

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 05.12.2017
CORAM
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
Crl.O.P No.14355 of 2011
and
Crl.R.C.No.1214 of 2010

Crl.O.P.No.14355 of 2011

Vijayashanthi ... Petitioner/Accused
Vs.

1.Inderchand Jain

2.M.V.S.Prasad

3.P.Jeyaraj

4.S.Amirtharaj ... Respondents/Accused 2,3,4

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records relating to the complaint number as M.P.No.2308 of 2011 order dated 03.06.2011 passed by the learned Chief Metropolitan Magistrate, Chennai and quash the same.

Crl.R.C.No.1214 of 2010

Mr.Inder Chand Jain ... Petitioner/Complainant
Vs.

1.S.Vijaya Shanthi

2.V.T.Shanker Rao

3.S.Anand

4.S.Sunder Prakash

5.M/s.Rajam Hotels (P) Ltd.,

Rep. by its Manager & Authorised Signatory,
J.Joseph,

No.14, Azeez Nagar, 2nd Street,
Kodambakkam, Chennai - 600 024.

6.The Assistant Commissioner of Police,
Central Crime Branch, Egmore,
Chennai.

.. Respondents/Accused

Prayer: Criminal Revision Case filed under Sections 397, 401 and 482 of Criminal Procedure Code, to call for the records and allow this revision by setting aside the order passed by the learned VIII Metropolitan Magistrate Court, George Town, Chennai in M.P.No.857 of 2010 dated 21.10.2010 and direct the respondent police to register the complaint and investigate and file a report before the learned VIII Metropolitan Magistrate Court, George Town, Chennai.

For Petitioner : Mr.S.Palani Rajan
(Crl.OP.No.14355/2011)

For Petitioner :Mr.P.L.Narayanan
(Crl.RC.No.1214/2010)

For Respondents : Mr.N.Bhaskaran (for R1)
(Crl.OP.No.14355/2011) Not Ready Notice (for R2)
No Appearance (for R3)
Mr.P.Gunaraj (for R4)

For Respondents : Mr.S.Anbalagan (for R1)
(Crl.RC.No.1214/2010) Mr.P.Gunaraj (for R5)

COMMON JUDGMENT

The above Crl.O.P and Crl.R.C are arising between the same parties and the issues involved in both the cases are one and the same and therefore the issues are dealt with jointly and thereby the order is passed as common order.

2.It is the case of the revision petitioner that there was a sale agreement dated 03.01.2006 entered between the revision petitioner as purchaser and the accused Nos. 2 to 4/respondents as vendors in respect of property comprised in old Survey No.68, New Town Survey No.4870/1 measuring to an extent of 8 grounds and 1303 sq.ft of land and building situated at Dr. Nair road, T.Nagar, Chennai. The sale agreement stood entered between the revision petitioner and the respondents 2 and 3 through the power agent of the accused 2 and 3 namely Smt.Vijayasanthi, the 1st accused. The sale consideration was arrived at a sum of Rs.5.20 crores for which a sum of Rs.4,07,00,000/- was paid as advance by the revision petitioner to the 1st accused on 09.01.2006 on the date of sale agreement itself.

3.In furtherance of the sale agreement all the parental documents were handed over to the revision petitioner. Thereafter, when the revision petitioner approached the 1st accused as well as the other accused to receive the balance sale consideration of Rs.1,13,00,000/- and execute the sale deed, it was intentionally evaded by them. Being so, it was found that during the subsistence of the sale agreement of the petitioner, the above extent of property was alienated to the 5th accused. It is significant to note that the very same 1st accused herein namely Vijayasanthi who acted as power agent of vendors, has alienated the above property in favour of the 5th accused. Moreover, it was found that the total sale consideration was mentioned as Rs.2,56,28,750/- in the sale deed in favour of the 5th respondent.

4.The above transaction has established that all the accused together have entered in conspiracy defrauded and cheated the revision petitioner by alienating/registering the subject of property in favour of the 5th respondent.

Thereafter getting knowledge of the above fraudulent sale, the revision petitioner filed a complaint before the police authority to take criminal action for the cheating committed by the accused. However, at the instance of the accused, by stating the revision petitioner's complaint as involving civil dispute, the police authority relegated the petitioner to approach a civil forum.

5. That apart taking criminal action over the fraudulent act of the accused attracting Sections 406, 420, 467, 468, 471, 120(b) & 506(ii) of IPC, the revision petitioner so as to declare the sale deed executed in favour of 5th respondent as null and void also availed his civil remedy by filing Civil Suit in C.S.No.189 of 2009 on the file of this Hon'ble Court.

6. Whereas due to the closure of his complaint by the police authority as stated above, the petitioner was again constrained to seek his remedy for Criminal Action under Section 156(3) of Cr.P.C by filing a complaint in Crl.M.P.No.857 of 2010 before the learned VIII Metropolitan Magistrate Court, George Town, Chennai. Misfortunately the said complaint too came to be dismissed by the learned judge by holding that the remedy available for the revision petitioner is only a suit for specific performance. Aggrieved over the same, the revision petitioner is before this Court by way of this criminal revision in Crl.R.C.No.1214 of 2010.

7. In the meantime, the revision petitioner filed another private complaint in Crl.M.P.No.2308 of 2011 under Section 200 of Cr.P.C. before the Learned Chief Metropolitan Magistrate, Chennai praying for an appropriate criminal action by directing the Deputy Commissioner of Police, City Crime Branch, Chennai. The said complaint was taken on file and the same was forwarded under Section 156(3) Cr.P.C for investigation and there was a further direction to file the corresponding report. Aggrieved over the same the 1st accused/1st respondent namely Vijayasanthi in the above private complaint by invoking the inherent power of this Court under Section 482 CrPC is before this Court by challenging the maintainability of the revision petitioner's private complaint.

8. I heard Mr.Mr.S.Palani Rajan, learned counsel for the petitioner in Crl.OP.No.14355 of 2011, Mr.P.L.Narayanan, learned counsel for the petitioner in Crl.RC.No.1214 of 2010 and Mr.N.Bhaskaran, learned counsel for the 1st respondent, Mr.P.Gunaraj, learned counsel for the 4th respondent in Crl.OP.No.14355 of 2011 and there was no representation on behalf of the 3rd respondent and Mr.S.Anbalagan, learned counsel for the 1st respondent and Mr.P.Gunaraj, learned counsel for the 5th respondent in Crl.RC.No.1214 of 2010 and perused the entire records.

9. Though very many contentions are raised on either side, this Court at the outset like to emphasize the guide lines to indicate the contingencies where this Court can quash complaints and criminal proceedings. The same is issued to quash a complaint under Section 482 of Cr.P.C. in the interest of justice and to reiterate the settled law that look into the averments and contention of the revision petitioner.

10. The Hon'ble Apex Court in the case of Indian Oil Corporation v. NEPC India Ltd., and Others reported in (2006) 6 SCC 736, was pleased to set forth the principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings which are relevant for the present purpose which runs as follows:

"(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining the prayer for quashing of a complaint.

(ii) A complaint may also be quashed, where it is a clear abuse of the process of the Court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal

proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

11. In the same context it would also be useful to look into the decision of the Hon'ble Apex Court made in MEDCHL Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. and Others reported in (2000) 3 SCC 269, wherein it is held that a Complaint has to be examined as a whole without going into merits of the allegations made therein. If a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the Courts should not quash the complaint. Merely, because of an offence committed during the course of a commercial transaction by itself is not sufficient to quash the complaint as Contractual or Civil one.

12. The above proposition would demonstrate the settled law that merely because there was a breach of contract and there is a civil remedy available for the same, itself is not a ground to quash the criminal proceeding the test to be done is whether the allegation disclose a criminal offence or not. In the present case it is to be testified as to why the sale deed is not executed, it is obvious for this Court to notice that the petitioner in quash petition /1st accused duly admitting the sale agreement has also annexed the same in her typed set of papers wherein it is further noticed that there was a receipt of Rs.4,07,00,000/- from the revision petitioner. At the same time it is an admitted fact that no sale deed was executed. This aspect is to be dealt with and to be testified by a competent civil Court by not only examining the witness but also to testify the veracity of the written documents including the sale agreement in the civil suit already filed by the revision petitioner in C.S.No.189 of 2009 on the file of this Hon'ble Court.

13. Now this Court coming to the facts of the case on hand, it is not able to trace any notice or communication between the parties about the execution of sale deed or want of the balance amount or a notice of cancellation of the sale agreement as unenforceable. In such event this Court is not in a position to entertain the proceedings initiated against the accused that too in the pendency of the civil Court proceedings. It creates serious doubt in the mind of this Court. Further during the course of the arguments it is brought to the notice of this Court that the petitioner/1st accused already repaid a sum of Rs.3,00,00,000/- to the revision petitioner and the same was also not disputed by the revision petitioner.

14. In so far as the contention of the petitioner in Criminal Original Petition is concerned it is unsustainable in view of the decision made by the Hon'ble Apex Court in the case of Upkar Singh v. Ved Prakash and Others reported in (2004) 13 SCC 292, wherein it is held that a Second complaint same incident is not prohibited under Cr.P.C.

Furthermore it was held that a Magistrate can direct the police, at any stage to register the complaint and investigate the same. But in the case on hand it is purely civil in nature and the complaints both in this Crl.O.P.No.14355 of 2011 and Crl.R.C.No.1214 of 2010 is not maintainable.

15.The Hon'ble Apex Court in a case of R.P.Kapur v. State of Punjab, reported in AIR 1960 SC 866, it has held as follows:

"this Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings:

(i)where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;

(ii)where the allegations in the First Information Report or Complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii)where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge."

16.The Hon'ble Apex Court in a case of Inder Mohan Goswami and another v. State of Uttaranchal and others reported in 2007 (5) CTC 614, it has held as follows:

"37.The question before us is - whether the case of the appellants comes under any of the categories enumerated in Bhajan Lal (supra)? Is it a case where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in entirety, do not make out a case against the accused under Sections 420, 467 and 120-B, IPC? For determination of the question it becomes relevant to note the nature of the offences alleged against the appellants, the ingredients of the offences and the averments made in the FIR/Complaint.

38.In the instant case, the First Information Report has been registered under Sections 420, 467 & 120-B, IPC. The allegations leveled in the First Information Report are of (1) cheating and (2) forgery.

Analysis of relevant provisions of law.

39.Firstly, we shall deal with the Section 420, IPC. Cheating is defined in Section 415, IPC and is punishable under Section 420, IPC. Section 415 is set out below:

"415. Cheating.-Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to cheat.

Explanation.- A dishonest concealment of facts is a deception within the meaning of this Section."

40. Section 415, IPC thus requires -

1. deception of any person.

2. (a) fraudulently or dishonestly inducing that person-

(i) to deliver any property to any person;
or

(ii) to consent that any person shall retain any property; or

(b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body mind, reputation or property.

41. On a reading of the aforesaid Section, it is manifest that in the definition there are two separate classes of acts which the person deceived may be induced to do. In the first class of acts he may be induced fraudulently or dishonestly to deliver property to any person. The second class of acts is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but need not be fraudulent or dishonest. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise. From his mere failure to subsequently keep a promise, one cannot presume that he all along had a culpable intention to break the promise from the beginning.

42. We shall now deal with the ingredients of Section 467, IPC. Section 467, IPC reads as under:

"467. Forgery of valuable security, Will, etc.-
Whoever forges a document which purports to be a security or a Will, or an authority to adopt

a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, moveable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any moveable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

43. The following ingredients are essential for commission of the offence under Section 467, IPC:

1. the document in question so forged;
2. the accused who forged it.

3. the document is one of the kinds enumerated in the aforementioned section.

The basic ingredients of offence under Section 467 are altogether missing even in the allegations of the FIR against the appellants. Therefore, by no stretch of the imagination, the appellants can be legally prosecuted for an offence under Section 467, IPC.

44. Even if all the averments made in the FIR are taken to be correct, the case for prosecution under Sections 420 and 467, IPC is not made out against the appellants. To prevent abuse of the process and to secure the ends of justice, it becomes imperative to quash the FIR and any further proceedings emanating therefrom.

45. The Court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressure the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482, Cr.P.C. though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the Statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained."

17. The Hon'ble Apex Court in a case of State of Karnataka v. L. Muniswamy & Others, reported in 1977 (2) SCC 699, it has held as follows:

"that the wholesome power under Section 482, Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. The Court observed in this case that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. This case has been followed in a large number of subsequent cases of this Court and other Courts."

18. Since the complaint in both the Criminal Original Petition and Criminal Revision Case given by the 1st respondent in CrI.O.P.No.14355 of 2011 and the petitioner in CrI.R.C.No.1214 of 2010 is totally abuse of process of law, when the remedy is available before the Civil Court, since it is purely based on the sale agreement between the petitioner and the respondents this proceedings has been arosed. This Court and the Hon'ble Apex Court in very large number of cases categorically held that the litigant should not invoke the criminal jurisdiction for recking vengeance on the accused with a view due to personal grudge. When the complainant having the remedy before the Civil Court, he might have been invoked the said jurisdiction and proceed against the accused persons.

19. It is my absolute view that the provisions under which the complaint has given under Sections 420, 467, 468, 471, 120 (B) and 506(ii) of IPC is not made out against this petitioner/accused. Where the allegations made in the complaint, even if they are taken at their face value and accepted in entirety, do not make out a case against the accused under Sections 420, 467, 468, 471, 120(B) and 506(ii) of IPC. It is also made clear that the criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressure the accused, when the civil remedy is available to the complainant. Therefore, this Court having jurisdiction under Section 482 of Cr.P.C. for quashment of the complainant. In view of the settled legal position, the complaint challenging in this Criminal Original Petition and the order rejecting the private complaint filed by the complainant in Criminal Revision Case cannot be proceeded.

20. It is noteworthy that the entire case of the revision petitioner is that he was defrauded and cheated with a malice intention and the accused with Mens rea suppressing the

earlier sale agreement have sold the property to some other. When such is the case of the revision petitioner, the same would be appropriate to be decided only after conclusion of a fair trial to be undergone and supported by sufficient oral and documentary evidence of either side before the competent civil Court.

21.It is needless to say that having properly appreciated the facts and circumstances of the available records on file, the Learned Judge has taken the subject Private Complaint on file and dismissed the same. Therefore, in view of the same, the Criminal Revision on hand is hereby liable to be dismissed.

22.In view of the above facts, this Court is of the opinion that the case on hand it is a fit case to exercise its inherent power, which is to be exercised cautiously and sparingly to prevent aberration of justice and to secure the ends of justice. The petitioner in CrI.O.P.No.14355 of 2011 has made out a case for quashment of the private complaint and it is liable to be quashed.

23.In the result:

(a) the Criminal Original Petition in CrI.O.P.No.14355 of 2011 is allowed and the order in CrI.M.P.No.2308 of 2011 dated 03.06.2011, on the file of the learned Chief Metropolitan Magistrate, Chennai, is quashed;

(b) the Criminal Revision Case in CrI.R.C.No.1214 of 2010 is dismissed.

vs

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Chief Metropolitan Magistrate,
Chennai.

2.The VIII Metropolitan Magistrate Court,
George Town, Chennai.

+1cc to Mr.P.Gunaraj, Advocate SR.No.86107

+1cc to Mr.S.Palanirajan, Advocate Sr.No.86617/17

Common Judgment made in
CrI.O.P No.14355 of 2011
and
CrI.R.C.No.1214 of 2010

VGII(CO)

sm:20.12.2017

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