

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.06.2015

Delivered on : 05.06.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.O.P.Nos.31188 and 10514 of 2014
and M.P.No.1 of 2014

Crl.OP.No.31188 of 2014

Tamilarasi

Versus

... Petitioner

State by:

The Inspector of Police,
District Crime Branch,
Cuddalore District, Cuddalore.

.. Respondent/Accused

Crl.OP.No.10514 of 2014

Babu Neelakandan

.. Petitioner/Accused

Versus

1.The State represented by
The Station House Officer,
DCB, Cuddalore.

2.Tamilarasi

.. Respondents

Prayer in Crl.OP.No.31188 of 2014 : Criminal Original petition filed under Section 482 of the Criminal Procedure Code praying to direct the respondent police to investigate the matter file a final report in Cr.No.9 of 2014 on the file of the respondent police to secure the ends of justice.

Prayer in Crl.OP.No.10514 of 2014 : Criminal Original petition filed under Section 482 of the Criminal Procedure Code praying to call for the records of the proceedings bearing FIR 9 of 2014 dated 05.03.2014, on the file of the first respondent police and to quash the same as an abuse of process.

For Petitioner : Mr.A.Arasu Ganesan
in Crl.OP.No.31188 of 2014 and
2nd respondent in
Crl.OP.No.10514 of 2014

For Respondent : Mr.C.Emalias,
in Crl.OP.No.31188 of 2014 and Addl. Public Prosecutor
1st respondent in
Crl.OP.No.10514 of 2014

For Petitioner : Mr.V.Ragavachari
in Crl.OP.No.10514 of 2014

COMMON ORDER

Criminal Original petition No.31188 of 2014 has been filed praying to direct the respondent police to investigate the matter in Cr.No.9 of 2014 and file a final report.

Criminal Original petition No.10514 of 2014 has been filed praying to quash the proceedings in Crime No.9 of 2014.

2. For the sake of convenience, the parties will be referred to as the defacto complainant and accused. It is the case of the defacto complainant that the accused and she entered into real estate business in 2011 and that she had invested around Rs.30lakhs in the business. According to the defacto complainant, the accused had deceived her and had not paid her share of profits from the business.

3. It is further stated by the defacto complainant that she and the accused entered into a Memorandum of Agreement on 23.02.2013 in the presence of two other persons, whereby the accused agreed to pay her Rs.52lakhs. The accused paid her Rs.7lakhs at the time of entering into the agreement and subsequently, paid Rs.13lakhs after great persuasion. Thereafter, he did not pay her the balance amount of Rs.32lakhs. Aggrieved by which, the defacto complainant lodged a complaint before the respondent police, based on which, a case in crime No.9 of 2014 for the offences under Section 420, 409 IPC was registered by the police on 05.03.2014 against the accused.

4. The defacto complainant filed Crl.OP.No.31188 of 2014 for a direction to the respondent police to complete the investigation in crime No.9 of 2014 and file a Final Report expeditiously. The accused has filed Crl.OP.No.10514 of 2014 for quashing the FIR in crime No.9 of 2014.

5. Heard the learned counsel for the defacto complainant and the accused and the learned Additional Public Prosecutor. This Court carefully perused the FIR in crime No.9 of 2014. On a careful reading of the FIR, it is abundantly clear that it does not disclose the commission of cognizable offence warranting registration of a case.

6. The defacto complainant has stated the facts narrated above in her complaint, from which, it is apparent that the defacto complainant and the accused were doing business as partners and they had fallen apart because the accused was not properly sharing the profits from the business with the defacto complainant. It is further stated in the complaint that the accused and the defacto complainant entered into a written agreement on 23.02.2013, under which, the accused agreed to pay a sum of Rs.52lakhs as quits, out of which he has admittedly paid Rs.20lakhs and a sum of Rs.32lakhs is due. To recover the same, the defacto complainant has lodged the present complaint.

7. The fact remains that both of them were doing real estate business as partners and there is no material to infer that the accused entertained the intention to cheat the defacto complainant from the inception which is essential for making out a case of cheating. The law on this aspect is in legion.

8. Mr.Arasu Ganesan, learned counsel for the defacto complainant relied upon the following judgments of the Hon'ble Supreme Court in support of his contention that the existence of civil remedy cannot be a reason for quashing the FIR.

- i. AIR 2014 SC [Supp] 1319 [Vijayander Kumar and Others Vs. State of Rajasthan and Another]
- ii. AIR 2013 SC [Supp] 408 [M/s.Shree Mahavir Carbon Ltd. Vs. Om Prakash Jalan [Financer] Another]
- iii. AIR 2013 SC [Supp] 390 [C.P.Subhash Vs. Inspector of Police, Chennai Others]

9. I have no quarrel with the preposition of law laid down in the aforesaid judgments of the Apex Court. The Hon'ble Supreme court in State of Haryana Vs Bhajan Lal AIR 1992 SC 604 has laid down the parameters for quashing an FIR. If the complaint in this present case is tested on the anvil of the law laid down in Bhajan Lal's case, it is clear that the FIR in this case is a sheer abuse of process of law in as much as the complaint does not disclose the commission of any offence much less any cognizable offence.

10. The ingredients that are required for sustaining an accusation of cheating is absent in the complaint. The accused should have a guilty intention at the time of obtaining pecuniary advantage from the complainant, which is miserably absent in this case. In Hridaya Ranjan Prasad Verma and others Vs. State of Bihar and another reported in 2000 AIR SCW 2077, the Hon'ble Supreme Court

has held that for maintaining a complaint of cheating, there should be deception at inception. Since this ingredient is absent in the case at hand, this Court is of the view that this is a fit case to quash the FIR.

11. Crl.OP.No.10514 of 2014 is allowed and the case in crime No.9 of 2014 hereby is quashed. In view of the order passed in Crl.OP.No.10514 of 2014, the direction as prayed for by the defacto complainant in Crl.OP.No.31188 of 2014 cannot be granted and hence, Crl.OP.No.31188 of 2014 is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
District Crime Branch,
Cuddalore District, Cuddalore.

2. The Section, House Officer, DCB, Cuddalore.

3. The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr.V.Ragavachari, Advocate SR.26790

CRL.OP.Nos.31188 and 10514 of 2014

GR(CO)
Eu 19.06.15

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