IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2015

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.R.C.No.218 of 2010
and
M.P.No.1 of 2010

1.N.Subramanian @ Subramaniam
S/o.Nallaya Gounder

2.Sellappan
S/o.Ramasamy … Petitioners/Accused 2 & 3

vs

1.State represented by
Inspector of Police,
District Crime Branch,
Namakkal.
Crime No.3 of 2003

2.Palanisamy
S/o.Nachi Gounder
[R2 has been impleaded as per the order of this Court dated 04.08.2015 made in M.P.No.1 of 2015] … Respondents

Criminal Revision filed under Section 397 r/w 401 Cr.P.C. against the order of learned Judicial Magistrate II, Namakkal, passed in Crl.M.P.No.1883 of 2009 in C.C.No.37 of 2009 on 19.01.2010.

For Petitioners: Mr.D.Shivakumaran

For Respondent : Mr.C.Iyyapparaj,
Government Advocate (Crl.side) [R1]
Mr.B.Vasudevan [R2]

O R D E R

This revision arises against the order of learned Judicial Magistrate II, Namakkal, passed in Crl.M.P.No.1883 of 2009 in C.C.No.37 of 2009 on 19.01.2010, dismissing the discharge petition filed by petitioners u/s.239 Cr.P.C.

2. The prosecution case is that complainants, petitioners and 10 others were partners in a partnership firm viz., Sri Venkateswara Finance, Namakkal. Initially, each partner, invested a sum of Rs.25,000/- and later, it was enhanced to Rs.50,000/-. Petitioners are Managing Partner and Assistant Managing Partner respectively of the said firm. The complainants expressed their intention to withdraw from the firm and gave a letter to such effect. The complainants have also requested the petitioners to return their capital along with profit. However, the petitioners have failed to meet the demand. Upon complaint and direction under Section 156(3) Cr.P.C., a case was registered in Crime 3 of 2003 on the file of the second respondent. Upon completion of investigation, a charge sheet informing commission of offences u/s.406, 420 r/w 120-B and 506 (ii) IPC has been laid and the same was taken on file in C.C.No.37 of 2009 on the file of learned Judicial Magistrate II, Namakkal. In such case, petitioners have filed Crl.M.P.No.1883 of 2013 seeking discharge. The Court below, under orders dated 19.01.2010, dismissed such petition. Hence, this revision.

3. Heard learned counsel for petitioner, learned Government Advocate (Crl.side) and learned counsel for second respondent.

4.In passing the order under challenge, learned Magistrate has taken a most erroneous approach of considering the monies invested by the complainant party, who were partners in the business along with the accused, as deposits and fastening responsibility on the accused to properly invest the same. The Magistrate took the erroneous view that a prima-facie case existed.

5.In Velji Raghavji Patel v. State of Maharashtra (AIR 1965 SC 1433), it has been explained that a owner of the property, irrespective of the manner in which he used the same and with whatsoever intention will not be liable for misappropriation and that would be so, even if he is not the exclusive owner. Placing reliance on such decision, this Court, in T.Sundararajan v. State ((2010) 4 MLJ (Crl) 197), observed as follows:

> "The petitioner has been entrusted or given dominion over property that belongs to the partnership firm. Undisputedly, the petitioner is a partner of the firm. Whileso, he necessarily would be a part owner of the property entrusted to him or over which he has been given dominion. Whileso and particularly in the light of the decision of the Hon'ble Apex Court in the case of Velji Raghavji Patel v. State of Maharashtra (supra), he could not have committed any offence under Section 409 IPC in respect of such property. An offence under Section 420

IPC would stand committed only where the victim have been induced to deliver property by practice of deception."

6.Though the final report in the case seeks to make out a case of the complainant party having been induced to deliver monies, the reading of the FIR reveals that the petitioners/accused and 13 others including the complainant party formed a partnership firm, which was registered in the year 1996. Each of them initially contributed Rs.25,000/-; subsequently enhanced to Rs.50,000/-. The acquisition is that the accused, Managing Partner and Assistant Managing Partner respectively, did away with the profits and failed to account therefor. There is no element of deception at inception. There without, no offence of cheating can be alleged. In the instant case neither offence of misappropriation or cheating is made out. A charge under Section 506(ii) I.P.C. is all too easy to make. In the case of dispute between partners, they would have to work out their rights before the civil forum.

7.This Criminal Revision Case stands allowed and the order of learned Judicial Magistrate No.II, Namakkal in Cr.M.P.No.1883 of 2009 in C.C.No.37 of 2009 stands set aside. The petitioners/accused are discharged from the case in C.C.No.37 of 2009 on the file of Judicial Magistrate No.II, Namakkal.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate II,
Namakkal.

2.The Inspector of Police,
District Crime Branch,
Namakkal.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.D.Shivakumaran, Advocate Sr.67317

Crl.R.C.No.218 of 2010

sai(CO)
srg(06/04/2016)