

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.04.2015

Coram

THE HONOURABLE MS.JUSTICE K.B.K.VASUKI

Crl.O.P.Nos.32935 and 32973 of 2013

MP.Nos. 1 + 1 of 2013 and 1 + 1 of 2014

1.Dr.P.V.Ravi
2.Prema Ravi
3.Anusha R.Mahesh

..Petitioners in Crl.OP.32935 of 2013
(Accused 1 to 3)

1.A.S.Selvaraj
2.T.Nithyanandham
3.K.R.Madheswaran

.. Petitioners in Crl.OP.32973 of 2013
(Accused 4 to 6)

Vs.

1.P.Rajamani
2.The State of Tamil Nadu
rep by the Sub Inspector of Police,
District Crime Branch, Coimbatore District.

... Respondents in both the Crl.O.Ps
(Complainant)

Common Prayer:- Criminal Original Petitions filed under Section 482 Cr.P.C. to call for the records and quash the complaint in CC.No.1074 of 2013 pending on the file of the Judicial Magistrate II, Coimbatore.

For Petitioners : Mr.G.Prasanna
in Crl.OP.No.32935 of 2013
Mr.S.Sidharthan
in Crl.OP.No.32935 of 2013

For Respondents : Mr.Ramesh, Senior Counsel
for Mr.P.Mahesh Kumar. (R1)

Mr.C.Emalias, APP for R2.

COMMON ORDER

Both the criminal original petitions are filed by A1 to A3 and A4 to A6 in CC.No.1074 of 2013 on the file of the Judicial Magistrate No.II, Coimbatore to quash the proceedings initiated against them on the basis of the private complaint filed by the first respondent/complainant.

2.The few facts which are relevant for consideration herein are as follows : -

The petitioners 1 and 2 are the husband and wife and the third petitioner is their daughter. The petitioners 1 and 2 and the first respondent/complainant are the Chairman-cum-Managing Trustee, Trustee and Treasurer-cum-Trustee of the Trust called Tamil Nadu Technical Education Foundation which runs a College by name Tamil Nadu College of Engineering. The first respondent's son by name Sabarivasa after the death of his father is made as Secretary-cum-Correspondent of the Trust. The 3rd petitioner/A3 is appointed as Chief Executive Officer of the college even during the life time of late T.N.Palanisame and after the death of Palanisame she is also co-opted as one of the trustees. The petitioners 1 to 3/accused 1 to 3 in CrI.OP.No.32935 of 2013, also own a college by name Park Engineering College. The petitioners in CrI.OP.No.32973 of 2013/A4 to A6 are the Auditor, Chief Operation Officer and Accountant of the Trust. The present private complaint is filed against the petitioners in both the Criminal original petitions and the Branch Managers of City Union Bank, Indian Overseas Bank, Catholic Syrian Bank, The Karur Vysya Bank, and Sub Inspector of Police, District Crime Branch, Coimbatore.

3.The first respondent/complainant in both the criminal original petitions is none else than the wife of one T.N.Palanisame who was the late Managing Trustee and Chairman of the Trust and Treasurer cum Trustee of the Trust.

4.While so, serious dispute arose between the members of two families i.e. Late T.N.Palanisame and Dr.P.V.Ravi/first petitioner after the death of T.N.Palanisame and after the refusal on the part of the petitioners 1 and 2 to Co-opt the complainant's son Sabarivasa as one of the trustees without any approval through resolution of the trust board and after the co-option of the third petitioner/Anusha as one of the trustees. During the life time of T.N.Palanisame, late Palanisame and the petitioners 1 and 2 along with one Kovai Thambi were the original trustees as per the Trust deed dated 01.02.1984. During 2003 Kovai Thambi resigned from the trusteeship and Supplementary deed dated 19.03.2003 came to be executed among the four trustees by making certain changes in the original Trust Deed. The trust was established by a Trust Deed dated 01.02.1984 and the Trust was managed by the Board of Trustees late T.N.Palaniswame, the petitioners 1 and 2 herein and one Kovai Thambi. Kovai Thambi resigned from trusteeship and TN.Palaniswame was appointed as lifetime trustee and Chairman of the college. While so, a suit was filed in OS.No.648 of 2001 for framing a scheme for the management and administration of the Trust. During the pendency of the suit, a supplementary deed of Trust dated 19.03.2003 came to be executed thereby modifying the terms of the original trust deed and the same was subsequently endorsed by the Court, in the compromise petition which was ordered on 15.02.2005. While TN.Palaniswame was holding the office of Chairman-cum-Managing Trustee, the petitioner/Ravi was

holding the position of Trustee-cum-Secretary and Correspondent and his wife Prema Ravi was the Treasurer. While the first respondent/Rajamani remained as Trustee after the demise of T.N.Palaniswame on 08.02.2010, P.V.Ravi assumed the charge of Managing Trustee of the Trust and Chairman of the college and the first respondent/Rajamani wife of TN.Palaniswame was appointed as Treasurer and the son of Palaniswame and Rajamani by name Sabarivasa was appointed as Secretary and Correspondent of the college. As far as third petitioner Anusha is concerned she was appointed as CEO of the college and involved in the day to day management of the college even during the lifetime of T.N.Palaniswame.

5.The dispute arose between the parties only after the death of complainant's husband T.N.Palaniswame and misunderstanding arose between the petitioners 1 to 3/A1 to A3 on one hand and the complainant and her son on the other hand due to the refusal on the part of the petitioners 1 and 2 to co-opt Sabarivasa as one of the Trustees and due to nomination of Anusha Ravi as one of the Trustees and the same led to police complaints and civil suit by the complainant side against the opponents. The first such complaint appears to be lodged during December 2010 by the complainant's son against A1 and A3 before Chithode police station and the same was registered in Cr.No.605 of 2010 and appears to be subsequently closed. The same was followed by another complaint by the present complainant Rajamani and the same was registered as District Crime Branch FIR in Cr.No.10 of 2012 dated 22.04.2012 and the Civil Suit in OS.No.140 of 2012 and the present complaint in CC.1074 of 2013.

6.As far as the FIR dated 22.04.2012 in DCB Cr.No.10 of 2012 is concerned the allegations therein are raised against P.V.Ravi and few others and the complaint proceeded to say that her husband late Palaniswame entrusted the entire management of the college to Ravi and fully trusted him and Ravi misappropriated the trust and college amount by showing false accounts and he opened more than one account in twenty banks and misappropriated the money belonging to the trust and college and diverted the amount to the Park College set up by them and Ravi did not correct himself in spite of his being demanded so by her late husband and the difference between the parties was sorted out and compromised by AICTE officers so as to run the college smoothly. Even thereafter Ravi did not treat her husband properly and humiliated him and caused him serious mental suffering due to which he fell ill and passed away. Thereafter, Ravi informed the Bank officials and others as if except Ravi, others have no authority to manage the affairs and even after appointing her son as Secretary, the same was not duly intimated to others and her son was not allowed to do any job in his capacity as Secretary and Correspondent and her son found out the act of misappropriation of crores of rupees of Trust by Ravi and his daughter Anusha Mahesh and he warned them not to indulge in such acts and he was kidnapped and was assaulted and the complainant and her son apprehended danger to their life from the hands of Ravi.

7. Pending investigation in DCB Cr.No.10 of 2012, the complainant along with her son filed Civil Suit in OS.No.140 of 2012 along with IA.No.335 of 2012 for declaratory reliefs for declaring the petitioners A1 to A3 who are arrived as defendants 2 to 4 as guilty of misfeasance, breach of trust and misappropriation are not fit and proper persons to hold Office as Trustees of the first defendant/education foundation and for declaring that purported co-option of the 3rd petitioner herein as the fourth defendant therein as trustee, as illegal, invalid, void-ab-initio and in violation of the supplementary Deed of Trust dated 19.05.2003 and consent order dated 15.02.2005 passed in OS.No.648 of 2001 and for declaring that the second plaintiff/Sabariyasa who is the son of the complainant/Rajamani herein is a valid life Trustee in terms of the nomination by the family trustee of the deceased TN.Palanisami with effect from 24.01.2012 and for consequential permanent injunction restraining the defendants 2 to 4 from functioning as trustees of the education foundation trust and for restraining them from in any manner interfering with the functioning of the second plaintiff/Sabariyasa as life trustee of the education foundation trust and for restraining the defendants 2 to 4 therein who are the petitioners A1 to A3 herein from opening or operating any accounts in any Bank in the name or in respect of the education foundation trust except in accordance with and compliance with the provisions of Supplementary Deed of Trust. In addition to the declaratory relief and consequential injunction reliefs as above referred to, direction sought for is to hold an inquiry into the accounts and affairs of the trust through an independent investigative audit and based on the findings passed thereon, pass appropriate further surcharge orders to surcharge defendants 2 to 4 therein/petitioners A1 to A3 herein. The plaint contains the identical allegations as raised in the present private complaint.

8. The complaint in DCB Cr.No.10 of 2012 was investigated into and closed as mistake of fact and appropriate final report was filed before the concerned court on 27.06.2012. On receipt of the same, the concerned Court issued due notice to the complainant and RCS was pending before the concerned court till 27.05.2013 by reason of non appearance of the complainant/Rajamani for few hearings and ultimately RCS filed by the IO was accepted and closed.

9. Thereafter, the complainant approached the concerned Judicial Magistrate Court in DCB Cr.No.10 of 2012 on 17.07.2013 by way of protest petition and with an application to receive his objections against RCS and to treat her objections as private complaint under Section 200 Cr.PC. The petition was taken up on file as CMP.No.4497 of 2013 in DCB Cr.No.10 of 2012. Pending the same, the complainant has also filed the present private complaint in CC.No.1074 of 2013, with the same allegations as raised in the plaint, but with improved version. The private complaint was taken on file on 05.11.2013 and the sworn statement was recorded on the same day and was taken cognizance for the offences under Sections 120(B), 420, 406, 468 and

471 IPC against accused 1 to 10 on 11.11.2013. While doing so, the lower court refused to take cognizance against the Sub Inspector of Police, DCB, Coimbatore who was arrayed as 11th accused in the complaint. The petitioner/complainant on 28.11.2013 made an endorsement thereby not pressing CMP.No.4497 of 2013 and the same was accordingly dismissed, thereby the order accepting RCS remained in force and became final.

10.The petitioners/accused A1 to A3 would in Crl.OP.No.32935 of 2013 seek to quash the proceedings in CC.No.1074 of 2013 on the following grounds : (1)the allegations raised in the complaint are false and baseless (2)the allegation raised in the complaint are thoroughly investigated into in the earlier complaint and was found to be mistake of fact (3)the dispute between the parties is more of civil in nature and same can be appreciated in the light of the evidence to be adduced in the civil suit already pending and (4)the private complaint filed during the pendency of RCS and CMP.No.4497 of 2013 arising out of the earlier complaint is legally not maintainable. The learned counsel for the petitioners has also reiterated the same contentions herein during the course of his argument.

11.The petitioners/A4 to A6 in Crl.OP.No.32973 of 2013 seeks to challenge the proceedings on the following grounds : (1)the allegations raised in the complaint against A4 to A6, who were the Auditor, Chief Operation Officer and Accountant of the Trust, have nothing to do with the dispute between the parties and no criminal liability can be fastened on them for discharging the official duties entrusted to them and they are not parties to any violation of the provisions of the Trust. (2)No allegations are raised against the petitioners either in the earlier complaint or in the Civil Suit nor they are arrayed as accused or defendants therein and the allegations raised in this private complaint against the petitioners are only an after thought.

12.Both the petitions are seriously opposed by the first respondent/complainant by reiterating the allegations raised in the complaints. The learned counsel for the complainant would also defend the maintainability of the present complaint mainly on the ground that the earlier complaint by order dated 28.11.2013 was closed and there is no legal impediment to maintain the present private complaint.

13.Heard the rival submissions made on both sides and perused the records.

14.From the facts made available herein it is now seen that the trust was created and the Engineering college was started as early as on 1984 on 01.02.1984 and the Supplementary Trust deed came into existence during 2003 and the same was confirmed by way of compromise decree in the year 2005. The school of Architecture was also started

in the year 2006 and A3/Anusha was appointed as CEO even during the lifetime of T.N.Palaniswame and opening of the extra bank accounts which was complained of in the complaint was also only during the lifetime of T.N.Palaniswame. The first Managing Trustee-cum-Chairman T.N.Palaniswame died on 08.02.2010 and thereafter difference of opinion and animosity developed between the two families.

15. Between 2010 and 2013, there are three criminal complaints and one civil suit filed by the complainant's family against the accused family. In all the three complaints and in the civil suit, the main allegations raised against the accused family are that all the three family members became trustees and they indulge in such acts so as to convert the trust into the family property and they did not allow the family members of the complainant to become the trustees for ulterior reasons and the accused family with the help of the staff of the trust and professionals such as Auditor and the Managers of the Bank created independent bank accounts and misappropriated the money belonging to the trust and the college in various manners as explained in the present private complaint and utilised the same for their own use to start their own college etc., thereby committed acts of misappropriation and breach of trust.

16. It is but relevant to point out at this juncture that T.N.Palaniswame till his lifetime appeared to have raised no objection either orally or in writing against either of the accused A1 to A3 or A4 to A6. It is also relevant to mention at this stage that though the complainant and her son happened to be in the helm of affairs during and after the lifetime of T.N.Palaniswame and though the complainant has been acting as treasurer of the trust and her son as Secretary and Correspondent of the college and the trust, they have not chosen to raise all the allegations either in the previous complaint or in the civil suit. The allegations raised in the earlier private complaint is regarding the conduct of A1 to A3 in not co-opting the complainant's son Sabarivasa as one of the trustees and their conduct in co-opting A3/Anusha as one of the trustees. The allegations regarding looting of Trust money in crores in various manners as explained herein are not mentioned either in the earlier complaint or in the civil suit. No allegations are also raised against A4 to A6 Auditor, Chief Operation Officer and Accountant therein.

17. Be that as it may, before going into the allegations raised against A1 to A3 and A4 and A6 on merits, the first aspect to be considered herein is the maintainability of the impugned present private complaint.

18. The fact that the present private complaint came to be lodged during November 2013 during the pendency of protest petition CMP.No.4497 of 2013 in DCB Cr.No.10 of 2012. As rightly argued by the learned counsel for the petitioners, the private complaint filed

during the pendency of the protest petition is legally not maintainable and the withdrawal of protest petition during the pendency of the impugned private complaint as not pressed would not cure the defect which goes to the root of maintainability of the complaint. As such, the objection raised against the maintainability of the present private complaint is hence legally sustainable.

19.The next legal objection to be considered herein is the manner in which the cognizance of the case is taken by the concerned Judicial Magistrate against all the accused for the offences under Sections 120B, 420, 406, 468 and 471 IPC. Here is the case wherein the main allegations raised are against A1 to A3 regarding the violations of provisions of trust, particularly the manner of opening of accounts, without the knowledge of the Chairman, misappropriation of money belonging to the Trust and College, in the manner mentioned in paras 28(2) to 28(12) of the complaint transfer of funds and non filing of the returns on behalf of the Trust.

20.The complainant has except stating in paras 14 and 15 that the accused 1 to 3 are doing illegal activities with the help of A4 to A6 and opened unlawful accounts with the help of A7 to A10 and have been sharing the unlawful gain attained with the help of A4 to A6 and A7 to A10 in pursuance of the conspiracy among A1 to A10 to make unlawful benefit to them and to create unlawful loss to the public trust and A1 to A10 have acted against the trust and violated the provisions of Trust and misappropriated the trust money, has not explained in detail as to what manner A4 to A6 helped and assisted A1 to A3 in their alleged unlawful activities. The allegations raised against A4 to A6 in paras 14 and 15 are very vague and bald and the statement made by PW1 and PW2 in their sworn statement are also equally vague and bald. In so far as A4 to A6 are concerned except stating that they all conspired together, no other specific overtact is attributed to them to constitute the acts of cheating, criminal misappropriation, criminal breach of trust etc., It is also pertinent to mention at this juncture that A4/Selvaraj/Auditor was examined as one of the witnesses in the earlier complaint by the IO. Whereas the allegations against A1 to A3 are for different acts. Thus having regard to the nature of allegations raised against A4 to A6 and A1 to A3 the order taking cognizance against all the accused for all the main offences without specifying the nature of the offences for which each accused are charged is in my considered view totally without application of mind and is illegal and the same vitiates not only the order taking cognizance against A4 to A6 but also against A1 to A3.

21.As far as the allegations raised against A1 to A3 are concerned on facts, the same also appears to be very vague, bald and based on no materials. As already referred to, T.N.Palanisame died on 08.02.2010 and the bank accounts are concerned were opened even during the life time of T.N.Palanisame. Immediately after the death of T.N.Palanisame problem arose and criminal complaints came to

be filed relating to misappropriation of amount due to the trust and the college in various manners as stated above. According to the complainant, the Trust money is misappropriated by transferring lakhs of rupees by way of crossed cheques and by transferring the amount earned by selling laptops forcibly to the students into the separate account and by making unnecessary expenditure and by paying more amount to the son of P.V.Ravi by way of Internet charges and by collecting more amount towards Internet insurance by giving false receipt and by purchasing the buses in the name of P.V.Ravi and by taking away the generator belonging to the trust for their use in the Park College and by swindling the money received from NGO scholarship meant for the students and by collecting money from Park College students towards hostel fees and putting them in TCE college hostel.

22.Regarding the allegations so raised herein, except the statement of the complainant and her son no statement is recorded from any other witness in support of the same. Though the complainant had been acting as Treasurer and her son has been acting as Secretary and Correspondent of the college and trust, they are unable to produce any material documents in support of the allegations raised herein. The document produced along with the complaint are not so serious enough in nature to prima facie make out the allegations raised against the petitioners/A1 to A3. Further, the statement of the witnesses in the course of investigation on the earlier complaint would not either support or stand contrary to the allegations raised herein. Further the complainant has also filed Civil Suit raising identical allegations and seeking certain declaratory and injunction and other reliefs based on such allegations. In that event, the allegations raised against A1 to A3 regarding violation of provisions of Trust Act, misappropriation of money and the act of criminal breach of trust are all matters to be gone into through full fledged trial and to be decided on appreciation of entire evidence to be adduced in the civil suit. If that is so, the dispute raised against the petitioners A1 to A3 is more of civil in nature.

23.The learned counsel for the respondent/complainant would at this juncture advance an argument that the dispute between the parties is such in nature that it raises both civil and criminal liability and while civil suit is one for recovery of amount misappropriated, the criminal proceedings is initiated for punishing them for the offence of criminal misappropriation and criminal breach of trust. Such argument is not supported by material evidence available herein. The relief sought for in the suit is as already stated, to declare A1 to A3 to be guilty of act of misfeasance, criminal misappropriation and criminal breach of trust and to restrain them from acting as trustee and to direct an enquiry into the accounts through independent audit and based on such findings to pass appropriate surcharge orders. The additional relief sought for therein is to declare the complainant son as life trustee and allow him to act as life trustee without any interruption from A1 to A3

herein. The manner in which the act of misappropriation alleged herein is such that it warrants a thorough probe by an independent investigating audit and the same cannot be thoroughly and effectively gone into in the private complaint filed herein. This court hence finds, considerable force in the argument advanced on the side of the petitioners that the allegations raised in the private complaint can be effectively decided by the civil forum in the civil suit, pending before the same and without obtaining any finding regarding the act of misappropriation and act of criminal breach of trust in the Civil Suit, no criminal proceeding can be allowed to go on against the petitioners herein.

24.Thus for the discussions held above, this court feels that it is a fit case wherein the criminal prosecution laid against the petitioners would amount to abuse of process of law and the same is hence liable to be quashed.

25.In the result, both the criminal original petitions are allowed, quashing the proceedings in CC.No.1074 of 2013 pending on the file of Judicial Magistrate No.II, Coimbatore. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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To

1. The Judicial Magistrate No.II, Coimbatore.
2. Do Thro' THE Judicial Magistrate No.II, Coimbatore.
3. The Sub Inspector of Police,
District Crime Branch, Coimbatore District.
4. The Public Prosecutor, High Court, Madras.

+1 cc to M/s. Prasanna, Advocate, sr.24666
+1 cc to M/s.Sidhardhan, Advocate, sr.24667
+1 cc to Mr.R.Maheshkumar, Advocate, sr.25670.

CrI.OP.Nos.32935 and 32973 of 2013

mg(co), kra(21/08)