

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.O.P.No.8329 of 2015

and

M.P.Nos.1 and 2 of 2015

M/s Dharani Sugar Mills Unit-II
Rep by its Chairman
Palani G.Periasamy
Karaipoondi Village, Polur
Thiruvannamalai District.

...Petitioner

vs.

1.Tiruvannamalai District Farmer Progressive Sangam
Madurai Perumpatter Village
Thelloor Post, Arni Taluk
Thiruvannamalai District
Rep by its Secretary
A.Krishna Reddiar
S/o Annamalai Reddiar

2.P.Subramani

...Respondents

Criminal Original Petition filed under Section 482 Cr.P.C.
to call for the records relating to the orders passed in
C.M.P.No.1129 of 2015 in C.C.No.96 of 2008 dated 25.03.2015, on the
file of Judicial Magistrate, Polur, and set aside the same.

For Petitioner : Mr.B.Kumar, Senior Counsel
for Ms.P.T.Ramadevi

O R D E R

Heard Mr.B.Kumar, learned Senior Counsel appearing for the
petitioner.

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

3. The accused is the petitioner before this Court, challenging the order dated 25.03.2015 passed in C.M.P.No.1129 of 2015 in C.C.No.96 of 2008 by the learned Judicial Magistrate, Polur. The complainant in this case is Tiruvannamalai District Farmer Progressive Sangam, represented by its Secretary, A.Krishna Reddiar and it is an Association registered under the Tamil Nadu Societies Registration Act, 1975. The complainant lodged a private complaint against the accused for offence under Section 409 IPC. The then Secretary of the Association gave sworn statement under Section 200 Cr.P.C. and the trial Court took cognizance of the offence and the case was numbered as C.C.No.96 of 2008.

4. Challenging the prosecution in C.C.No.96 of 2008, the accused approached this Court in Crl.O.P.No.10324 of 2008 and obtained interim stay of further proceedings in M.P.No.1 of 2008. Thus, the trial did not progress. Ultimately, this Court dismissed Crl.O.P.No.10324 of 2008 on 30.10.2014, by a detailed order holding that the complainant had made out a prima facie case for trial for an offence under Section 409 IPC against the accused. In the meantime, A.Krishna Reddiar, the then Secretary of the complainant Association died on 11.08.2013 and therefore, the complainant filed a Substitution Petition praying that one P.Subramani, who has been authorised by the Executive Committee, be permitted to proceed with the case. The resolution passed by the Executive Committee was also filed along with the petition. The accused filed a detailed objection objecting to substitution. The trial Court by a well considered order dated 25.03.2015 allowed the Substitution Petition C.M.P.No.1129 of 2015 in C.C.No.96 of 2008 and permitted the complainant to be prosecuted by Subramani, aggrieved by which the accused is once again before this Court to quash the said order.

5. Mr.B.Kumar, learned Senior Counsel for the petitioner submitted that the complainant Association had become defunct and therefore, a defunct Society cannot further continue with the prosecution. In support of his contention, he relied upon Section 44 of the Tamil Nadu Societies Registration Act, which provides the procedure for removal of defunct registered Societies. The learned Senior Counsel also relied upon the judgment of this Court in Senthivel v. J.K.Narayanan & Ors. [2001(1) MWN (Cr.)235]

6. Now the question is, will the offence get effaced just because the complainant has had a legal death? The answer is an emphatic "no". Even assuming for a moment that the complainant Society had become defunct, the cognizance that was validly taken by the Magistrate and which was upheld by this Court as stated above, cannot be effaced.

7. Let us assume that an accused is charged for an offence under Section 307 IPC for attempting to murder the de facto complainant and after filing of Final Report, if the de facto

complainant dies, can the prosecution against the accused abate? The answer is a definite "No". The prosecution has to proceed in accordance with the Code of Criminal Procedure to come to a logical conclusion.

8. The contention of the learned Senior Counsel for the petitioner that the Society was declared defunct, is a question of fact, which cannot be decided by this Court in a petition under Section 482 Cr.P.C. Even assuming for a moment that the Society, after the complaint was taken cognizance of, had become defunct, that will

not enure to the benefit of the accused. Section 20 of the Tamil Nadu Societies Registration Act reads as follows:

"20(1) The committee or any officer of the registered society authorised in this behalf by its by-laws may bring or defend or cause to be brought or defended any action or other legal proceeding touching or concerning any property, right or claim of the registered society and may sue or be sued in respect of any such property, right or claim.

(2) Any action or other legal proceeding shall not abate or be discontinued by the death, resignation or removal from office of any officer of the registered society."

9. From a reading of Section 20 it is clear that, legal proceedings can be initiated by the Committee or an Officer of the Society. A Society registered under the Tamil Nadu Societies Registration Act is not a juristic person, like a Company incorporated under the Indian Companies Act. It cannot sue and be sued in its name. In a criminal prosecution it will be sufficient, either to give the name of the Secretary as the complainant in the cause title or merely give the designation "Secretary" and proceed with the other averments in the complaint, if the Secretary is the person who has been authorised by the bye-laws to sue and be sued. Section 2(d) of the Code of Criminal Procedure states as follows:

"2(d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report."

Section 2(d) does not say, who should be the complainant. It is first principle in criminal law that, criminal law can be set into motion by anyone. The concept of 'locus standi' is foreign to criminal jurisprudence. Only when there is a particular statutory

regulation as found in Section 142 of the Negotiable Instruments Act, can the question of locus standi be raised. [See : Vishwa Mitter vs O.P.Poddar - AIR 1984 SC 5]. In Ashwin vs. State of Maharashtra [AIR 1967 SC 983], the Supreme Court has clearly stated that a criminal complaint does not necessarily abate on the death of the complainant even in those case where a making of the complaint by the person aggrieved is made a condition precedent by the Code.

10. Here the allegation against the accused is that he has misappropriated funds and if the prosecution is able to adduce cogent evidence before the trial Court that the accused has committed misappropriation of funds, the accused will have to face the consequence. He cannot take advantage of the fact that the complainant has had a legal death and therefore, the cognizance taken earlier should be set at naught.

11. In M/s MMTC Ltd and another vs. M/s Madchel Chemical & Pharma Pvt. Ltd. [(2001) AIR SCW 4793], while dealing with the prosecution under Section 138 of the Negotiable Instruments Act, the Supreme Court has held that even if there was no authority for a person working in a Company to lodge the complaint, yet at a subsequent stage, the defect could be rectified and that defect will not enure to the advantage of the accused.

12. Coming to the judgment cited by the learned Senior Counsel for the petitioner, it is seen that much water has flown under the bridge pursuant to the judgment of the Supreme Court in Associated Cement Co. vs. Keshvanand [AIR 1998 SC 596].

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

Sd/-

सत्यमेव जयते
Assistant Registrar(R)

//True Copy//

Sub Assistant Registrar

gms

To

1. The Judicial Magistrate,
Polur.

2. The Chief Judicial Magistrate,
Thiruvannamalai.

3. The Public Prosecutor,
High Court, Madras.

1 CC to Ms.P.T.Ramadevi, Advocate SR.No. 20773

Cr1.O.P.No.8329 of 2015

KJI (CO)
PSI (14.05.2015)



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