IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.04.2017
DELIVERED ON : 13.10.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

CRL.O.P.No.10371 of 2011

1. Vijayaraj
2. Geetha .. Petitioners

Vs

The Assistant Commissioner of Police
Central Crime Branch
Coimbatore City
Coimbatore. .. Respondent

PRAYER: Petition under Section 482 of the Code of Criminal Procedure to call for the records in C.C.No.81 of 2011 on the file of the learned Judicial Magistrate VI, Coimbatore and to quash the charge sheet as against the petitioners herein, who are arrayed as accused 3 and 4.

For Petitioners : Mr.M.K.Kabir
Senior Counsel
for Mr.T.Jayaraman

For Respondents-1 : Mr.B.Ramesh Babu
Government Advocate
(Criminal Side)
for respondent

For R2 : Mr.G.Gnana Sundaram

ORDER

The petitioners have filed this petition to call for the records in C.C.No.81 of 2011 on the file of the learned Judicial Magistrate VI, Coimbatore, and to quash the charge sheet as against the petitioners herein, who are arrayed as accused 3 and 4.

2. The facts in brief are as under: According to the petitioners, based on a complaint given by one G.Varadaraj, the respondent had registered a First Information Report in C.C.No.81 of 2011 as against the parents of the petitioners.

The gravamen of the allegation is that the parents of the petitioners sold a property measuring 55 cents in S.F.No.771/4C at Kalapatti Village, Coimbatore North Taluk, Coimbatore District, despite being aware of the recovery proceedings instituted by United Bank of India before the Debts Recovery Tribunal, Kolkata, in respect of the said property which was mortgaged by the parents of the petitioners. On the basis of the above allegations complaint under Section 420 of the Indian Penal Code and other offences was filed.

3. It is stated that the petitioners had applied for anticipatory bail and the same was granted by this Court. The respondent had filed a charge sheet in Charge Sheet No.10 of 2010, dated 25.11.2010 on the file of the learned Judicial Magistrate VI, Coimbatore, alleging an offence under Section 420 of the Indian Penal Code against the petitioners and their parents.

4. Seeking quashment of the said criminal proceedings, the present criminal original petition is filed.

5. The learned Senior Counsel appearing on behalf of the petitioners vehemently contended that the allegations in the complaint, the charge sheet and the statement of witnesses do not in any manner make out a case against the petitioners and, therefore, the charge sheet arraying the petitioners as accused 3 and 4 for collateral purposes is an abuse of the process of law.

6. He further submitted that the ingredients of the offences under Section 420 and 120-B of the Indian Penal Code are conspicuously absent and there is no overt act as against the petitioners and their participation in the alleged offence has not been spelt out.

7. Per contra, the learned Government Advocate (Criminal Side) contended that all the mandatory provisions have been complied by the respondent police during the course of investigation and inasmuch as the case is pending trial, there is no necessity to quash the criminal case at this stage.

8. Heard the learned Senior Counsel for the petitioners and the learned Government Advocate (Criminal Side) appearing on behalf of the respondent.

9. In the case on hand, it is beyond any cavil that the complaint had been lodged by the complainant, G.Varadharaj, as

against the parents of the petitioners. A bare perusal of the complaint shows that the complainant along with two of his relatives purchased property of an extent of 55 cents, referred supra, on 15.12.2003 for a sale consideration of Rs.15,94,000/- and they claimed that they have invested a sum of Rs.50 lakhs.

10. It is further alleged in the complaint that on 19.5.2007, the officials of the Debts Recovery Tribunal, Koltaka, visited the property and only during that visit, the complainant came to know that the parents of the petitioners mortgaged the property with United Bank of India, Kolkata, in the year 1988 for the loan obtained by them for their business purpose. It is stated that the parents of the petitioners concealed the fact that an order of attachment of the property was in force qua the property sold to the complainant and two others and thus played fraud with dishonest intention and induced the complainant and his relatives and, therefore, the accused have committed an offence under Section 420 of the Indian Penal Code.

11. It is also stated in the complaint that the parents of the petitioners conspired to play fraud and knowing fully well that they have no right over the property for which sale deed was executed in favour of the complainant and two others, they had sold the property, committing an offence punishable under Section 120B of the Indian Penal Code.

12. The complaint, on the face of it, shows that there is not even a whisper about the overt act against the present petitioners, who had been arrayed as respondents 3 and 4 in the charge sheet.

13. In order to make an offence under Section 420 of the Indian Penal Code, the accused must have the intention at the inception of the contract. In the case on hand, there is no allegation in the first information report against the present petitioners. All the allegations levelled were only as against the parents of the petitioners. That apart, there is nothing in the complaint or in the statement of the complainant to show that accused 3 and 4 were parties to the deed of conveyance or that they had such an intention to defraud the complainant and two others. It is trite that to establish cheating as provided in Section 420 of the Indian Penal Code it must be established that the accused had the intention to induce, deceive and cheat the complainant right from very beginning. In the instant case, no such thing has happened, as is evident from the complaint.

14. A guilty intention is an essential ingredient of the offence of cheating. In other words `means rea' on the part of the accused must be established before he can be convicted of an offence of cheating. Whereas the complainant had alleged nothing as against the present petitioners in the complaint. Therefore, it can be said the present petitioners had no intention to defraud the complainant at the time of inception of execution of the sale deed, to which, admittedly, they were not even parties. That being so, it cannot be construed as to how the allegation of criminal conspiracy had been levelled against the present petitioners, when they were not even parties to the conveyance executed by their parents.

15. In Zandu Pharmaceutical Works Ltd. and Others v/s Md. Sharaful Haque and others, (2005) 1 SCC 122, the Hon'ble Supreme Court held that "it would be abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding, if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in to to".

16. In the case on hand, the allegations made in the first information report or the complaint, even if they are taken at their face value and are accepted in their entirety do not prima facie constitute any offence or make out a case against the present petitioners.

17. In view of the above and having regard to the facts stated and the legal position explained above, this Court is of the firm view that the leaned Judicial Magistrate had committed a serious error in issuing the process against the present petitioners under Sections 420 and 120-B of the Indian Penal Code, as the act alleged against them did not constitute the offence satisfying the ingredients even prima facie.

In such view of the matter, this criminal original petition is allowed and the charge sheet in C.C.No.81 of 2011, pending on the file of the learned Judicial Magistrate VI, Coimbatore is quashed in respect of the petitioners / accused 3 and 4. The learned Judicial Magistrate VI, Coimbatore, is directed to proceed with the case and dispose of the same within a period of six months from the date of receipt of a copy of this order. Consequently, M.P.No.1 of 2011 is closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate VI, Coimbatore.

2.The Assistant Commissioner of Police,
Central Crime Branch,
Coimbatore City,
Coimbatore.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.T.Jayaraman, Advocate sr.no.73821

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nri(co)
nr 18/09/2018