

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.04.2015
DELIVERED ON : 29.04.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.27520 of 2014
and
M.P.Nos.1 and 2 of 2015

Thamburaj

... Petitioner

vs.

Inderchand

... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in CRP No.10/2014 from the file of the Principal District Judge, Chengalpet and set aside the order made on 18.09.2014 by him and confirm the order of Judicial Magistrate at Alandur in Crl.M.P.No.4177 of 2014 in C.C.No.97/2012.

For Petitioner : Mr.O.R.Abul Kalaam

O R D E R

This petition has been filed to call for the records in CRP No.10/2014 from the file of the Principal District Judge, Chengalpet and set aside the order made on 18.09.2014 by him and confirm the order of Judicial Magistrate at Alandur in Crl.M.P.No.4177 of 2014 in C.C.No.97/2012.

2. Heard the learned counsel appearing for the petitioner.

3. The complainant is the petitioner before this Court. The complainant filed a private complaint against the respondent/accused, alleging offence under Section 420 IPC. The trial Court took cognizance of the offence and issued process to the accused. On appearance of the accused, witnesses were examined on behalf of the complainant and a charge under Section 420 IPC was framed against the accused by the trial Court on 19.03.2014. The complainant was not satisfied with the charge framed and wanted the Court to alter the charge by including Sections 193 and 383 IPC.

4. The trial Court heard the parties and by a well considered order, dismissed Crl.M.P.No.4177 of 2014 in C.C.No.97 of 2012 on

17.07.2014, aggrieved by which, the petitioner approached the Sessions Court in C.R.P.No.10/2014, which was dismissed by the Sessions Court on 18.09.2014, against which this application under Section 482 Cr.P.C. has been filed.

5. It is trite law that once when once a party has approached the Sessions Court by invoking revisional jurisdiction., is precluded from once again approaching the High Court. A petition under Section 482 Cr.P.C. can be entertained only in extraordinary circumstances as held in the judgments that were relied upon by the learned counsel himself, namely:

1. Charanjit Singh and others v. Smt.Gursharan Kaur [1990 Crl.L.J.1264]
2. Iqbal Singh Marwah and another v. Meenakshi Marwah and another [(2005) 4 SCC 370]

6. In this case, this Court has to see whether there is any serious miscarriage of justice in the orders of the Court below, warranting interference of this Court in exercise of its power under Section 482 Cr.P.C. The allegation of the petitioner/complainant is that there are materials for a charge under Sections 193 and 383 IPC. It is the contention of the petitioner/complainant that, the accused had forcibly taken some cheques from the petitioner/complainant and had launched 138 prosecution against him. The learned counsel for the petitioner relied upon the Constitutional Bench judgment of the Supreme Court in Iqbal Singh Marwah and another vs. Meenakshi Marwah [(2005) 4 SCC 370], wherein, the Supreme Court has held that the provisions of Section 195 Cr.P.C. can be invoked only when a document has been tampered with, while it is in the custodia legis of the Court and not otherwise.

7. It is the case of the petitioner/complainant that the cheques were obtained by force outside the Court and based on such cheques, the prosecution has been launched under Section 138 of the Negotiable Instruments Act by the respondent/accused herein, against the petitioner/complainant in another Court. The crux of the allegation in this petition is that, the respondent/accused had forcibly taken three cheques bearing Nos.415721 dated 21.01.2010 for Rs.75 lakhs; 415722 dated 05.02.2010 for Rs.50 lakhs and 415723 dated 17.02.2010 for Rs.75 lakhs from the petitioner/complainant and had instituted 138 N.I. Act proceedings against him. Whereas, on a reading of the private complaint filed by the petitioner/complainant in C.C.No.97 of 2012, in paragraph 18 he has stated as follows:

"18. The complainant accordingly drafted an agreement in writing to the said effect and handed over the same to his wife with instructions to give the same to the respondent and get the

signature on the said agreement from him and pass on to him three cheques i.e. Cheque bearing No.415721, dated 21.01.2010 for Rs.75,00,000/-, Cheque No.415722, dated 05.02.2010 for Rs.50,00,000/- and Cheque No.415723 dated 17.02.2010 for Rs.75,00,000/-"

He has not stated that those cheques were obtained from him under duress or coercion, as projected by him now. Therefore, both Courts below were perfectly right in dismissing the petition filed by the petitioner/complainant for including Sections 193 and 383 IPC.

In the result, the petition is devoid of merits and the same is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gms

To

1. The I Principal District Judge,
Chengalpet
2. The Judicial Magistrate at Alandur
3. -do- Through Chief Judicial Magistrate,
Chennai

+1cc to Mr.O.R.Abdul Kalaam, Advocate, S.R.No.23679

Cr1.O.P.No.No.27520 of 2014

RSY(CO)
CA(15/05/2015)

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