

(2015) 04 MAD CK 0011

In the Madras High Court

Case No : Criminal O.P. No. 718 of 2015, M.P. Nos. 1 & 2 of 2015

V.D. Mohana Krishnan

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 27-04-2015

Acts Referred:

Citation : (2015) 2 MadWNCri 210

Hon'ble Judges : P.N. Prakash, J.

Bench : Single Bench

Advocate : R. Sankarasubbu, Advocate, for the Petitioners; C. Kmalias, Additional Public Prosecutor, for the Respondent

Final Decision : Disposed Off

Judgement

P.N. Prakash, J.—This Petition has been filed to call for the records in C.C. No. 126 of 2014 on the file of the Judicial Magistrate-I, Cuddalore and quash the same as illegal.

2. Heard the learned Counsel appearing for the Petitioners and the learned Additional Public Prosecutor appearing for the State.

3. The Respondent Police have filed a Counter.

4. It is the case of the prosecution that the First Petitioner/Accused was employed in the High Court of Madras and that, he had received around Rs.7 lakhs along with the Second and Third Petitioners, who are none other than his Wife and daughter, from the defacto Complainant for arranging a job for the defacto Complainant's son and another person, as Clerk in the Madras High Court. The Complaint also states that the Accused produced a photo copy of the Order, on the strength of which when the defacto Complainant came to the High Court and made enquiry, he learnt that the said Order was a fake order and so he lodged a Complaint, based on which a case in Cr. No. 48 of 2011 for offences under Sections 406, 420, 468, 471 & 506(i). I.P.C. was registered by the Police against the Petitioners and investigation was taken up.

5. Police completed the investigation and filed a Final Report against the three Petitioners for the aforesaid offences and the same was taken on file as C.C. No. 126 of 2014 by the learned Judicial Magistrate No.I, Cuddalore, which is now under challenge in this Petition.

6. Mr. R. Sankarasubbu, learned Counsel for the Petitioners submitted that, even according to the FIR, the date of occurrence is shown as 1.5.2009, But the FIR was registered only on 21.7.2011. Therefore, he submitted that the entire prosecution is vitiated on account of enormous delay in lodging the Complaint by the de facto Complainant. In support of this proposition, the learned Counsel relied upon the Judgment of the Supreme Court in Vakil Prasad Singh v. State of Bihar, 2009 (3) SCC 355.

7. Mr. R. Sankarasubbu, learned Counsel also submitted that, even according to the de facto Complainant, the Accused returned the money by Cheque, which was dishonoured and therefore, the de facto Complainant could prosecute the case only under Section 138 of the Negotiable Instruments Act and this prosecution is an abuse of process of law.

8. In Paragraph 13 of the Counter, it is stated as follows:

"13. Regarding the averments made in ground in of the Petition it is submitted that it is totally untenable to state that the entire allegations on the face of Complaint disclosed no offence against the Petitioners/Accused since the verbatim of the said Complaint has meticulous details and array of circumstances in which the de facto Complainant was lured by the First Petitioner under the pretext of getting Computer Assistant posts in High Court, Madras and their alleged payments on two occasions to the Wife and daughter of the First Petitioner, who also provided him those fake and forged Order of Appoint merit, etc Hence there is no pith and substance in this ground that the entire Complaint disclosed no offence against the Petitioners/Accused."

9. As regards the first contention of Mr. R. Sankarasubbu, it is now settled by the Supreme Court in Ranjan Dwivedi v. CBI, 2012 (5) CTC 83 (SC) : AIR 2012 SC 3217, that, long delay cannot be a reason to quash the prosecution Similarly, delay in lodging the FIR is also not fatal in every case. In the facts of this case, the Accused had represented that, he is an Officer in the High Court and on that representation, he had collected money from the de facto Complainant. In a cheating of this nature, one cannot expect the de facto Complainant to immediately rush to the Police Station and lodge a Complaint and every attempt could have been made by the de facto Complainant to get back the money and similarly, the Accused also could have made an attempt to cover up his delinquency and hence, the delay could have occasioned. Nevertheless, delay in lodging the FIR cannot be the sole ground for quashing a prosecution, when there are strong materials to proceed with the trial.

10. As regards the second contention, the Cheque was given not towards the discharge of a legally enforceable debt, but towards the discharge of money that

was received for an illegal act. Hence, prosecution under Section 138 of the Negotiable Instruments Act may not be sustainable.

11. The Supreme Court in *State of Haryana v. Bhajan Lal*, AIR 1992 SC 604, has laid down the parameters for quashing a Final Report. The facts of this case do not fall within the parameters laid down by the Supreme Court.

In the result, the Petition is devoid of merits and the same is dismissed. Consequently, connected Miscellaneous Petitions are closed.

12. Today, after the orders were pronounced, Mr. R. Sankarasubbu, learned Counsel for the Petitioners submitted that this Court may dispense with the appearance of the women Accused before the Trial Court.

13. Accepting his submission, this Court directs the women Accused to be present before the Trial Court for collecting the charge-sheet and other relevant documents under Section 207, Cr.P.C., at the time of examination under Section 313, Cr.P.C. and at the time of the pronouncement of the Judgment. The Trial Court, shall liberally consider their Petition under Section 317, Cr.P.C., provided, if they are represented by the learned Counsel and on further condition that the women Accused shall not dispute their identity and that their Counsel will cross-examine the witness in their absence and not adopt any dilatory tactics so as to drag the Trial Court proceedings.