

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.10.2015

DELIVERED ON : 06.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.9933 of 2013
and M.P.No.1 of 2013

Periasamy

.. Petitioner

Vs

1.S.Bethaperumal
2.Uma Maheswari

... Respondents

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No.304/2011 pending on the file of Judicial Magistrate No.III, Coimbatore and quash the same with cost.

For Petitioner
For R1

Ms.P.T.Asha
Mr.G.Murugendran

O R D E R

This petition has been filed to call for the records in C.C.No.304/2011 pending on the file of Judicial Magistrate No.III, Coimbatore and quash the same.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

3. For the sake of convenience, the parties will be referred to by their name.

4. Bethaperumal [complainant/first respondent] and Periasamy [petitioner/first accused] were working as Sub Inspectors of Police in the State Police and thus they seem to know each other. Bethaperumal lodged a private complaint on 02.08.2011 before the learned Judicial Magistrate, Coimbatore in C.C.No.304 of 2011 for alleged offences under Sections 406, 465, 468, 469, 471, 417 and 420 IPC r/w 200 Cr.P.C. against Periasamy and Uma Maheswari [A2]. In the said private complaint he has made the following averments:

"3. The complainant submits that whenever the first accused talking with the complainant over phone, he induced him to construct a new house at Coimbatore, for which he promised him to arrange a loan up to 3 lakhs to the complainant from private financiers at Palani town in a low rate of interest. The complainant believed the first accused and his plan. The complainant agreed with the first accused to get a loan from Private Financiers at Palani Town.

4. The complainant further submits that on 08.08.2009 the first accused called the complainant over phone and he directed him to hand over the following documents to his second wife Uma Maheswari when she visits the house of the complainant at Uppilipalayam new police quarters, Coimbatore. The Documents as follows:

1. The unfilled three cheques, which are drawn on Karnataka Bank, Oppankara Street Branch, Coimbatore with signature of the complainant bearing No.359420, 359421 and 359422.

2. The unfilled Pronotes with signature of the complainant.

3. The unfilled Rs.50/- value General stamp paper and Plain papers with signature of the complainant."

5. It is further averred in the private complaint that on 08.03.2010, Bethaperumal received a legal notice from Uma Maheswari under Section 138 of the Negotiable Instruments Act, following which Uma Maheswari lodged a complaint against him in C.C.No.641 of 2010 before the learned Judicial Magistrate, Palani for the said offence. It is the contention of Bethaperumal that, the blank cheques that were allegedly given by him to Periasamy and Uma Maheswari were misused and a false prosecution has been launched under Section 138 of the Negotiable Instruments Act by Uma Maheswari. Challenging the private complaint in C.C.No.304 of 2011 filed by Bethaperumal, Periasamy is before this Court in this quash petition.

6. Heard Ms.P.T.Asha, learned counsel for Periasamy and Mr.Murugendran, learned counsel for Bethaperumal.

7. It is admitted by both sides that Uma Maheswari lodged the prosecution in C.C.No.641 of 2010 before the learned Judicial Magistrate, Palani under Section 138 of the Negotiable Instruments Act against Bethaperumal on 06.04.2010. It is the specific case of Uma Maheswari in her complaint that Bethaperumal came with his wife Vasuki on 09.08.2009 and obtained a loan of R.6 lakhs for meeting the medical expenses of Vasuski and also for the educational expenses of their son Karthikeyan and in discharge of the said debt, Bethaperumal gave the impugned cheque, which when presented was dishonoured and after the issuance of the statutory notice on 08.03.2010, the complaint for the offence under Section 138 of the Negotiable Act was filed on 06.04.2010 against Bethaperumal before the learned Judicial Magistrate, Palani and the same was taken on file as C.C.No.641 of 2010.

8. In the private complaint filed by Bethaperumal against Periasamy and Uma Maheswari, he has averred that they have induced him to construct a house and promised to arrange a loan at low interest and in that connection, he has alleged that they obtained from him blank cheques and promissory notes and misused the same. It is relevant to state here that Uma Maheswari had issued statutory notice under Section 138 of the Negotiable Instruments Act on 08.03.2010 and thereafter, the complaint under Section 138 of the Negotiable Instruments Act was filed on 06.04.2010, whereas Bethaperumal's complaint has been filed against Periasamy and Uma Maheswari only on 02.08.2011, nearly more than a year after the launch of prosecution under Section 138 of the Negotiable Instruments Act.

9. Yet another important fact was brought to the notice of the Court by the learned counsel for Periasamy, which deserves consideration. It is admitted by both the parties that Bethaperumal was placed under suspension and challenging the suspension order, he filed writ petition in W.P.No.34031 of 2012 before this Court, in which affidavit, in paragraph no.6 he has stated as follows:

"6. I state that I had requested one Tr.Periyasamy, Sub Inspector of Police of Dindigul district who was my batch-mate to raise loan of Rs.3 lakhs for a low rate of interest for the education of my son and other medical expenses during August 2009. On 8.8.2009 Tr.Periyasamy directed me to hand over 3 blank cheques with signature and an unfilled pronote with signature to his second wife Tmt.Uma Maheswari."

10. Ms.P.T.Asha, learned counsel submitted that Bethaperumal has filed an affidavit before this Court, wherein he has stated that he raised a loan of Rs.3 lakhs from Periasamy for the education of his son and other legal expenses. It is seen that this affidavit was sworn to by Bethaperumal on 17.12.2012. This averment by Bethaperumal in his affidavit that the loan was secured for the purpose of education of his son and for medical expenses is in consonance with the averments made by Uma Maheswari in her complaint under Section 138 of the Negotiable Instruments Act. The only dispute between them is that, according to Bethaperumal, he gave blank cheques, but according to Uma Maheswari, the cheques were filled and given. Having taken a stand in the affidavit filed before this Court that the loan was obtained for educational and medical purposes, it does not lie in the mouth of Bethaperumal to take a stand in the private complaint that he was induced by Periasamy and Uma Maheswari to build a house on the promise that they will get him loan at a low interest.

11. Mr.Murugendran, learned counsel for Bethaperumal submitted that the writ petition was allowed by this Court and the suspension order of Bethaperumal was quashed. This means that this Court believed Bethaperumal's assertion that the loan was obtained for medical and educational purposes as averred by him in his affidavit. This affidavit is an impeachable document which is on the file of this Court and is of sterling quality and therefore, it can be looked into by this Court in proceedings under Section 482 Cr.P.C. as held by the Supreme Court in State of Orissa vs. Debendra Nath Padi [2004 AIR SCW 6183].

12. It was contended by Mr.Murugendran, learned counsel that the trial in this case has commenced and therefore, this Court should not interfere with the prosecution. This Court called for the records from the trial Court and found that the trial in this case has not commenced at all and only the sworn statements of Bethaperumal and his witnesses were recorded under Section 200 Cr.P.C before the issuance of process to the accused.

13. Mr.Murugendran, learned counsel relied upon the judgment of the Supreme Court in Vinod Raghuvanshi v. Ajay Arora and othes [(2013) 10 SCC 581] and submitted that the prosecution should not be stifled. There is no quarrel with the proposition of law laid down by the Hon'ble Supreme Court in the said judgment. In the same judgment, the Hon'ble Supreme Court has stated that appropriate prosecution should not be stifled, unless there are compelling circumstances to do so. In this case, there are sufficient compelling circumstances for quashing the prosecution, which are as follows:

- Uma Maheswari has launched a prosecution under Section 138 of the Negotiable Instruments Act in C.C.No.641 of 2010 against Bethaperumal as early as 06.04.2010.
- As a counter blast, Bethaperumal has launched the present complaint alleging that he was duped into giving blank cheques to Uma Maheswari and Periasamy.
- Bethaperumal in his affidavit filed before this Court in W.P.No.34031 of 2012 has taken a stand that he had borrowed money from Periasamy for the purpose of meeting medical and educational expenses, but whereas in the impugned complaint, he has alleged that he was induced by Periasamy and Uma Maheswari to invest in the construction of a house. Thus seen from any angle, the present prosecution is clearly an abuse of process of law.

14. Mr.Murugendran, learned counsel contended that the complaint given by Bethaperumal in C.C.No.304 of 2011 before the learned Judicial Magistrate No.III, Coimbatore has been transferred to the learned Judicial Magistrate No.I, Udumalpet as C.C.No.156 of 2014 and therefore, the petition filed by Periasamy should be amended.

15. In the considered opinion of this Court, this is an argument at despair. Bethaperumal filed C.C.No.304 of 2011 before the learned Judicial Magistrate No.III, Coimbatore, challenging which Periasamy has filed this quash petition before this Court on 12.04.2013 after receipt of summons.

16. As stated above, Bethaperumal is facing prosecution in STC No.154 of 2011 before the learned Judicial Magistrate, Fast Track Court, Palani for offence under Section 138 of the Negotiable Instruments Act initiated against him by Uma Maheswari. Bethaperumal filed Crl.O.P.(MD)No.9102 of 2012 before the Madurai Bench of Madras High Court for transferring STC No.154 of 2011 from the file of the learned Judicial Magistrate, Fast Track Court, Palani to the file of the learned Judicial Magistrate No.III, Coimbatore for conducting joint trial with C.C.No.304 of 2011 filed by him against Uma Maheswari and Periasamy. Madurai Bench of Madras High Court by order dated 10.08.2012 in Crl.O.P.(MD)No.9102 of 2012 to transfer both STC No.154 of 2011 from the file of Judicial Magistrate, Fast Track Court, Palani and C.C.No.304 of 2011 from the file of Judicial Magistrate No.III, Coimbatore and posted before the Judicial Magistrate, Udumalpet and the case is re-numbered as C.C.No.156 of 2014. This has been done by a judicial order of this Court. Hence, it is not necessary to make the petitioner file an amendment application, for, that will only further prolong the litigation.

In the result, this criminal original petition is allowed and the proceedings in C.C.No.156 of 2014 on the file of the learned Judicial Magistrate No.I, Udumalpet [old C.C.No.304 of 2011 on the file of the Judicial Magistrate No.III, Coimbatore] is hereby quashed as against the petitioner Periasamy. Consequently, connected miscellaneous petition is closed.

gms

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

To

1.Judicial Magistrate No.III, Coimbatore.

2.Judicial Magistrate No.I, Udumalpet.

3.The Public Prosecutor
High Court, Madras.

+ 1 cc to M/s.Sarvabhuman Associates, Advocate SR 61534

+ 1 cc to M/s.G.Murugendran, Advocate Sr 61595 (7/1/16)

ad(co)
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