handed over to him, but he never given the Agreements as promised. The Petitioner committed the rank cheating and criminal breach of trust by not handing over the original Agreement, except colour photo copies of the Agreement and therefore that score, he now taken a stand that the defacto complainant forged the signature of te petitioner and created document. In this regard, the defacto complainant gave complaint to th Inspector of Police, Forgery Wing, Chennai, requesting to take action against the petitioner and recover his money from the petitioner for a sum of Rs.4,80,31,024/-.

12. The learned counsel for the defacto complainant further submitted that suppressing all the above said facts, the petitioner lodged a false complaint against the defacto complainant on 27.04.2023 as if he was cheated by the defacto complainant, for which the defacto complainant gave Commissioner of Police, Chennai on 31.01.2024, requesting him to reject the complaint of the petitioner, dated 27.04.2023 and take up the complaint of the defacto complainant on file and proceed against the petitioner according to law. In this regard, the deacto



complainant also gave complaint, dated 31.01.2024, to the Inspector of Police, Forgery Wing, Chennai, as against the petitioner requesting to take the complaint on file and register the FIR, against the petitioner. Since, no action taken, the defacto complainant filed a petition in Crl.M.P.No.17288/2024 before the learned Metropolitan Magistrate, under Section 156(3) Cr.P.C., seeking to direct the 2nd respondent Police to investigate the complaint and register the same in accordance with law. The learned Magistrate allowed the petition by forward the complaint of the petitioner to the Deputy Commissioner of Police, Central Crime Branch, Vepery, Chennai-7.

13. Mr.A.Damodaran, the learned Additional Public Prosecutor appearing for the State would submit that the 1st respondent filed a petition under Section 156(3) of Cr.P.C., before the trial Court. The trial Court, on considering the petitioner's complaint, directed the respondent Police to register the FIR and to investigate. During the enquiry and consideration of 156(3) Cr.P.C, petition, Notice was ordered to the respondent. The respondent disclosed the fact that a case in Crime No.27/2022, for the offence under Sections 465 and 468 IPC., was registered on 14.04.2022, on the complaint given by the petitioner and it is a business dispute between the petitioner and the 1st respondent.



Further, the respondent police also informed the Court that 41(A) notice served to the 1st respondent for appearance for enquiry. Instead of appearing for the enquiry, the 1st respondent filed the quash application and the same was closed, thereafter, filed Crl.M.P.No.5168/2024 and sought an interim order on 12.03.2024 to appear before the respondent and to participate in investigation. The 1st respondent appeared on 22.03.2024 and informed that he is not in a possession of the original documents and only produced colour photo copies of the documents and after dismissal of the anticipatory bail application, the first respondent absconded himself. Further, the Police filed an objection that to protect himself the above complaint has been lodged against the petitioner.

14. I have heard the learned counsel appearing on either side and perused the materials available on record.

15. On perusal of the records it is seen that in the impugned order the contention of the 1st respondent in the complaint has been extracted. From the perusal of the complaint it is seen that the 1st respondent being an accused in Crime No.27/2024 has not been disclosed. While extracting the submissions of the learned Additional Public Prosecutor before the lower Court in the impugned order it is recorded that the Registration of



the FIR, dismissal of the anticipatory bail application, closure of the quash application, but strangely, in the points for consideration, there is no reference about these aspects. It is seen that in this case, 156(3) Cr.P.C., complaint was filed before the lower Court on 21.03.2024. The case in Crime No.27/2024 against the 1st respondent came to be registered on 14.02.2024. This registration of FIR was subsequent to the petitioner approaching this Court in Crl.O.P.No.25917/2023. By order dated 01.12.2023, this Court given a direction and thereafter, FIR has been registered. Prior to it, the petitioner, after receiving interim injunction order, dated 21.02.2023, passed in O.A.Nos.130 and 131 of 2023 about the fraudulent creation of the documents viz., transfer of Copy Rights Agreement, the petitioner lodged the complaint to the CCB Police. Notice was ordered on 26.06.2023. On the orders of this Court, an FIR came to be registered. Thereafter, the 1st respondent filed the quash application in Crl.O.P.No.4400/2024 and the same was closed on 26.02.2024, and the Anticipatory Bail application in Crl.O.P.No.5168/2024 was dismissed on 03.04.2024. Neither the registration of the case nor the subsequent orders passed by this Court were informed to the Magistrate Court by the petitioner, which is the suppression. Though the Additional Public Prosecutor attached to the Magistrate Court given all these particulars, strangely, the Magistrate in the impugned order on the points for



consideration, not referred or adverted to these aspects, but merely reproduced the complaint, directed the respondent police and passed the impugned order. Further, the Apex Court in the case of **V.C.Shukla Vs. State Through CBI** reported in **1980 AIR 962** held that Sub-section 3 of Section 397 does not limit the inherent power of High Court contained in Section 482. Thus, in case of miscarriage of justice, this Court can very well entertain the above Revision.

16. This Court finds that the 1st respondent has not come with clean hands suppressing the facts filed the petition, which the Magistrate not adverted and passed the impugned order. Further it is seen that it is only a commercial dispute between the petitioner and the 1st respondent, which has been attempted to give a criminal colour, as though some documents forcibly obtained and based on the documents, payments denied. Now, it is stated that the documents are not available, which is the basis of the entire dispute. Thus, from the above it is seen that there have been suppression and the real truth have not been disclosed. In view of the same, this Court is inclined to quash the proceedings.

17. In view of the forgoing reasons, the Criminal Revision Case is allowed and the order dated 23.07.2024, passed in Crl.M.P.No.17288 of



CrI.R.C.No.1422 of 2024

2024, by the learned Metropolitan Magistrate For Exclusive Trial of CCB Cases (Relating to Cheating Cases in Chennai) and CBCID Metro Cases, Egmore, Chennai, is set aside. Consequently, the connected miscellaneous petition is closed.

31.01.2025

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

vv2/mpk

To

- 1.The Metropolitan Magistrate For Exclusive Trial of CCB
(Relating to Cheating Cases in Chennai)
and CBCID Metro Cases, Egmore, Chennai-08.
- 2.The Commissioner of Police,
Office of the Commissioner of Police,
Veppery,
Chennai – 600 007
- 3.The Inspector of Police,
Forgery Team – 27,
Vepery,
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4. The Public Prosecutor,
High Court, Chennai.



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Crl.R.C.No.1422 of 2024

M.NIRMAL KUMAR, J.

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Pre-Delivery Order made in

Crl.R.C.No.1422 of 2024

31.01.2025