

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Judgment: 02.12.2016	Date of pronouncing the Judgment : 16.12.2016
---	--

CORAM :

THE HONOURABLE MR. JUSTICE S.BASKARAN

Crl.O.P.No.3724 of 2010
and M.P.No.1 of 2010

A.Mohamed Elyas .. Petitioner/Accused

Vs.

M.Mohammed Iqbal .. Respondent/Complainant

Petition filed under Section 482 Crl.P.C., praying to call for records and quash the proceedings in C.C.No.4800 of 2009 on the file of Chief Metropolitan Magistrate, Egmore, Chennai.

For Petitioner : Mr.A.Kumaraguru

For Respondents: Mr.R.Shanmuga Sundaram,
Senior counsel for
Mr.G.Ravikumar

ORDER

This Criminal Original Petition is filed seeking to quash the proceedings pending in C.C.No.4800 of 2009 on the file of Chief Metropolitan Magistrate, Egmore, Chennai.

2. The petitioner is the sole accused in C.C.No.4800 of 2009, which was taken cognizance for the offences under Section 406 and 420 IPC. The petitioner is the Managing Director of a Private Limited company dealing with software products and the respondent was an employee of the petitioner.

3. The allegation in the complaint registered against the petitioner herein is that when the complainant was appointed in the petitioner's company as consultant, he was assured of a monthly salary of Rs.50,000/- plus commission of 10% on all orders procured by the complainant. Accordingly, he was paid Rs.50,000/- monthly from April 2000 and the petitioner evaded the payment from 2001 onwards. In January 2004, the petitioner informed the complainant that he has reduced the commission to

5% and the complainant was shocked to know this and realized that he was cheated by the petitioner. During complainant's employment as Vice President and Chief Operating Officer, he has worked hard and promoted the turnover of the company and made the company as 100% export oriented software unit and obtained the status of Software Technology Park of India (STPI) and for other benefits. Due to the non-payment of the said commission and other benefits to the complainant as agreed upon, the petitioner is alleged to have cheated the complainant to the tune of Rs.31,26,884/- for the period 2001 to 2005. Hence, he preferred the complaint before the court concerned against the petitioner herein.

4. Aggrieved over the same, the petitioner has come to the court, stating to quash the complaint as it is baseless and not maintainable. The petitioner denies all the allegations made against him and states that if at all any claim is made against him, it should be deemed to be against the company only and not against the petitioner as an individual and more over it is purely a contract of employment and the matter is civil in nature. It is further averred that the complainant is trying to convert it into criminal case in order to harass him.

5. On the other hand, the petitioner made counter allegations against the complainant stating that the complainant had cheated the company by misusing the company's name and had diverted huge orders to his interest and stolen the data and valuable software of the company.

6. The petitioner also submits that he has preferred a complaint before the Commissioner of Police, Chennai, on 20.10.2005 and the same was registered as FIR on 16.11.2005 in Crime No.809 of 2005 for the offences under Section 120B, 380, 408 IPC and 66 of Information Technology Act, 2000. Charge sheet has also been filed in the said case before the learned Chief Metropolitan Magistrate, Egmore, Chennai, on 29.09.2008 and the same was taken on file in C.C.No.15273 of 2008 and it is pending for trial.

7. It is also the contention of the petitioner that knowing about the complaint given by him against the respondent on 20.10.2005, as a counter blast to the same, the respondent immediately gave a complaint before the Commissioner of Police on 24.10.2005 and the said complaint was investigated and it was referred as mistake of fact by the Police. Subsequently, the CrI.O.P.No.4151 of 2006 filed before this court by the complainant, had been subsequently withdrawn as not pressed. It is further averred that on 29.09.2008, charge sheet has been filed in the complaint given by the petitioner and as a counter blast to the same, the respondent/complainant, preferred a private complaint before Chief Metropolitan Magistrate, Egmore,

Chennai, after a period of 21 months from the date of dismissal of the direction petition and it was taken on file in C.C.No.4800 of 2009 and a summon was issued to the petitioner to appear on 18.02.2010. According to the petitioner, it is a clear case that the respondent/complainant had caused huge loss to the company and thereby cheated the company and the same has been confirmed by the police investigation, and therefore, with a view to harass the petitioner and to make him to withdraw the case against the respondent, pending in C.C.No.15273 of 2008 on the file of same court, the respondent/complainant has preferred the complaint, now under challenge in the present petition.

8. The argument advanced by the learned counsel for the petitioner is that the representation of the petitioner is only in the capacity of Managing Director of the said company and he cannot be held liable individually, if those assurances or representations are not meted out. In the said circumstances, the petitioner pleaded that the proceedings initiated on the basis of complaint given by the respondent herein in C.C.No.4800 of 2009 on the file of Chief Metropolitan Magistrate, Egmore, Chennai, has to be quashed.

9. The learned counsel for the petitioner contended that the complaint was lodged by the respondent 21 months later to the complaint given by him and that itself would go to show the malafide intention of the respondent. The same is denied by the respondent and it is pointed out by the respondent that after withdrawing Crl.O.P.No.4151 of 2006 on 03.04.2007, he received a notice dated 22.04.2007 from Sub Inspector of Police, Central Crime Branch, Egmore, Chennai-600 008, asking to come for investigation in respect of the complaint given by him and therefore, he waited till November 2008, in the hope of action will be initiated by the Police. Since they failed to do so, it is claimed by the respondent that he lodged the complaint on 15.12.2008 and as such, it cannot be stated that the complaint is malafide, only because of it being lodged after few months after withdrawal of Crl.O.P.No.4151 of 2006, wherein, liberty was given to him to file a private complaint.

10. Further, it is contended by the respondent/complainant that he is a software Engineer and was previously worked in various Establishments until 1999 and thereafter, on the basis of offer made by the petitioner herein, during July 1999, he joined the establishment of the petitioner as a technical expert, but he was not paid the remuneration as agreed upon and the petitioner cheated him to the tune of Rs.40 lakhs. In spite of the repeated request in person and E.Mails sent to the petitioner, there was no reply from the petitioner and due to the acts of breach of trust and cheating committed by the petitioner, the complainant/respondent herein lodged the complaint with the Commissioner of Police, Chennai, on

24.10.2005 and the same was forwarded for necessary action. It is alleged by the respondent that on coming to know about the complaint given by him, the petitioner herein lodged a false complaint to the Police on 16.11.2005 and the case was registered under Section 120(b), 381, 408 IPC and Section 66 of Information Technology Act, 2000, against the respondent herein. On the basis of the said complaint, subsequently, charge sheet was filed on 29.09.2008 before Chief Metropolitan Magistrate, Egmore, Chennai, against the respondent herein and the same was taken on file in C.C.No.15273 of 2008 and the same is pending. It is the contention of the respondent that the police failed to investigate the complaint given by him against the petitioner and due to that, he filed CrI.O.P.No.4951 of 2006 before this court seeking direction, but the same was withdrawn, with liberty to file a private complaint. The petitioner contends that at that stage on 22.04.2007, he received a notice from Sub Inspector of Police, Central Crime Branch, Chennai, to appear before him for investigation in respect of the complaint given by the respondent herein against the petitioner, but even after enquiry, the police failed to take any action against the petitioner till November 2008. Hence, the respondent filed a private complaint before Chief Metropolitan Magistrate, Egmore, Chennai on 15.12.2008 as per the liberty given by this court in CrI.O.P.No.4951 of 2006 and the said complaint was taken on file by Chief Metropolitan Magistrate, Chennai, in C.C.No.4800 of 2009. The respondent states that both the cases [filed by the petitioner and the respondent herein] are pending before the trial court. In such circumstances, the learned counsel appearing for the respondent contends that the plea of the petitioner cannot be entertained and this court should not entertain the petition as it is devoid of merits.

11. The learned counsel appearing for the respondent further contends that he has filed 12 documents along with his private complaint and after perusing and satisfying itself, the trial court has taken the complaint on file since prima facie case was made out against the petitioner herein and at this stage, this court should not entertain the plea of the petitioner, as the same will cause prejudice to the respondent herein.

12. The learned counsel for the respondent also pointed out that, at this stage, this court should not look into or consider the sufficiency of evidence to prove the allegation and also contended that in the absence of any material to show that the respondent acted in a malafide manner and lodged a false complaint, the same cannot be quashed. In support of his contention, the learned counsel for the respondent relied upon the Ruling of the Apex court in the case of State of Karnataka Vs. M.Devendrappa and another, reported in 2002 (3) SCC 89, wherein, it is held as follows:-

" While exercising power under the Section

482 Cr.P.C., the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice the court has power to prevent abuse.

In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 CrPC. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court."

Similarly, the learned counsel for the respondent also relied on the Ruling of the Supreme Court in the case of Rishipal Singh Vs. State of Uttar Pradesh and another reported (2014) 7 Supreme Court cases 215, and contended that if the allegations on the complaint established a prima facie case, this court should not grant the relief sought for by the petitioner.

13. The learned counsel for the respondent pointed out that it is admitted fact of the case that the respondent was engaged by the petitioner as an expert and worked for remuneration in the petitioner establishment. The averments in the complaint filed by the respondent categorically states that he was engaged by the concerned establishment of the petitioner herein and he was paid Rs.50,000/- as consultancy fees. According to the respondent, he was promised 10% commission on all orders

procured by him for the company and the same was not paid to him. It is the claim of the respondent that the petitioner herein, after promising to pay 10% commission on orders secured by the respondent herein, failed to pay the same, and thereby cheated him.

14. The averments in the complaint categorically allege that in spite of promising payment of commission at the rate of 10% by the petitioner herein, and also offered a offer letter to the respondent herein, as consultant for the establishment of the petitioner, the petitioner, thereafter, worked out payment of commission at 5% and thereby evaded the promise. This according to the complainant amounts to breach of trust and the same will constitute the offence alleged by him. The averments in the complaint lodged by the respondent herein on 24.10.2005 set out in detail about the transaction between himself and the petitioner herein. The trial court on perusal of the complaint as well as 12 documents filed along with the complaint and getting itself satisfied took on file the said complaint in C.C.No.4800 of 2009 and the same is pending. In the light of the above said rulings relied upon by the learned counsel for the respondent, this court is of the considered view that it cannot be stated that the complaint averments do not make out or disclose prima facie case. Further no material is available to show that the complainant acted in a malafide manner. In such circumstances, though the learned counsel for the petitioner contended that the complaint lodged by the respondent was in response to the complaint already given against him by the petitioner herein, the same cannot be a ground to entertain the plea of the petitioner at this stage.

15. As a residual argument, it is pointed out by the learned counsel for the respondent that in the event of cross cases pending, the same are to be tried together by the same court irrespective of the nature of offence involved and both should be decided on the basis of evidence placed on record in respective cases. In support of the said contention, the learned counsel for the respondent relied upon the Ruling of the Apex Court in the case of Nathi Lal and others Vs. State of U.P., and another reported in 1990 (Supp) Supreme Court Cases 145 and in the case of State of M.P. And Mishrilal (Dead) and others reported in (2003) 9 Supreme Court cases 426, whereunder, it is categorically held that in cross cases, the procedure to be followed by trial court is that each case to be decided on the basis of evidence placed on record in that particular case, without being influenced by evidence or arguments urged in cross case and judgments to be pronounced by same Judge one after other. In the instant case also, on the basis of the complaint given by the petitioner against the respondent case in C.C.No.15273 of 2008 and on the basis of complaint given by the respondent herein against the petitioner case in C.C.No.4800 of

2009 are pending on the file of Chief Metropolitan Magistrate, Egmore, Chennai. In such circumstances, as rightly pointed out by the learned counsel for respondent, both cases have to be dealt with by the said court in accordance with law and no ground is made out to interfere at this stage by this court.

16. Admittedly, the respondent was working in the establishment of the petitioner herein and there appears to be some dispute regarding payment to be made to the respondent herein by the petitioner for the work done by the respondent/complainant. As stated earlier, the averments in the complaint lodged by the respondent make out prima facie offence against the petitioner and in the absence of any material to show that the malafide intention on the part of the respondent and in the light of the above said rulings, relied upon by the respondent counsel, it is clear that the plea of the petitioner cannot be entertained and the same has to fail. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected MP is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

The Chief Metropolitan Magistrate,
Egmore, Chennai.

+2 cc's to M/s.G.Ravikumar, advocate, sr.73567

+1 cc to Mr.B.R.Shankaralingam, advocate, sr.73529.

ug(co)

krd 6/1

WEB COPY

Crl.O.P.No.3724 of 2010