IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.07.2015

Delivered on : 04.08.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.O.P.No.18820 of 2015
and MP.Nos.1,2 of 2015
and
CRL.OP.No.10405 of 2008
and MP.Nos.1 of 2008, 1 of 2009

1.D.Basanth Kumar Ranka
2.S.Kapil ... Petitioners/Accused 1 & 3 in Crl.OP.18820/2015

B.Sachin ... Petitioner/Accused 2 in Crl.OP.10405/2008

Vs

1.State rep by
The Inspector of Police [crime],
C-2 Elephantgate Police Station,
Chennai-79. ... Respondent/Complainant

2.T.T.Sekar ... Respondent/Defacto Complainant in Crl.OP.18820/2015

1.The Inspector of Police,
C-2 Police Station,
Elephantgate, Chennai-79.

2.T.T.Sekar .. Respondents
[R2 impleaded as per the order of this Court dt.20.01.2009 in MP.No.3 of 2008] in Crl.OP.10405/2008

Criminal Original petitions filed under Section 482 of the Criminal Procedure Code praying to call for the records in C.C.No.1154 of 2008 on the file of the VIII Metropolitan Magistrate, George Town, Chennai and quash the same.

For Petitioners in both Crl.Ops : Mr.M.V.Venkataseshan for Mr.V.Pavel

For Respondents in both Crl.OPs : Mr.C.Emalias, APP [for R1]
: Mr.S.Vadivelmurugan [for R2]

C O M M O N   O R D E R

These petitions have been filed to quash the proceedings in C.C.No.1154 of 2008 on the file of the learned VIII Metropolitan Magistrate, George Town, Chennai.

2. On a complaint lodged by T.T.Sekar [de facto complainant], the respondent police registered a case in C-2 Police Station crime No.501 of 2006 under Section 420 and 506[ii] IPC against the petitioners/accused and after completing the investigation, filed Final Report in CC.No.1154 of 2008 before the learned VIII Metropolitan Magistrate, George Town, Chennai, challenging which, the petitioners/accused are before this Court.

3. Heard the learned counsel for petitioners/accused, learned counsel for the de facto complainant and the learned Additional Public Prosecutor for the State.

4. It is the case of the prosecution that the accused are running a business concern in the name of M/s.D.R.Ranka Brothers which is into selling silver jewelleries. The de facto complainant had supplied silver anklets between January 1997 and January 1998 to the accused totalling 1850 kilograms and the labour charges worked out to Rs.6Lakhs.

5. According to the de facto complainant, the accused promised to make payments within three months from the date of supply, but failed and they have been giving lame excuses, in respect of which, the de facto complainant lodged a complaint on 21.09.2006 i.e., after a lapse of eight years alleging that the accused had cheated him in not making the payment.

6. On a complete reading of the Final Report, 161 Cr.P.C statement of the de facto complainant and other witnesses who were examined by the police, it is seen that even according to the de facto complainant, the 1st accused had given a receipt in Hindi dated 10.04.2002 [called rucca] and also executed a bond on 05.05.2003 for the receipt of the silver. These facts are categorically admitted by the de facto complainant and even the Final Report filed by the police it is stated that issuance of rucca is a practice prevalent among marvadi community in silver trade. Thereafter in 2006, the present FIR has been registered and Final Report has been filed.

7. Learned counsel appearing for the de facto complainant submitted that earlier, the petitioners filed Crl.OP.No.30459 of 2006 for quashing the FIR which was dismissed by this Court on 28.09.2007 and therefore, this quash petition challenging the Final Report is not maintainable. In support of this contention, learned counsel for the de facto complainant relied upon the judgment of the Hon'ble Single Judge of this Court reported in Thanickachalam and another Vs State, by the Sub Inspector of Police, Central Crime Branch Team-I, Egmore, Chennai [2003] MLJ [Crl] 632.

8. In the order dated 28.09.2007 in Crl.OP.No.30459 of 2006, this Court while dismissing the petition for quashing the FIR has held in paragraph No.30 that, "So far as the facts of the present case are concerned, the criminal proceedings are not at all barred and the investigation has to proceed on its own direction and this Court need not disturb the same. Hence, no ground in made out for quashing the FIR."

9. From the above, it is clear that this Court did not want to quash the FIR thereby, stifling the very investigation. Now the investigation has been completed and the Final Report has been filed, which is under challenge before this Court. In certain circumstances, even a second quash application is maintainable and therefore, the dismissal of the quash application challenging the FIR cannot preclude the accused from challenging the Final Report as held by the Hon'ble Supreme Court in the following judgment.

i. [1975] 3 SCC 706 [Superintendent and Remembrancer of Legal Affairs, West Bengal Vs Mohan Singh and others]
ii. [2007] 4 SCC 70 [SMS Pharmaceuticals Ltd. Vs Neeta Bhalla and Another]

10. Learned Additional Public prosecutor submitted that after the FIR was registered, the accused came forward and paid some money to the de facto complainant which itself shows the guilty mind of the accused.

11. Learned counsel appearing for the accused submitted that the de facto complainant received so much pressure through the police that they had no other option but to pay lest they should suffer arrest.

12. The police have recorded the 161 Cr.P.C statement of one P.S.Ranganathan [LW15] who is the President of Silver Ware Artisans Association. The said P.S.Ranganathan has stated that he went to the police station on 22.09.2006 where the accused were being interrogated by the police with respect to the rucca receipts and bond that were executed by A1 in favour of the de facto complainant. He has further stated that he told the police that these are disputes concerning silver business, which can be amicably settled by the Association. On the strength of his assurance, the accused were let off by the police and the dispute between the de facto complainant and the accused was settled, on the accused making some payments to the de facto complainant.

13. From this statement itself, it is obvious that the dispute is purely civil in nature that had occurred in the course of ordinary business dealings. For sustaining a charge under Section 420 IPC, it is trite law that there should be deception at inception. Admittedly, the accused are traders and the de facto complainant is a supplier of silver materials and they have had business dealings. Even according to the de facto complainant, the supplies were made between 1997 and 1998 and the accused had also given receipt and bond in 2002, 2003 and thereafter, the de facto complainant lodged a complaint only in 2006 as if the accused had

cheated him. The allegations of the de facto complainant in the facts and circumstances of this case as disclosed in the Final Report and in the 161 Cr.P.C statement of witnesses looks highly improbable and artificial.

14. The learned counsel appearing for the accused submitted that unable to withstand police pressure, the accused made a representation to the Director General of Police against the respondent police on 04.07.2007. In retaliation, the respondent police registered a complaint against this accused in crime No.290 of 2007 for an offence under Section 7[1][a] of Protection of Civil Rights Act [PCR] alleging that these petitioners/accused had abused one E.Stephen Raj on 18.05.2007 by his caste name. Though these petitioners were granted anticipatory bail in this case, one of the petitioner namely, Kapil Ranka was arrested and remanded to custody on 19.05.2007 for the PCR offence in crime No.290 of 2007.

15. It is the allegation of the petitioners that the PCR case was foisted on them by the de facto complainant who is a friend of E.Stephen Raj in connivance with the respondent police. Ultimately, the FIR in crime No.290 of 2007 in the PCR case was quashed by this Court on 27.07.2009 in Crl.OP.No.1744 of 2007.

16. In Ajay Mitra Vs State of M.P. and others AIR 2003 SC 1069 [1], the Hon'ble Supreme Court has stated as follows:

> "... 16.In Hari Prasad Chamaria v. Bishun Kumar Surekha and others, AIR 1974 SC 301 it was held that unless the complaint showed that the accused had dishonest or fraudulent intention at the time the complainant parted with the money it would not amount to an offence under Section 420, IPC and it may only amount to breach of contract. In G.V.Rao v. L.H.V. Prasad and others, 2000 [3] SCC 693 it was reiterated that guilty intention is an essential ingredient of the offence of cheating and, therefore, to secure conviction 'mens rea' on the part of the accused must be established. It has been further held that in order to constitute the offence of cheating the intention to deceive should be in existence at the time when the inducement was offered. ..."

17. The Hon'ble Supreme Court in Rajesh Tiwari Vs Nand Kishore Roy [2001] 1 MLJ 407 has noticed that there is a growing tendency among business community to convert civil disputes into criminal cases and in the opinion of this Court, this is one such case. In this case, there is no material whatsoever to infer that the accused had the necesary mens rea in the year 1997 and 1998, when they had business dealings with the de facto complainant. Admittedly the accused had also given receipts and bond and did not repudiate the transaction. Just because the period of limitation had lapsed for civil action, an ordinary civil dispute cannot be converted into a criminal case.

18. In the result, the prosecution of the petitioners is clearly an abuse of process of law and accordingly, the petitions

are allowed and the proceedings in CC.No.1154 of 2008 on the file of the learned VIII Metropolitan Magistrate, George Town, Chennai is hereby quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To
1.VIII Metropolitan Magistrate,
George Town, Chennai

2.Inspector of Police [crime],
C-2 Police Station, Elephantgate,
Chennai-79.

3.The Chief Metropolitan Magistrate,
Egmore, Chennai.

4.The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.S.Vadivel Murugan, Advocate, sr.40032
+1 cc to Mr.V.Pavel, Advocate, sr.39899.

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