(2024) 02 KL CK 0236

In the High Court Of Kerala

Case No : Criminal Miscellaneous Petition No. 643 Of 2024

Midhun Das APPELLANT

Vs

State Of Kerala RESPONDENT

Date of Decision : 27-02-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 34, 406, 420
Banning of Unregulated Deposit Schemes Act, 2019 — Section 3, 21
Prize Chits and Money Circulation Schemes (Banning) Act, 1978 — Section 3, 4, 5, 6

Citation : (2024) 02 KL CK 0236

Hon'ble Judges : Bechu Kurian Thomas, J

Bench : Single Bench

Advocate : Mohammed Youseff T.M., Aysha Youseff, T.K.Sandeep, Swetha R., M.C. Ashi

Final Decision : Dismissed

Judgement

Bechu Kurian Thomas, J

1. Petitioners seek to quash FIR No.61/2024 registered with the Palakkad Town South Police Station. Petitioners are being prosecuted for the offences under sections 406, 420 r/w section 34 of the Indian Penal Code, 1860, apart from Sections 3 and 21 of the Banning of Unregulated Deposit Schemes Act, 2019 (for short 'BUDS Act') and sections 3, 4, 5 and 6 of Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (for short 'Prize Chits Act').

2. According to the defacto complainant, the accused had, without permission or authority from the Government, collected deposits after inducing the public to believe that they were the promoters of a project called 'Meta Force' and conducted various motivation classes for collecting such deposits and investments from the public. It is also alleged that misusing the friendship with the defacto complaint, the accused had, during the period 01.08.2023 to 31.12.2023, collected an investment of Rs.28,77,500/- through the account

maintained by the first accused with the Federal Bank and thereafter failed to return the amount and thereby committed criminal breach of trust and cheating.

3. Sri.T.H.Mohammed Youseff, learned Senior Counsel assisted by Adv. Akheela Farzana contended that the allegations in the FIR, even if it is assumed to be correct, would not make out any of the offences alleged against the petitioners and, therefore, the investigation initiated against them is an abuse of the process of court and is liable to be quashed. The learned Senior Counsel also submitted that 'Meta Force' is a blockchain cryptocurrency network mechanism, and the petitioners have not collected any amount personally. It was also pointed out that petitioners are also persons who had invested in the said project, like the defacto complainant, and therefore they cannot be prosecuted under any circumstances. It was also submitted that large amounts of money had been earned by the defacto complaint and his family members after joining as partners in the project and it is only a form of investment in cryptocurrency which provides unlimited income potential. The learned Senior Counsel further submitted that the partnership is a measure of a smart contract enabling people to network with others to build up an investment, and therefore, there cannot be any instance of criminal breach of trust or cheating. The learned Senior Counsel further submitted that the provisions of the BUDS Act or the Prize Chits Act have no application as petitioners have not indulged in any collection of deposits, nor have they conducted any money circulation schemes. It was asserted that the crime registered against the petitioners is an abuse of the process of court and is liable to be quashed at the threshold itself.

4. Sri.T.K.Sandeep, learned counsel for the defacto complainant, on the other hand, contended that the petitioners had collected large amounts of money from the public, including the defacto complainant, and the amounts were transferred to the account of the first petitioner. It was also submitted that the screenshots of mobile phones produced by the petitioners, indicating amounts received by the defacto complainant, are false. The learned Counsel further submitted that though people have received those screenshots, no amounts, as alleged, were actually received by the defacto complainant or others. According to the learned counsel, 'Meta Force' is a ponzi scheme, and the petitioners have duped several persons by collecting huge deposits. It was further submitted that the investigation is only at the initial stage, and this court should not interfere at this juncture.

5. Sri.M.C.Ashi, learned Public Prosecutor submitted that the accused has, within the limited investigation conducted so far, found to be the promoter and had canvassed and even arranged meetings for collecting deposits from the public and had even received more than Rs.28,00,000/- from the defacto complainant himself. It was also pointed out that there are two other similar cases as Crime No.53/2024 and Crime No.65/2024 and considering the nature of the allegations and the stage of the investigation, the court ought not to interfere.

6. I have considered the rival contentions.

7. The prosecution alleges that the accused had, under the guise of a company called 'Meta Force', conducted motivation classes at different hotels in Palakkad and induced the public to invest money promising high returns. The defacto complainant himself had made a deposit of more than Rs.28,00,000/- and it was submitted across the Bar that there are other investors as well. The amount collected by the first accused was paid into his account, as seen from the statement given to the police by the defacto complainant. Though screenshots have been produced by the petitioners and a few other documents indicating some transactions in the form of a wallet payment, the veracity of those documents and the transactions cannot be decided by this Court at this juncture.

8. In a proceeding under section 482 Cr.P.C, the court cannot rely upon the documents produced by the accused. This is all the more when the documents are those whose credibility and sanctity cannot be ensured. In the decision in Suryalakshmi Cotton Mills Ltd. v. Rajvir Industries Ltd and Others [(2008) 13 SCC 678], it was observed that 'Ordinarily, a defence of an accused although appears to be plausible should not be taken into consideration for exercise of jurisdiction under section 482. The High Court at that stage would not ordinarily enter into a disputed question of fact. It, however, does not mean that documents of unimpeachable character should not be taken into consideration at any cost for the purpose of finding out as to whether continuance of the criminal proceedings would amount to an abuse of the process of Court or that the complaint petition is filed for causing mere harassment to the accused.'

9. In the present case, documents produced by the petitioners to justify their claim cannot be said to be of unimpeachable and sterling quality. Therefore Annexure A3 to Annexure A9 produced by the petitioners cannot be relied upon by this Court to enter a finding regarding its reliability or credibility and even about the concept of 'Meta Force'. Those are private documents and do not by itself ensure its reliability. Those documents cannot be said to be of unimpeachable credibility.

10. What, therefore, remains is only the FIR and the statement of the defacto complainant. It is a settled principle as held in State of Haryana v. Bhajan Lal and Others [(1992) Supp 1 SCC 335], that the scope of interference against an FIR is very limited, especially under section 482. The court can interfere under section 482 of the Cr.P.C only when the allegations, even if taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused or the allegations do not disclose a cognizable offence, justifying an investigation by police officers. Of course, the Court can interfere when, the allegations in the F.I.R. are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. None of the above instances are applicable to the case at this stage.

11. In this context, it is necessary to mention that the word 'deposit' under the BUDS Act contemplates acceptance of money in any form and under any

arrangement. Unless the Government recognises the arrangement or the Scheme, a person is not entitled to accept deposits from the public. Thus, a reading of the FIR in the instant case reveals that the admitted allegations do constitute the offences alleged.

Viewed in the above perspective, I find no merit in this Crl.M.C. and it is dismissed.