

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27-10-2015

CORAM:

THE HON'BLE MR. JUSTICE P.N.PRAKASH

Crl.O.P.No.24791 of 2014 &
M.P.Nos.1 of 2014, 2 of 2014 and 3 of 2015
Crl.O.P.No.10987 of 2015 & M.P.No.1 of 2015

Crl.O.P.No.24791 of 2014

1. Kalaiarasi
2. Kumaresan ...Petitioners/Accused

Vs.

1. State rep. by the Sub Inspector of Police,
District Crime Branch,
Kancheepuram,
Kancheepuram District.
2. Pandurangan ...Respondents/Complainant

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure with a prayer to call for the records in Crime No.39 of 2014 pending investigation on the file of the first respondent and quash the same.

Crl.O.P.No.10987 of 2015

- K. Kalaiarasi ...Petitioner/Accused

Vs.

- M/s.Zenith Builders (P) Ltd.,
rep.by its Managing Director, V.Pandurangan,
Office at Door No.83/3,
T.M.Maistry Street,
Thiruvanmiyur,
Chennai - 600 041. ...Respondent/Complainant

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure with a prayer to call for the records in STC No.263 of 2015 on the file of the learned Judicial Magistrate, Tambaram and quash the same.

For Petitioner
in both CrI.O.Ps. : Mr.V.Krishnamoorthy

For 1st Respondent in : Mr.C.Emalias,
CrI.O.P.No.24791/2014 Additional Public Prosecutor

For 2nd Respondent in : Mr.A.Ragunathan,
CrI.O.P.No.24791/2014 & Senior Counsel,
Respondent in for Mr.D.Vijayakumar &
CrI.O.P.No.10987/2015 M/s.Selvin Robert Holmes

Reserved on	Pronounced on
12-10-2015	27-10-2015

O R D E R

For the sake of convenience, the parties will be referred to as the accused and the defacto complainant.

2. Total extent of 171 cents of lands belong to the petitioners/accused herein and in respect of their lands, they entered into a Memorandum of Understanding dated 11.1.2013 and later entered into a Joint Development Agreement on 12.4.2013 with the defacto complainant, under which the petitioners/accused received Rs.1.00 crores and executed seven General Powers of Attorney on 15.4.2013 for development and maintenance of the property, in favour of the defacto complainant. The defacto complainant took possession of the property and developed the lands by building a compound wall around it and spent about Rs.65 lakhs towards development activities. In such circumstances, without the knowledge of the defacto complainant, the petitioners/accused cancelled the powers of attorney on 12.8.2013 behind their back and issued a notice to them on the same date.

3. The defacto complainant therefore lodged a complaint with the police and during enquiry the petitioners/accused came to the police station with their advocate and stated that the

matter is purely a civil dispute, and that they will settle the matter amicably outside the police station. The petitioners/accused gave cheques for Rs.1.40 Crores to the defacto complainant, which when presented, were dishonoured on 5.3.2014. The defacto complainant issued a statutory notice under Section 138 of the Negotiable Instruments Act to the petitioners/accused and on the failure of the petitioners/accused to repay the amount, launched prosecution under Section 138 of the Negotiable Instruments Act in STC No.263 of 2015 before the Judicial Magistrate, Tambaram, challenging which accused Kalaiarasi has filed CrI.O.P.No.10987 of 2015.

4. The defacto complainant also lodged a police complaint against the petitioners/accused based on which a case in Cr.No.39 of 2014 dated 2.7.2014 has been registered against the accused, challenging which they are before this Court in CrI.O.P.No.24791 of 2015.

5. Mr.V.Krishnamoorthy, learned Counsel appearing for the accused relied upon the following decisions of the Supreme Court to drive home the point that the entire transaction is of civil in nature, and that, the FIR is an abuse of process of law:

- (i) G.Sagar Suri v. State of U.P., (2000) SCC (CrI) 513
- (ii) Anil Mahajan v. Bhor Industries Ltd, (2006) 1 SCC (CrI) 746
- (iii) Indian Oil Corporation v. NEPC India Ltd, (2006) 3 SCC (CrI) 188
- (iv) Inder Mohan Goswami v. State of Uttaranchal (2008) 1 SCC (CrI) 259
- (v) Dalip Kaur v. Jagnar Singh, (2010) 2 SCC (CrI) 223

This Court gave its anxious consideration to the facts obtaining in the aforesaid judgments of the Supreme Court and the law laid down therein.

6. In G.Sagar Suri v. State of U.P. (2000 SCC (CrI) 513), the defacto complainant had given loan to the accused, which was not repaid by the accused and in that circumstances, the Supreme Court said that the transaction is purely civil in nature.

7. In Anil Mahajan v. Bhore Industries Ltd. ((2006) 1 SCC (Cr1) 746), the accused and the complainant entered into a Memorandum of Understanding for the period 6.8.2000 to 30.11.2000, which inter alia stipulated that 50% of the payments against monthly quantity would be given in advance and balance 50% will be paid on receipt of the goods by M/s. Shikhar Enterprises or its sister concern, and when there was a breach of the said agreement, the Complainant lodged a complaint and the Supreme Court held that there is no deception.

8. In Indian Oil Corporation v. NEPC India Ltd ((2006) 3 SCC (Cr1) 188), the Indian Oil Corporation and NEPC had entered into an agreement in which IOC had agreed to supply fuel to the aircrafts of NEPC, and the aircrafts were given as security for the payment of the amounts due. On the breach of the agreement, a revised agreement was entered into on 20.9.1997. Even when that was breached by the NEPC, a police complaint was lodged, and the Supreme Court quashed the prosecution holding that the matter was purely of civil nature.

9. In Inder Mohan Goswami v. State of Uttaranchal ((2008) 1 SCC (Cr1) 259), the accused was one Sanatan Dharma Pratinidhi Sabha, Punjab, which had entered into an agreement with the complainant for construction of a ghat and when the complainant did not properly perform the contract, the agreement was cancelled in order to protect the interest of the Sabha. The complaint lodged against the Sabha was quashed by the Supreme Court holding that the matter was purely a civil dispute.

10. In Dalip Kaur v. Jagtar Singh ((2010) 2 SCC (Cr1) 223), the accused was the owner of the agricultural land and entered into an agreement of sale with the defacto complainant, who was a Property Dealer. The defacto complainant, has paid Rs.7 lakhs as advance to the accused and another sum of Rs.14,20,000/- was paid to the accused. But the accused cancelled the sale and sold the property to another person. In paragraph 4 of the judgment, the Supreme Court has noted that the accused had repaid Rs.7.20 lakhs to the defacto complainant at the time of cancellation of the agreement, and in that context held that the transaction is purely civil one.

11. In this case, the accused entered into a Development Agreement with the defacto complainant from whom the accused received rupees one crore and issued seven powers of attorney. After the defacto complainant has spent around Rs.65 lakhs, the

accused, behind the back of the defacto complainant, cancelled the powers of attorney on 12.8.2013 and only on that date issued a notice to the defacto complainant about the cancellation. The FIR was not registered immediately thereafter. The defacto complainant came with his lawyer and handed over the cheques, which also were dishonoured. Thus, after availing such huge pecuniary advantage from the defacto complainant, the act of the accused in cancelling the powers of attorney unilaterally and also not honouring the cheques would surely go to prima facie show that from the beginning the accused had the necessary guilty mind to cheat the defacto complainant.

12. On a reading of the Joint Development Agreement it is clearly stated in paragraphs 16 and 18 as follows:

"16. The owner shall not revoke the Powers of Attorney, executed above, and provided however there is no breach of the terms contained herein to be performed /observed by ZENITH.

18. Both parties shall give written notice to the other side, if there is a breach or violation of the terms of this Agreement and the other party shall rectify/remedy such breach within 30 days of receipt of such notice, failing which only the aggrieved party will be at liberty to either seek specific performance or terminate this Agreement and the defaulting party shall be bound to perform or compensate the aggrieved party for all claims, losses and damages as the case may be."

From the above recitals it is evident that the accused had agreed not to recall the powers of attorney and they have also agreed to refer the matter for arbitration. Without resorting to the agreed procedure, the accused unilaterally cancelled the powers of attorney after taking rupees one crore from the defacto complainant. Since investigation is at a very initial stage this Court is not inclined to quash the FIR.

13. Coming to Crl.O.P.No.10987 of 2015, Mr.V.Krishnamoorthy, learned Counsel for the petitioner/accused submitted that even according to the complainant the impugned cheques were issued by the petitioner/accused in the police station, and he relied upon the judgment of the Honourable

Supreme Court in D.Venkatasubramaniam v. M.K.M.Krishnamachari (2009) 4 MLJ (Crl) 347 : (2009) 10 SCC 488. In the said case the facts have been set out in paragraphs 23 and 24 (in SCC), which read thus,

"23. It is too fairly well settled and needs no restatement at our hands that the saving of the High Court's inherent power is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. It is unfortunate that it is the exercise of the inherent power by the High Court in this case that had ultimately resulted in harassment of the appellants as is evident from the subsequent events.

24. Pursuant to the impugned order, the investigating authorities have approached Appellant 1 [in SLP (Crl.) No. 3269 of 2007], took him into custody and exhibited him on a television channel. The police have ⁴⁹⁷demanded to pay an amount of Rs 2,28,00,000 and threatened that he would be arrested if he fails to comply with their demand. Accordingly, the appellants have paid Rs 10 lakhs in cash in the police station itself and issued a cheque for an amount of Rs 2.18 crores drawn on Tamil Nadu Mercantile Bank. However, the cheque was not encashed on account of the instructions to the Bank to stop the payment in view of the interim order dated 4-5-2007 of this Court. The police offered explanation stating that the matter was settled voluntarily between the parties and therefore, the accused were not arrested and remanded to custody. It is difficult to buy this idea that there was a settlement between the parties in the police station. It is not difficult to discern as to how and under what circumstances the appellants may have agreed to pay the amounts and also issued a cheque. It is not known as to how and under what authority the police could intervene and settle any

disputes between the parties. It is needless to observe that the police have no such authority or duty of settling disputes."

14. At the first blush his arguments did sound convincing. But on a closure scrutiny of the facts, this Court finds that the impugned cheques were not given under duress at all.

15. In *Dashrath Rupsingh Rathod v. State of Maharashtra* ((2014) 9 SCC 129) a three Judge Bench of the Supreme Court held thus,

"20. We feel compelled to reiterate our empathy with a payee who has been duped or deluded by a swindler into accepting a cheque as consideration for delivery of any of his property; or because of the receipt of a cheque has induced the payee to omit to do anything resulting in some damage to the payee. The relief introduced by Section 138 of the NI Act is in addition to the contemplations in IPC. It is still open to such a payee recipient of a dishonoured cheque to lodge a first information report with the police or file a complaint directly before the Magistrate concerned. If the payee succeeds in establishing that the inducement for accepting a cheque which subsequently bounced had occurred where he resides or ordinarily transacts business, he will not have to suffer the travails of journeying to the place where the cheque has been dishonoured. All remedies under IPC and CrPC are available to such a payee if he chooses to pursue this course of action, rather than a complaint under Section 138 of the NI Act. And of course, he can always file a suit for recovery wherever the cause of action arises dependent on his choosing."

16. Now what has to be seen in this case is whether the impugned cheques were obtained under coercion or duress. The defacto complainant in his complaint under Section 138 of the Negotiable Instruments Act has fairly stated thus,

"7. The complainant states that without consent or permission of the complainant, the

accused has cancelled the above said seven General Powers of Attorney on 12.08.2013 and more over the accused had created so many problems and pertaining to this, the complainant approached the concerned local Police authorities and lodged a complaint. The complainant further states that accused and her husband with a view to cover up their illegal act, the accused has voluntarily landed up before the Police authorities and accused offered to reimburse the sum of Rs.1,40,00,000/- (Rupees one crore and forty lakhs only) towards accused's wrong doing. The complainant states that pertaining to the reimbursement, the accused has issued two cheques dated 05.03.2014, bearing Nos.014607 and 014608 drawn on Union Bank of India, Tambaram Branch, Chennai for a sum of Rs.1,00,00,000/- (Rupees One Crore only) and Rs.40,00,000/- (Rupees Forty Lakhs only) respectively and handed over to the complainant whereas under instruction of the accused, the complainant had deposited the above said cheques for clearance in the Tamil Nadu Mercantile Bank Ltd., (TMB), Thiruvannamiyur Branch on 05.03.2014 and the same were returned unpaid with an endorsement "Funds Insufficient" on 06.03.2014 through the complainant's Bank return memo."

17. The accused, in the advocate's notice dated 7.4.2014, issued to the complainant has accepted that the two cheques for Rs.1.40 lakhs were handed over to the complainant before the Inspector of Police Guduvanchery Police Station, and in the notice also he has not stated that the same was handed over under duress or coercion. In the said notice dated 7.4.2014 the stand of the accused is that they allowed the cheques to be dishonoured, because the complainant did not hand over certain records. It was never the case of the accused that since the cheques were received under duress, the accused was forced to dishonour the cheques. According to the complainant the cheques dated 5.3.2014 were handed over in the police station on 5.1.2014, which has not been refuted by the accused. Under such circumstances, in a quash application, this Court cannot decide on the disputed question of fact and hold that the cheques were

issued under duress, just because it was given in the police station. The question of duress has to be decided only during trial, especially in the light of the assertion of the complainant that the accused came with his advocate to the police station on 5.1.2014 and handed over the two post dated cheques.

18. In the result, both the Criminal Original Petitions stand dismissed as they are devoid of merits. Connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(T&P)

//True Copy//

Sub Assistant Registrar

vr

To

1. The Sub Inspector of Police,
District Crime Branch,
Kancheepuram,
Kancheepuram District.

2. The Public Prosecutor,
High Court, Madras.

1 CC to Mr.B.L. Jayakandan, Advocate SR.No. 58003

1 CC to Mr.M.Rajavelu, Advocate SR.No. 57970

Crl.O.P.No.24791 of 2014

JSV (CO)

PSI (28.10.2015)

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