(2008) 02 MAD CK 0069

In the Madras High Court

Case No : Criminal O.P. No''s. 1360 to 1369 of 2008 and M.P. No''s. 1 and 2 of 2008

S.K. Krishnamoorthy APPELLANT

Vs

State RESPONDENT

Date of Decision : 01-02-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 109, 120(B), 419, 420, 463

Citation : (2008) 02 MAD CK 0069

Hon'ble Judges : M. Jeyapaul, J

Bench : Single Bench

Advocate : V. Krishnamoorthy, for the Appellant; A. Saravanan, Government Advocate (Crl. Side), for the Respondent

Final Decision : Allowed

Judgement

M. Jeyapaul, J.—These Criminal Original petitions are filed by the third accused in C.C. Nos. 10103 to 10112 of 2005 to quash the same.

All these criminal original petitions are found to be connected with each other inasmuch as all these cases have arisen out of similar transactions

which took place within a short span of time and the accused are one and the same.

2. The charge as against the petitioner is that he being a merchant, hatched a conspiracy to create fake and fabricated international credit cards

along with other accused to cheat the bank and prepared bills as though he had transacted business on the fake charge slips and bogus invoices

and thereby caused heavy loss to the bank. The petitioner, along with other accused, was charge sheeted for offences punishable under Sections

419 420, 467, 468, 471 read with 463 and 109 and 120B of the Indian Penal

Code.

3. The petitioner contends that except the statement of the bank official examined as witness No. 1 by the investigating official, no other material

has been collected to show prima facie that the petitioner fabricated the documents in culmination of the conspiracy hatched by him and duped the

bank along with other accused. The petitioner, who transacted business in mobile phones, has been unnecessarily dragged to the portals of the

criminal court. The petitioner would not have accepted the credit cards and prepared the charge slips and made claim to the bank if the bank''s

swipe machine did not accept the credit card of the customer. The petitioner had parted with the mobile phones immediately after the bank''s

swipe machine accepted the credit card submitted by the other accused. At any rate, there is no material to accept the suspicion entertained by the

bank official to show even distantly that the petitioner has committed any crime.

4. Learned Counsel appearing for the petitioner would submit that there is no iota of material collected to show prima facie that the petitioner

committed any crime as alleged by the prosecution. The petitioner who was a merchant by profession at the time when the alleged offence was

committed, had innocently accepted the credit cards and parted with the mobile phones as the credit cards were honoured by the bank''s swipe

machine. Therefore, the court will have to intervene to save the petitioner from the ordeal being faced on account of the trial against him.

5. Learned Government Advocate (Criminal Side) would submit that the petitioner was involved in as many as ten cases of similar nature. He

would further contend that the petitioner has chosen to file, an application seeking discharge before the Trial Court and the same is pending

adjudication. Therefore, he would submit that the, present petitions seeking quashment are not sustainable.

6. It. is found that one Chandramohan, who was examined as prosecution witness No. 1 by the investigating officer has entertained some suspicion

as to the role of the petitioner in using the fake credit cards by the other accused as there had been some anomalies and inherent defects in the bills

raised by the petitioner. He has also not concretely stated that the petitioner was a part of the conspiracy to cheat the bank and played a vital role

in the fraudulent transaction.

7. Mr. Mohamed Rizwan and Mr. Ajay Babu examined by the investigating officer u/s 161 of the Code of Criminal Procedure were witnesses to

the alleged confession statement of the accused 1 and 3. Mr. Somasundaram and Sundararaj examined by the investigating officer were witnesses

to the confession statement of the fourth accused. Mr. Murugesan and Inbakumar are the police officials who have spoken to the registration of the

case and further investigation which culminated in laying final report.

8. As rightly pointed out by the learned Counsel for the petitioner, except the vague suspicion entertained based on the incongruity found in the bills

raised by the petitioner, no other material is available to prima facie indicate the criminal liability of the petitioner herein. None of the witnesses has

spoken to the criminal conspiracy alleged to have been hatched by the petitioner, the dishonest and fraudulent mental make up of the petitioner at

the time when the alleged fake credit card was used by the other accused for purchasing mobile phones from the. petitioner''s shop, the role of the

petitioner in the impersonation of the other accused, forgery of the credit card used in these cases and his connivance in using the forged

documents as genuine by the other accused. The irregularity, if any, committed by him in preparing the charge slips and invoiced may invoke the

wrath of the Bank in cancelling the business agreement with him but by no stretch of imagination, such a default can be construed as a cognizable

crime.

9. There is no dispute to the fact that the bank''s swipe machine accepted the alleged fake credit card used by the other accused while purchasing

mobile phones from the petitioner''s shop. An innocent merchant will have to. necessarily honour the credit card when it was accepted by the

bank''s swipe machine. A merchant would entertain a doubt only when? the machine refuses to honour the credit card issued by the bank. Even the

co-accused, in their confession statements, have not implicated the petitioner herein. When there is no legal evidence available on record

supporting the. accusation, continuance of criminal proceedings would amount to abuse of process of the court. Even if the entire version of the

prosecution is taken their face, value and accepted in their entirety, the court finds that such materials do not constitute the offences alleged against

the petitioner. The pendency of discharge application before the Trial Court is not a ground to browbeat and show him the doors out the inherent

domain of this court.

10. In view of the above, the criminal proceedings in C.C. Nos. 10103 to 10112 of 2005 on the file of the Additional Chief Metropolitan

Magistrate, Egmore, Chennai as against the petitioner stands quashed and the Criminal Original Petitions stand allowed. The connected

Miscellaneous Petitions stand closed.

