

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 2-12-2016

(Orders reserved on 13.07.2016)

Coram

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

Crl.R.C.No.679 of 2016

And

Crl.M.P.No. 4835 of 2016

1. Aravind Srinivasan

2. Chandini Srinivasan

... Rev. Petitioners/Petitioners/A2 and A3

Vs

The State represented by
The Inspector of Police
CBCID (Metro Wing)
Chennai.
(Crime No. 3 of 2013)

...Respondent/Respondent/Complainant

PRAYER: Criminal Revision case filed under Section 397 & 401 of Cr.P.C., against the order of the learned XI Metropolitan Magistrate Saidapet, Chennai, dated 26.08.2015 in Crl.M.P.No. 3616 of 2015 in C.C.No. 3546 of 2014 dismissed the petitioners for discharge.

For Petitioner : Mr. V.Prakash
Senior Counsel for
M/s. Shubaranjani Ananth

For Respondent : Mr. M.Mohammed Riyaz
Government Advocate
(Crl.Side)

For De-facto complainant/
Intervenor : Mr.R.Shanmugasundaram
Senior counsel for
Mr.L.Baskaran and
Mr.A.Gopinath

O R D E R

The Criminal Revision Case is directed against the order of dismissal of discharge application filed by the second and third accused passed by the learned XI Metropolitan Magistrate Saidapet, Chennai, dated 26.08.2015 in Crl.M.P.No. 3616 of 2015 in C.C.No. 3546 of 2014.

2. In this case, the de-facto complainant filed an application to implead himself as second respondent and permit him to put forth his submissions in this Criminal revision. After hearing both parties, this Court by order dated 04.05.2016 has passed the following order:-

"Conclusion:

33. In the upshot of detailed qualitative and quantitative discussions and this Court taking into consideration of the respective contentions and also bearing in mind of the fact that although the main Criminal Revision Petition is not yet admitted, yet, this Court, by exercising its judicial discretion with utmost care, caution and circumspection, is of the considered view that the learned counsel for the petitioner/complainant/1st informant in Crl.M.P.No. 5232 of 2016 can assist the learned Government Advocate (Criminal Side) appearing for the third respondent/state, by way of filing of a written argument only [without there being any impleadment] at the time of conclusion of hearing on the side of the respondent/state in Crl.R.C.No. 679 of 2016, if he so desires/advised."

Hence, the de-facto complainant/intervenor was permitted to file written arguments and on the side of the de-facto complainant, Mr.R.Shanmuga Sundaram, learned Senior Counsel has filed written arguments.

This Court perused the written arguments filed by the learned counsel appearing for the de-facto complainant.

3. Based on a petition given by the de-facto complainant under Section 200 Cr.P.C., before the learned XI Metropolitan Magistrate Saidapet, Chennai, and the same was numbered as M.P.No. 4234 of 2012. On 30.07.2012, the learned Magistrate

forwarded the complaint to Central Crime Branch, Chennai, under Section 156(3) of Cr.P.C., and directed to register a case and to investigate the same. After receipt of the complaint from the learned XI Metropolitan Magistrate Saidapet, Chennai, a case was registered by the Central Crime Branch, Chennai, in Crime No. 438 of 2012 under Sections 406, 409, 418 and 420 IPC on 17.08.2012 against the first and second accused and took up for investigation. After due investigation, the investigating officer has recorded the statement of more than 11 witnesses and collected nearly thirty seven documents and after analyzing the documents, had filed the final report under Section 173 (2)(i) of Cr.P.C., before the learned XI Metropolitan Magistrate Saidapet, Chennai. In the final report, the investigating officer framed more than six charges against the accused persons. After filing of the final report, the present accused Nos. 2 and 3 has filed application before the learned Magistrate for discharge under Section 239 Cr.P.C. The learned Magistrate has taken the case on file in C.C.No. 3546 of 2015 and after perusal of the documents produced on the side of the prosecution and also considering the argument of the learned counsel for the petitioners, has finally dismissed the discharge application filed by the accused Nos.2 and 3 on 26.08.2015.

4. Aggrieved against the order of the dismissal of discharge application, the petitioner has preferred the present Criminal Revision Case before his Court.

5. The learned counsel appearing for the revision petitioners contended that the trial Court, without analysing and appreciating the evidence produced on the side of the prosecution, has erroneously dismissed the application. The learned counsel appearing for the petitioner would mainly contend that the dispute between the parties is purely civil in nature based on the documents and already, there are two civil suits pending before the Civil Court. He also mainly contended that the trial Court failed to consider the dispute as wholly of civil nature and hence, the same cannot be converted as a criminal case against the present petitioners. He further contended that the trial Court failed to go through the documents produced in this case and came to such conclusion.

6. The third point of argument put-forth on the side of the revision petitioners is that there are no materials available on record to show that any offences made out as against the present revision petitioners. Further, the trial Court has not taken into consideration, the probabilities of the case and further failed to consider that no sufficient grounds exist to sustain the prosecution.

7. It is admitted case of both parties that the wife of

the complainant had executed a power of attorney dated 01.12.2004 in the name of the first accused company in her individual capacity for the purpose of dealing shares. Further, it is admitted that Mr.Aravind Srinivasan was representing the first accused Company, as a Managing Director, and deal with the power of attorney given by the complaint and his wife Sarala Vasu.

8. It is contended on the side of the respondent that the second accused misused the above said power of attorney and transferred the shares in the name of the complainant Mr.Vasu and Sarala Vasu to his name. Further, it is contended that the first petitioner/accused transferred a sum of Rs.10,75,204/- and Rs.8,62,038/- on 23.07.2008 to the account of his wife Tmt. Chandini Srinivasan, the second petitioner/accused herein by using a forged document.

9. In this case, the first petitioner/accused Tr. Arvind Srinivasan had not given any intimation about the transfer of shares to the de-facto complainant Tr.Vasu or Tmt. Sarala Vasu, wife of the de-facto complainant. The first petitioner/accused continuously conspired with his wife Tmt. Chandini Srinivasan, the second petitioner/accused and by misusing the Power of Attorney, transferred the above shares in his name and the total value of the said shares on the date of transfer was to the Tune of Rs.1,52,85,350/-.

10. It is submitted that the forged request letter for fund transfer dated 22.07.2008 for Rs.8,62,038/- and Rs.10,75,182/- from Tmt. Sarala Vasu account (CNS025) to second petitioner/accused Tmt. Chandini Srinivasan's account (CNC003) was confirmed by the statements of the witnesses and the certificate of Tr.Hari Krishnan, Vice President, M/s. Kantilal Chaganlal Securities Pvt., Ltd., Mumbai. Further, the transaction relating to transfer of the above said total amount, a fund transfer request letter dated 22.07.2008 for Rs.19,37,220/- had also been given and sent by the second petitioner/accused Tmt. Chandini Srinivasan NSE & F & O Account (CNC003) to the account of the first petitioner/accused Tr.Arvind Srinivasan NSE account (CNA001). The above transactions were confirmed through their party ledger account statement and subsequent mail "request for transfer" which was sent by one Ms. Abirami, an employee of M/s. Belair Enterprises Ltd., on 18.08.2008. The aforesaid statements and documents proved that the accused forged or cause to be forged the signature of Tmt. Sarala Vasu wife of the defacto complainant on the request letter of fund transfer and used it as genuine to cheat the complainant with a view to misappropriate the amount.

11. In this case on reading of the above allegations made against the present petitioners are of criminal nature and forging and misusing of power of attorney against the contract entered into between the parties. Hence, it come under the purview of criminal investigation. Hence, the argument of the learned counsel appearing for the petitioner that since there are two civil suits are pending, no criminal case will not lie and the petitioners have to be discharged, cannot be accepted.

12. From the reading of the entire materials produced on the side of the prosecution and also statement recorded on the side of the prosecution, there are sufficient incriminating materials available to file charge against the present petitioners. Whether the document and statement recorded by the investigating authority are reliable or not reliable cannot be decided at the present stage of framing of charges. Whether the document produced on the side of the prosecution is not maintainable or not supported by any other documents or genuinity or not cannot be decided at this stage and has to be decided only at the time of trial alone. In this case, it would suffice that if there are sufficient incriminating materials available to frame charges against the accused persons, the Court has to frame charges without looking for the probabilities and genuinity of the documents and statement adduced on the side of the prosecution. In this case also, the argument of the learned counsel appearing for the petitioner that there is no probabilities to frame charges against the accused persons are not at all acceptable.

13. In this case on reading of the entire statements and documents, it reveals that there are sufficient incriminating materials are available to frame charges. Hence, the argument of the learned counsel for the petitioner that there is no probabilities to frame charges is not sustainable and at all acceptable.

14. The trial Court after analyzing the entire document and statement produced on the side of the prosecution, come to a proper conclusion that there are incriminating materials available to frame charges and to come to the conclusion that the offence would have committed by the present petitioners. Hence, the argument of the learned counsel for the petitioners that the trial Court has not applied its mind or analyse the documents produced on the side of the petitioners, is not at all acceptable.

15. After analyzing the documents, it appears that letters are forge and created as if they were written by the wife of the de-facto complainant and there are also materials and statements filed to that effect. Hence, according to the learned counsel

for the petitioner that no evidence was filed by the prosecution to show that the offence was made against the petitioners, is not at all acceptable.

16. In this case, it would not be a proper stage to consider the veracity of the documents and to decide at the initial stage of framing charges. Thus, it has to be decided only after examination of evidence of the prosecution and also after marking of the documents on the side of the prosecution.

17. Hence, this Court is of the considered view that after analyzing the documents and statements recorded by the prosecution, the trial Court has come to a proper conclusion that there are so many incriminating materials available to presume that the accused would have committed the offence stated by the prosecution and finally come to a correct conclusion that the discharge petition filed by the petitioner is not maintainable and dismissed the same.

18. This Court find that no illegality or infirmity in the order of the trial Court and there is no reason to interfere with the order of the trial Court. Hence, this Court is of the considered view that the revision filed by the petitioners is liable to be dismissed and accordingly, the Civil Revision Case is dismissed. No costs. Consequently, connected application is closed.

After pronouncing the order, the learned counsel for the petitioners seeks to suspend the order of this Court. Since the revision preferred by the petitioners is dismissed, this Court is not inclined to suspend the order, passed by this Court. Hence, the request of the learned counsel for the petitioners is rejected.

sd/

Assistant Registrar(CCC)

/true copy/

Sub Assistant Registrar

vsg

To

1. XI Metropolitan Magistrate Saidapet, Chennai.
2. The Inspector of Police
CBCID (Metro Wing)
Chennai.

3.The Chief Metropolitan,
Magistrate, egmore, chennai.

4.The public Prosecutor,
High Court, Chennai.

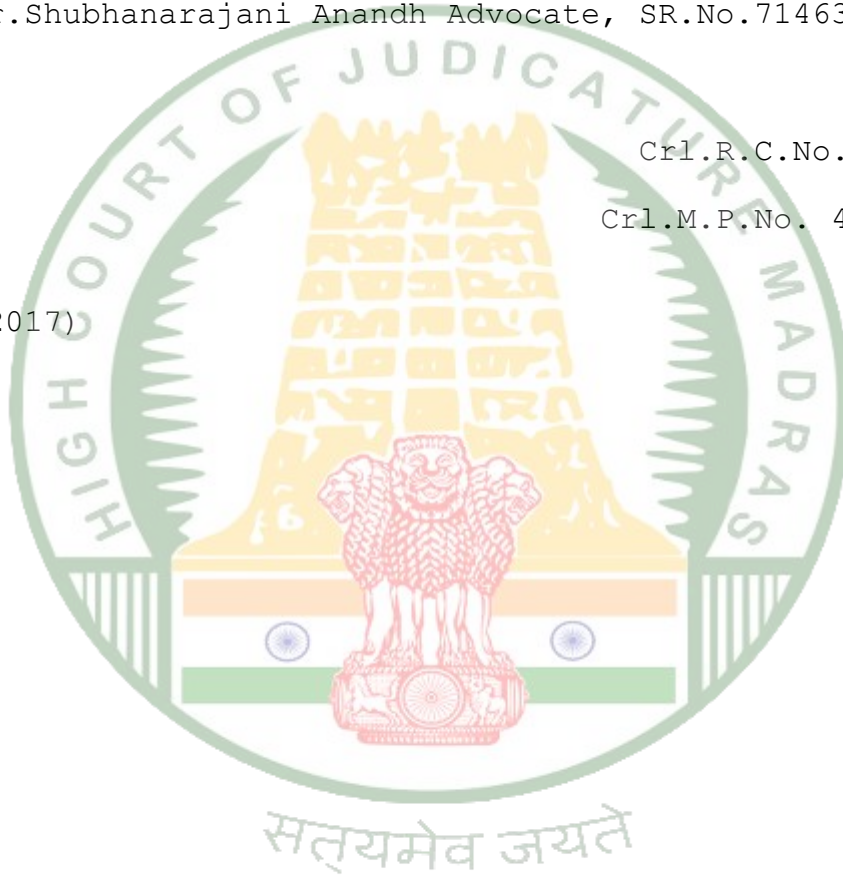
Copy to
The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.L.Baskaran, Advocate, SR.No.71603

+1cc to Mr.Shubhanarajani Anandh Advocate, SR.No.71463.

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RSY(CO)
GN(01/02/2017)



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