IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2015

CORAM:

THE HON'BLE Ms. JUSTICE K.B.K.VASUKI

Crl.O.P.No.8377 of 2014
and
M.P.No.1 of 2014

1.Valliammal
2.C.Madhappan ... Petitioners/Accused

Vs.

1. Inspector of Police,
   District Crime Branch,
   Salem.

2. Divisional Manager,
   New India Assurance Ltd.,
   No.102, Premier complex,
   Yercaud Junction Road,
   Salem. ... Respondents/Complainant
   and Defacto Complainant

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, praying to call for the records and quash the First Information Report registered in Crime No.24 of 2005 on the file of the Inspector of Police, District Crime Branch, Salem.

For Petitioners : Mr.Shanmugasundaram, SC
for Mr.K.P.S.Palanivelrajan

For Respondents : Mr.C.Emalias, APP

ORDER

The petitioners 1 and 2, who are arrayed as A1 and A3 in District Crime Branch FIR in Cr.No.24 of 2005 dated 26.3.2005 registered for the offences under sections 420, 468, 417 and 471 IPC, have come forward with this petition to quash the criminal proceedings initiated against them.

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2.Few facts, which are relevant for consideration herein, are as follows:

The first petitioner by name Valliammal aged about 50 years met with an accident on 16.6.2002 at about 3.30pm and sustained injuries and the same was followed by the complaint given by one Chinnakutti S/o.Chinnapaiyan, who is none else than the son-in-law of the first petitioner Valliammal to Edappadi Police Station, Salem and the complaint was registered as FIR in Cr.No.1077/2002 on 28.9.2002 for the offences under sections 279 and 337 IPC against the driver of one Hero Honda bearing Regn.No.TN27 C 5134. The complaint proceeds as if the first petitioner along with her son-in-law was going on the left side of the road near Alachamapalayam bus stop and at that time, one motor cycle bearing Regn.No.TN27 C 5134 was driven by its driver rashly and negligently and dashed against his mother-in-law and pushed her aside and the mother-in-law sustained bone fracture and other injuries and was immediately taken to and admitted in the hospital. The FIR was investigated into by the second petitioner who is the then Head Constable/IO in Edappadi police station and culminated as STC.No.1382 of 2002 and the driver of the vehicle appeared and admitted his guilt and in the meanwhile, the first petitioner Valliammal/injured filed a claim petition in MCOP No.1519/2002 before the Motor Accident Claims Tribunal (District Judge), Salem against one Shajakhan who is the driver of the offending vehicle and New India Assurance company Ltd, who is the insurer of the vehicle, arraying them as respondents 1 and 2 in the claim petition. Neither of the respondents appeared to have filed any counter in the MCOP. Whereas, the insurance company appointed their Private Investigator to find out the genuineness of the claim and the Investigator conducted an enquiry and filed the report to the effect that the claim made by the first petitioner herein was false and the insured vehicle was not involved in the accident. In view of such report received from their Investigator, the Divisional Manager of the Insurance company filed the present complaint on 26.3.2005 to the District Crime Branch and the same was registered as FIR in Cr.No.24/2005 on 26.3.2005 for the offences under sections 420, 468, 417 and 471 IPC against the injured Valliammal, rider of Hero Honda Shajakhan and Head constable No.1343 C.Madhappan. Pending investigation into the same, the first petitioner Valliammal filed a memo on 14.6.2005 seeking dismissal of the claim petition as not pressed and on the basis of the same, the claim petition was dismissed on 14.6.2005.

3.The complaint, arising out of which is FIR in Cr.No.24 of 2005, which is sought to be quashed herein, proceeds as if the insurance company conducted investigation and found that the vehicle was not involved in the accident and false claim was made by fixing the

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vehicle which was not involved in the accident. The defacto complainant in his complaint furnished the particulars about the case regarding the accident, name of the injured/claimant and her advocate and requested the police to take appropriate action to curb the fixing of vehicle to make fraudulent claim. The complaint was received and registered as FIR against the injured/claimant, rider of the motor cycle and the head constable.

4.The petitioners have come forward with the present petition for quashing the present FIR by claiming innocence and by denying the allegations made against them and also on the ground that the allegations do not make out no prima facie offence case against the petitioners.

5.The petition is seriously opposed by the respondents 1 and 2 by alleging conspiracy and by alleging the act of fraud and forgery against the petitioners.

6.Heard the rival submissions made on both sides.

7.The fact that the first petitioner Valliammal met with an accident and sustained injured, is nowhere denied. What was denied in the complaint is the involvement of the vehicle in the accident. It is so denied on the basis of the report of their Private Investigator to the effect that the claimant made a false claim by fixing the vehicle, which was not actually involved in the accident and the claim petition was, pending investigation into the impugned complaint withdrawn by the claimant.

8.Be that as it may, the defacto complainant except alleging that the vehicle was wrongly fixed, not raised any specific allegation against either the injured/claimant or her counsel about the role played by them in fixing the vehicle. As a matter of fact, the falsity of the claim is sought to be raised on the basis of the report of the Private Investigator of the insurance company, which came into existence much after the accident. It is also relevant to point out at this juncture that the rider of the vehicle appeared before the concerned Judicial Magistrate No.II, Sangakiri in STC.No.1382/2002 and admitted his guilt for the offences under sections 279 and 337 IPC and paid a fine of Rs.1250/-. The second petitioner herein is arrayed as third accused only in his capacity as the Investigating officer in the accident case culminated as STC.No.1382/2002. In my considered view, the allegations raised against the petitioners either in the FIR or in the charge sheet are very vague and bald and without specific allegation regarding the role played by them and the materials sought to be relied by the

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prosecution for establishing and proving the allegations made against the petitioners are not supported by any legally permissible evidence. Apart from that, there is no allegation or material to prove the act of conspiracy between the parties. Further, as the claim petition was already dismissed as not pressed, there is no occasion to prove the falsity of the claim made before the appropriate forum. That being the factual state of affairs, the criminal proceedings initiated against the petitioners is nothing but an abuse of process of law and the same is thus, liable to be quashed.

9.The learned counsel for the petitioners has at this juncture also raised another legal ground by resorting to section 195(1)(a) Cr.P.C and in support of such contention, relied on the decision reported in AIR 1953 SC 293 (Basir-ul-Huq and others v. The State of W.B). It is sought to be argued that as the allegation raised herein constitutes an offence punishable under section 182 IPC giving false information with intent to cause public servant to use his lawful power to cause injury to another person, the complaint ought to have been filed by the public servant concerned under clause (a) of sub section (1) to Section 195. This Court finds legal force in the argument so advanced on the side the petitioners. Here is the case, wherein, the sum and substance of the allegation raised is false claim made before the Motor Accident Claims Tribunal for receiving wrongful gain, which is the offence punishable under section 182 IPC. Section 195 deals with the procedure for lodging the complaint for the purpose of prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. As per Section 195(1)(a), no court shall take cognizance of any offence punishable under sections 172 to 188 (both inclusive) IPC or any abetment or attempt to commit such offence or of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom, he is administratively subordinate. Thus, the combined appreciation of Section 182 IPC and Section 195(1)(a) would, as rightly argued by the learned counsel for the petitioners, go to show that the complaint regarding false claim made before the Motor Accident Claims Tribunal shall be either by the Presiding Officer of the Tribunal or by the public servant concerned or by some other public servant to whom he is administratively subordinate and the complaint given by the Divisional Manager of the Insurance company is hence not maintainable.

10.Further, the legal proposition laid down by the Hon'ble Supreme Court in the decision reported in AIR 1953 SC 293 (Basir-ul-Huq and others v. The State of W.B) cited by the learned counsel for

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the petitioners is that when an offence is essentially covered by the provisions of Section 195, prosecution for such offence cannot be taken cognizance of by mis-describing it or by putting a wrong label on it. The Apex Court in para 14 of the decision observed that the provisions of this section cannot be evaded by the device of charging a person with an offence to which that section does not apply and then convicting him of an offence to which it does, upon the ground that such latter offence is a minor offence of the same character or by describing the offence as being one punishable under some other section of the Indian Penal Code, though in truth and substance the offence falls in the category of sections mentioned in S.195 Cr.P.C.

11.The learned Additional Public Prosecutor appearing for the respondents at this juncture cited the order passed by me reported in (2012) 4 MLJ (crl) 719 (B.Ranganathan and another v. State) in support of his contention that as the document in support of the false claim was created outside the court and the same was produced during the proceedings before the court, the complaint by the individual is maintainable and the individual complainant is competent to set in motion criminal law against offenders for such act of forgery. In this case, the allegations raised in the complaint are more relating to the offence in respect of false claim before the court concerned by fixing the wrong vehicle and not one for creating false document outside the court and then for producing the same before the court as evidence. As such, the decision rendered by me is hence not applicable to the facts of the present case, when the offence involved herein is essentially covered by section 195 the complaint not by the public servant concerned is not maintainable.

12.Viewing from any angle, the criminal prosecution laid against the petitioners amounts to abuse of process of law and cannot be hence allowed to continue against them. In the event of the same being allowed to go on, the same would cause serious prejudice to the petitioners.

13.In the result, this criminal original petition is allowed and the FIR in Cr.No.24/2005 pending on the file of the first respondent stands quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

1. Inspector of Police,
   District Crime Branch,
   Salem.

2. The Divisional Manager,
   New India Assurance Ltd.,
   No.102, Premier complex,
   Yercaud Junction Road,
   Salem.

3. The Public Prosecutor,
   High Court, Madras.

+1cc to Mr.K.P.S.Palanivelrajan, Advocate, S.R.No.10311

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SR(CO)
CA(26/05/2015)

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