IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.04.2015
DELIVERED ON : 23.04.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.20415 of 2014
and
M.P.Nos.1 and 2 of 2014

1.Mohit C.Murgai
2.Amol C.Murgai ... Petitioners/Accused

vs.

1.The State rep by
The Inspector of Police
V-3, JJ Nagar Police Station
Chennai 37
(Crime No.97 of 2013) ... 1st Respondent/Complainant

2.P.Balaji ... Respondents

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records pertaining to the Crime No.97 of 2013 on the file of the Inspector of Police, V3, JJ Nagar Police Station and quash the same.

For Petitioners : Mr.S.Thiruvengadam

For Respondents : Mr.C.Emalias, APP [for R1]
Mr.P.Sintha Mathar [for R2]

O R D E R

This petition has been filed to call for the records pertaining to Crime No.97 of 2013 on the file of the Inspector of Police, V3, JJ Nagar Police Station and quash the same.

2. Heard Mr.S.Thiruvengadam, learned counsel appearing for the petitioners, Mr.P.Sintha Mathar, learned counsel appearing for the de facto complainant and Mr.C.Emalias, learned Additional Public Prosecutor appearing for the State.

3. For the sake of convenience, the parties would be referred to as the de facto complainant, the accused and the police.

4. The accused is before this Court seeking to quash the FIR in Cr.No.97 of 2013 for alleged offences under Sections 294(b), 406, 420 and 506(i) IPC that has been registered by the police, on the complaint given by the de facto complainant.

5. The de facto complainant lodged the impugned complaint dated 27.01.2013. The relevant paragraphs of it are extracted hereunder:

> "In due course of our business, we have associated with the accused company from October 2010 and we used to purchase such commodities from the accused company and we used to export the same by our clearing and forwarding agents from Mumbai to various countries mainly to Australia.
>
> Since, the accused 1 and 2 who are the partners of the accused company had acquired our confidence and since they had asked us to help him to export Sugar to Sri Lanka by lending money to an extent of about 10% of the total export amount which worked out to a sum of Rs.18.00 lakhs. Both the accused had assured me to give me a sum of Rs.4.00 lakhs as interest for the said borrowal and promised to return to me the principal sum of Rs.18.00 lakhs and the interest thereof in a sum of Rs.4.00 lakhs totalling to Rs.22.00 lakhs immediately upon completion of export. This amount of Rs.22.00 lakhs was agreed by the accused to be paid to me, irrespective of the loss or profit sustained by them in their export.
>
> Accordingly, by bonafide believing the accused, I had transferred a sum of Rs.18.00 lakhs from my company to the accused company as financial advance. Notwithstanding the same, the accused was continuing their supplies for my export and receiving from me the necessary payments. Even before they receive the expo9rt proceeds, they had agreed to supply Basmati Rice and Wheat Flour to the tune of Rs.18.00 lakhs, for which they had requested me to give 2 letter heads and 2 cheques blank signed. Accordingly, I had given them 2 letter heads of our company and two cheques bearing Nos.283820 and 283821 both drawn on Central Bank of India, Anna Nagar Branch, all blank signed to the accused on 07.07.2011.
>
> But, after completing the export, the accused had told that they had met with a loss and did not pay me the interest sum of Rs.4.00

lakhs and requested me that I should support for his 2nd export also so that after completing the 2nd export they would pay all the amounts back to me. During October 2011, the A-1 came and met my wife in my office at Anna Nagar, Chennai and received from me a sum of Rs.2.00 lakhs by way of cash on 09.10.2011, which also he had promised to repay along with the aforesaid dues.

Since the accused had induced me that they would definitely return all my moneys and by bonafide believing their oral assurances, I have given a further loan amount of Rs.18.75 lakhs for their business and they had assured to pay me the previous interest due of Rs.4.00 lakhs and the further loan amounts of Rs.2.00 lakhs paid by cash and the further loan amount of Rs.18.75 lakhs transferred to them by me by way of RTGS and the interest for the same in a sum of Rs.4.25 lakhs, totalling in all a sum of Rs.29.00 lakhs on or before September/October 2011; but they had failed and neglected to pay.

Whenever I contacted the accused they had been taking times under the guise of loss in their business. Upon enquiry, I came to know that the accused had completed the aforesaid 2 shipments successfully and earned huge profits. Apart from that they had received huge subsidies under the DEP Scheme from the Central Government, but deliberately cheated me of my valuable moneys."

6. Admittedly, there appears to have been business dealings between the de facto complainant and the accused, in which, even according to the de facto complainant, he gave two blank cheques for the supply of Basmati rice by the accused in the year 2011. These two cheques when presented by the accused were dishonoured and therefore, statutory notice under Section 138 of Negotiable Instruments Act was issued by the accused on 01.02.2012 to the de facto complainant and thereafter, the accused launched prosecution against the de facto complainant before the learned Judicial Magistrate, Vashi in Mumbai in Summary Criminal Case No.2334 of 2012 against B.Sumathi, the wife of the de facto complainant who had signed the cheque and against the de facto complainant also. The trial Court took cognizance of the offence and issued process only to B.Sumathi and did not proceed against her husband, the de facto complainant, as B.Sumathi alone had signed the cheque in the capacity of the Proprietrix of "Arthi Exports". Process was issued to Sumathi and she appeared before the trial Court and is participating in the trial. While so, the de facto complainant has lodged the present complaint in Chennai before the respondent

police making the aforesaid allegations against the accused. The respondent police have also filed a counter repeating the allegations made by the de facto complainant in his complaint.

7. Mr.Sintha Mathar, learned counsel appearing for the de facto complainant relied upon the following judgments in support of his plea that the FIR should not be quashed:

- Dr.S.P.Kohli v. The High Court of Punjab and Haryana [AIR 1978 SC 1753]
- A.Mohideen v. M.K.Chandra Kani [1985 (Madras High Court) LW (Crl.)343]
- V.Tamil Selvan v. The State of Tamil Nadu rep. by its Secretary, Industries Departments, madras 9 [1992 WRL 716]
- Ponnurangam v. Chairman, Slum Chlearance Board of Tamil Nadu, Madras [AIR 1996 Madras 274]
- Hariram Onkar v. Mt.Radha [AIR (30)1943 Nagpur 327]
- Janata Dal vs. H.S.Chowdhary and others [(1992) 4 SCC 305]
- State of W.B. v. Narayan K.Patodia [(2000) 4 SCC 447]
- Guvvala Sreenivasula Reddy v. Sankaranarayana and others [2012 Crl.L.J.(NOC) 63 (AP) 19]
- Rattan Chand Hira Chand v. Askar Nawaz Jung (dead) by LRs and others [(1991)3 SCC 67]
- State of Haryana and others v. Ch.Bhajan Lal and others [AIR 1992 SC 604(1)]
- Bhagatram v. State of Punjab and another [I(1997) BC 91]
- Tarsem Singh v. Sukhminder Sing [AIR 1998 SC 1400]

8. The learned counsel for the accused relied upon the reasoned judgment of the Supreme Court in Chandran Ratnaswami v. K.C.Palanisamy and others [(2013) 6 SCC 740].

9. Now this Court has to see as to whether the FIR lodged by the de facto complainant against the accused in Chennai, is an abuse of process of law?

10. The de facto complainant did not choose to reply to the statutory notice that was issued by the accused under Section 138 of the Negotiable Instruments Act, after the cheque issued by the de facto complainant was dishonoured. In the complaint, the de facto complainant admitted that he had issued two blank cheques some time on 07.09.2011 to the accused and in the same complaint, the de facto complainant has set up a plea that the accused had borrowed money to a tune of Rs.18.75 lakhs from him, which they had failed to repay. Thus the FIR lodged by the de facto complainant in Chennai is clearly a counter blast for the prosecution that has been launched against him by the accused under

Section 138 of the Negotiable Instruments Act. As stated above, the prosecution under Section 138 of the Negotiable Instruments Act was admittedly launched against the de facto complainant in Mumbai during March 2012 and the present FIR was registered in January 2013 against the accused. Thus this is clearly an abuse of process of law as held by the Supreme Court in Bajanlal vs. State of Haryana, [AIR 1992 SC 604]

In view of the above, this petition is allowed and the proceedings in Crime No.97 of 2013 on the file of the Inspector of Police, V3, JJ Nagar Police Station are quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gms

To

1.The Inspector of Police
V-3, JJ Nagar Police Station
Chennai 37.

2.The Public Prosecutor
High Court, Madras.

+1cc to Mr.S.Thiruvengadam, Advocate, S.R.No.22179
+2cc's to Mr.P.Sintha Mathar, Advocate, S.R.No.22009

 Crl.O.P.No.20415 of 2014

VGI(CO)
CA(18/05/2015)