

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.OP No.19257 of 2008
and
M.P.No.1 of 2008

1.H.J.Nanjan
2.S.Bhoja Gowder

... Petitioners

Vs

B.R.Habbi

... Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in C.C.No.74 of 2008 on the file of the learned Judicial Magistrate, Uthagamandalam and quash the same.

For Petitioners : Mr.S.Kingston Jerold

For respondent : Mr.C.D.Johnson

O R D E R

This petition has been filed to call for the records in C.C.No.74 of 2008 on the file of the learned Judicial Magistrate, Uthagamandalam and quash the same.

2. When the case was taken up for final hearing, the learned counsel for the petitioners submitted that H.J.Nanjan, the first petitioner has died.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

4. The respondent herein has lodged a private complaint against the petitioner in C.C.No.74 of 2008 before the learned Judicial Magistrate, Uthagamandalam for an offence under Section 219 IPC, challenging which the petitioner/accused is before this Court.

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

6. It is the case of the complainant that, a Memorandum of Understanding was entered into on 04.06.1999 between the family members of the complainant in respect of sharing of properties belonging to them. In the said memorandum, paragraph 8 of the reads as under:

"8. The parties covenant that all disputes, difference etc., between the parties that may arise between them in regard to all matters including this Memorandum or anything incidental thereto or connected therewith shall be subject to decision by arbitration by 1.Mr.N.Krishnamoorthy, 2.Mr.Nanja Gowder and 3.Mr.Boja Gowder and their decision shall be final and binding on the parties. In the event of demise of any of the arbitrators the surviving arbitrator or arbitrators alone shall be competent to decide the same."

7. A partition suit was filed in O.S.No.101 of 2004 by the brothers of the complainant before the District Court, Nilgiris. The existence of the arbitration clause in the Memorandum dated 04.06.1999 was brought to the notice of the District Court. Therefore, the matter was referred to the three arbitrators named therein for arbitration, under the Arbitration and Conciliation Act, 1996. One of the arbitrators Mr.N.Krishnamoorthy, withdrew from the Office and therefore, the arbitration proceedings was conducted by Mr.Nanja Gowder and Mr.Boja Gowder. The arbitrators gave an award dated 12.04.2007, which went against the interest of the complainant, aggrieved by which, the complainant has lodged the present complaint against the arbitrators for an offence under Section 219 IPC on the ground that, one of them has signed as a witness in the Memorandum dated 04.06.1999.

8. On reading of the complaint, this Court is unable to comprehend as to how the arbitrators could be made as accused for having given the arbitration award which is not to the liking of the complainant.

9. Mr.C.D.Johnson, learned counsel for the complainant submitted that one of the arbitrators was a witness to the Memorandum and therefore, he ought not to have acted as an arbitrator. On reading of the Memorandum dated 04.06.1999 it is obvious that, the complainant is also a signatory to it and he had also agreed to have Mr.N.Krishnamoorthy, Mr.Nanja Gowder and

Mr.Boja Gowder as arbitrators for resolving disputes. Having agreed to it, prosecution under Section 219 IPC cannot be launched by the complainant just because the arbitration award did not go in his favour. Mr.C.D.Johnson, learned counsel submitted that the arbitration award was later set aside by the Court, but that cannot be a reason to make the arbitrators criminally liable.

In the result, the petition is allowed and the prosecution in C.C.No.74 of 2008 on the file of the learned Judicial Magistrate, Uthagamandalam is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gms

To

1. The Judicial Magistrate,
Uthagamandalam
2. -do- Through The Chief Judicial Magistrate,
Nilgiris District.

+1cc to Mr.S.K.Rakhunathan, Advocate, S.R.No.44616

Cr1.OP No.19257 of 2008

VD(CO)
CA(08/09/2015)

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