

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.04.2017
CORAM
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
Crl.O.P Nos.19240 and 21761 of 2011

1.K.R.Palanisamy
2.P.Soundaram
3.V.K.Saravanan

...Petitioners in Crl.O.P.No.19240/2011/
Accused 2 to 4

R.Krishnamoorthy

... Petitioner in Crl.O.P.No.21761/2011/
1st Accused

vs.

1.State, represented by
Inspector of Police,
Central Crime Branch,
Tiruppur.
(Ref. Crime No.1 of 2011 dated 28.01.2011)

2.P.K.Ganeshwar

... Respondents in both the Crl.O.P.s/
Complainant & Defacto Complainant

Common Prayer: Criminal Original Petitions filed under Section
482 of Cr.P.C., to call for the records and quash the
proceedings in C.C.No.392 of 2011, pending on the file of the
Judicial Magistrate No.1, Tirupur.

For Petitioners : Mr.T.Mohan
for Mr.K.Surendar
(In both the Crl.O.P.s)

For Respondents : Mr.B.Ramesh Babu (for R1)
Government Advocate (Crl. Side)
(In both the Crl.O.P.s)

Mrs.Hema Sampath, Senior counsel
for M/s.S.Raveekumar (for R2)
(In both the Crl.O.P.s)

COMMON JUDGMENT

The above criminal original petitions have been preferred under Section 482, Cr.P.C., seeking to quash the proceedings in C.C.No.392 of 2011, on the file of the Judicial Magistrate-I, Tiruppur, wherein the petitioners are facing prosecution under Sections 406, 418, 468, 471, 420 and 120-B, I.P.C., on the basis of the charge sheet laid by the 1st respondent police.

2.The criminal law has been set in motion by one P.K.Ganeshwar, the 2nd respondent herein, stating that in spite of his retirement from a partnership firm, his shares have not been fully settled by the other partner, the 1st accused. The above complaint of the 2nd respondent was registered by the 1st respondent police in Crime No.1 of 2011. After completion of investigation the impugned charge sheet has been laid not only against the 1st accused but also against his relatives, who have been arrayed as 2nd and 3rd accused and their power of attorney agent, the 4th accused. All the accused are before this Court challenging the validity of the proceedings by way of two separate original petitions and they are referred to as per their rank in the charge sheet for the sake of convenience.

3.I heard Mr.T.Mohan for Mr.K.Surendar, learned counsel appearing for the petitioners, Mr.B.Ramesh Babu, learned Government Advocate (Criminal Side) appearing for the 1st respondent in both the Crl.O.P.s and Mrs.Hema Sampath, learned senior counsel for M/s.S.Raveekumar, learned counsel appearing for the 2nd respondent in both the Crl.O.Ps.

4.The only issue that has to be decided in the above original petitions is whether the case of the prosecution, if assumed to be true in its entirety, would render the petitioners criminally liable. The brief set of facts, as reflected in the charge sheet that are absolutely essential to determine the above issue can be summarized as follows:

(i)The 1st accused is a real estate businessman and the defacto complainant is an industrialist, who got acquainted with each other during the year 2004 in the course of their business. The defacto complainant had extended financial assistance to the 1st accused to the tune of Rs.16,65,38,888/- towards meeting certain business commitments.

(ii)Thereafter, the 1st accused, through his proprietorship concern namely, 'Chitrahhar Traders' had participated in the e-auction conducted by the Neyveli Lignite Corporation for removing and disposing the iron scrap materials and was declared as the successful bidder.

(iii) Promising to repay the sum of Rs.16,65,38,888/- to the defacto complainant, out of the profits that would accrue from the transaction with NLC, the 1st accused had admitted the defacto complainant as a partner in 'Chitrahar Traders' by way of a partnership deed dated 7th March 2005.

(iv) Since a sum of Rs.70 crores was required to be paid to NLC for proceeding with the transaction, the said sum was raised by Chitrahar Traders as a loan from Karur Vysya Bank and UCO Bank, by placing the properties of the 1st accused and the defacto complainant as security, in addition to the properties belonging to the relatives of the 1st accused namely, the 2nd and 3rd accused.

(v) Subsequently, the defacto complainant had retired from the partnership by way of a Deed of Retirement dated 13.04.2005. Since the share of the defacto complainant in 'Chitrahar Traders' was not settled to him even after his retirement from the firm, a Memorandum of Understanding (MOU) dated 28.04.2006 was entered between the defacto complainant and the 1st accused, wherein the total sum payable to the defacto complainant was ascertained as Rs.31,39,13,022/-.

(vi) In accordance with the said MOU the 1st accused had transferred an immovable property in favour of the defacto complainant, in partial settlement of the dues to an extent of Rs.25.5 crores and for the remaining amount of Rs.5,89,13,022/-, five cheques were also issued to the defacto complainant.

(vii) Since Chitrahar Traders had defaulted in repayment of the bank loan, proceedings were initiated by the bank before the Debts Recovery Tribunal. Thus, due to paucity of funds in the account of 'Chitrahar Traders', the defacto complainant did not present the aforesaid five cheques for encashment, whereby he suffered a loss of Rs.5,89,13,022/-.

(viii) Further, since the properties of the defacto complainant were also involved in the recovery proceedings initiated by the bank, he had to pay a sum of Rs.2,14,29,365/- to the bank, whereby the total amount payable to the defacto complainant arose to Rs.8,03,42,387/-, out of which the 1st accused had settled a sum of Rs.4.5 Crores and the remaining sum of Rs.3,53,42,387/- is yet to be settled.

(ix) In addition to the above allegations, the charge sheet reflects certain other allegations with

respect to disposal of the properties of the 2nd and 3rd accused through their power agent, the 4th accused in spite of the subsisting mortgage with UCO Bank. However, it has been stated in the charge sheet that separate criminal proceedings in respect of the same have already been initiated by the UCO Bank and the same is pending before the Judicial Magistrate-I, Tiruppur. It is to be noted that the said prosecution has also been challenged by way of quash petitions before this Court in CrI.O.P.Nos.13015 and 13016 of 2010.

(x) The charge sheet also reflects another allegation pertaining to a transaction with one Martin, whereby the defacto complainant had sustained a loss of Rs.3 Crores. However, the charge sheet itself clarifies by way of a note that a separate charge sheet has been filed regarding the same.

(xi) Thus the sum and substance of the present case is regarding failure of the 1st accused to settle the sum of Rs.3,53,42,387/-, which is allegedly due and payable to the defacto complainant. Based on the above facts, the prosecution has been launched not only as against the defaulting partner but also as against the 2nd to 4th accused, who have got no connection with the partnership firm.

5. The learned counsel appearing for the petitioners contended that even as per the case of the prosecution the 1st accused had settled more than 90% of the dues payable to the defacto complainant, while the fact remains that the entire dues were already settled by the 1st accused. The learned counsel further submitted that the case of the prosecution even if presumed to be true, would only make out a simple civil dispute and a criminal flavor is sought to be added to it by incorporation the details of other unconnected cases in the charge sheet. The learned counsel also contended that the impugned prosecution has been initiated based on extraneous considerations at the instigation of the defacto complainant with a view to wreak vengeance and settle scores with the 1st accused. The learned counsel also pointed out the order dated 08.11.2010 passed by this Court, whereby the attempt of the defacto complainant to implead in the quash petition preferred by the petitioners herein in CrI.O.P.Nos.13015 and 13016 of 2010, challenging the prosecution initiated at the instance of UCO Bank was prevented. The relevant portion of the said order is as follows:

"22. ... The petitioner (defacto complainant herein) is always at liberty to proceed against the 1st respondent for any amount due and payable by the 1st respondent (1st accused) to the petitioner. The

petitioner cannot seize this proceedings as an opportunity to wreak vengeance or try to settle his score in a criminal proceedings initiated by the 6th respondent (UCO Bank).

...
24. It is not desirable to encourage third parties to participate in a proceeding where the actual aggrieved person is a party. Therefore, there is no merit in the application filed by the petitioner and it is liable to be dismissed."

6.The learned counsel appearing for the petitioners further pointed out that only subsequent to the above order of this Court, the defacto complainant has approached the 1st respondent police with a complaint on 28.01.2011, which has resulted in the impugned prosecution. Thus, the impugned prosecution is intended to defeat the above said order of this Court passed on 08.11.2010 and the defacto complainant has sought to make himself as a party to the proceedings by initiating a fresh prosecution on the same set of allegations.

7.The learned senior counsel appearing on behalf of the Respondent No.2/defacto complainant took painstaking efforts to narrate the entire state of affairs between the defacto complainant and the 1st accused and submitted that the defacto complainant has suffered enormous loss, which is suitable to the 1st accused. The learned senior counsel further submitted that though there are separate criminal cases as against the 1st accused, there is a semblance of crime in the present case since the dues payable to the defacto complainant were not settled and that the prosecution has to be allowed to proceed.

8.The learned counsel appearing for the petitioners submitted by way of reply that a mere semblance of crime, as contended on behalf of the defacto complainant, is not sufficient to subject the petitioners to undergo the ordeal of criminal trial and that it is imperative that the charge sheet makes out a specific case in unequivocal terms so as to justify initiation of a criminal prosecution.

9.The only grievance of the defacto complainant in the present case is that the 1st accused had failed to fully comply with the terms of the MOU dated 28.04.2006, whereby the 1st accused was required to pay a sum of Rs.31,39,13,022/- to the defacto complainant. While admittedly, a sum of Rs.30 Crores has been settled by way of transfer of immovable properties and cash, the defacto complainant claims the remaining sum of Rs.1,39,13,022/-, and the sum of Rs.2,14,29,365/- subsequently paid by him to UCO Bank, whereby the total dues payable by the 1st accused to the defacto complainant works upto Rs.3,53,42,387/-. However, it is the case of the 1st accused

that the entire dues have been settled.

10.It is apparent on the face of the prosecution that the same is nothing but an attempt for recovery of money from the 1st accused. The criminal justice system is sought to be used as a recovery agent by adding criminal colour to a pure and simple civil dispute.

11.The Hon'ble Supreme Court has on several occasions condemned such attempts of misusing criminal prosecution to settle personal scores as an abuse of process of law. In the case of Hridaya Ranjan Prasad Verma and others v. State of Bihar and another, reported in 2000 (4) SCC 168, the Hon'ble Supreme Court has held as follows:

"15. ... Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. 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 fraudulent or dishonest intention at the time of making the promise.

16.From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

12.Further, in the case of Mohamed Ibrahim and others v. State of Bihar and another, reported in 2009 (8) SCC 751, the Hon'ble Supreme Court has held as follows:

"7.This Court has time and again drawn attention to the growing tendency of complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for setting scores or to pressurise parties to settle civil disputes."

13.While the petitioners have been charged for criminal breach of trust (Section 406 IPC), cheating (Sections 418 and 420 IPC) and forgery (Sections 468 and 471 IPC), none of the essential ingredients for constituting the above offences can be seen from the case of the prosecution. It is not the case of the prosecution that the amount invested by the defacto complainant was misappropriated by anybody, which renders the charge under Section 406 IPC misplaced. It is also not the case of the prosecution tat the defacto complainant was induced to

make any payment based on any false representation or a dishonest concealment, so as to show any dishonesty at the inception for invoking Sections 418 and 420 IPC. Further, it is not the case of the prosecution that a false document within the meaning of Section 464 IPC was created, in order to make out the offence of forgery. The only case of the prosecution is that the dues were not fully settled by the 1st accused, which can by no stretch of imagination amount to an offence under the penal code.

14. As far as the charge of conspiracy under Section 120-B IPC is concerned, the facts do not disclose any agreement to commit an illegal act or any act by illegal means, as stipulated under Section 120-A IPC. It is further clear from the proviso clause to Section 120-A IPC that criminal conspiracy comes into play when commission of any other offence is involved. While the facts do not constitute commission of any offence, the theory of conspiracy does not have place to stand and as such the charge under Section 120-B is also unsustainable.

15. The Hon'ble Apex Court in a number of cases has laid down the scope and ambit of court's powers under Section 482 Cr.P.C.

In R.P. Kapur Vs. State of Punjab; AIR 1960 SC 866, 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.

In State of Haryana Vs. Bhajan Lal; 1992 Supp. (1) SCC 335, the Hon'ble Apex Court in the backdrop of interpretation of various relevant provisions of the Cr. P.C. under Chapter XIV and of the principles of law enunciated by this court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 of Cr.P.C. gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this court made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be

exercised:

"(1) Where the allegations made in the first information report or 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 a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 156 (2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 156 (2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

Considering the facts and circumstances of the present case, this Court is of the considered view that the allegations in the F.I.R., even after taking on their face value and accepted in their entirety do not constitute the offence as alleged and the criminal proceedings lodged by opposite party no. 2 appears to be manifestly malafide and

malicious, the dispute being purely of civil nature are liable to be quashed.

Accordingly the application is allowed. The summoning order dated 01.05.2012 passed by Chief Judicial Magistrate, Gautam Budh Nagar in Criminal Case No.3921 of 2012 (State of U.P. Vs. Lourenco D' Souza) under Sections 420, 406, 504 and 506 of IPC, Police Station Sector 58 Noida, District Gautam Budh Nagar arising out of Case Crime No.1085 of 2011 and the entire proceedings of the aforesaid criminal case are hereby quashed."

In a recent judgment of the Hon'ble Supreme Court of India held in Vineet Kumar and others Vs. State of U.P. and others, reported in 2017 (3) CTC 751, it was held in paragraphs 20, 21 and 39 that

20. ... Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 Cr.P.C. vested in the High Court. Section 482 Cr.P.C. saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

21. This Court time and again has examined scope of jurisdiction of High Court under Section 482 Cr.P.C. and laid down several principles which govern the exercise of jurisdiction of High Court under Section 482 Cr.P.C. A three-Judge Bench of this Court in State of Karnataka vs. L. Muniswamy and others, 1977 (2) SCC 699, held that the High Court is entitled to quash a proceeding if 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. In paragraph 7 of the judgment following has been stated:

7....In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if 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 saving of the High Courts inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution

rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.

39. Inherent power given to the High Court under Section 482 Cr.P.C. is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the Categories as illustratively enumerated by this Court in *State of Haryana vs. Bhajan Lal*. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are material to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 Cr.P.C. to quash the proceeding under Category 7 as enumerated in *State of Haryana vs. Bhajan Lal*, which is to the following effect:

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of the *State of Haryana vs. Bhajan Lal*, but did not advert to the relevant facts of the present case, materials on which Final Report was submitted by the IO.

We, thus, are fully satisfied that the present is a fit case where High Court ought to have exercised its jurisdiction under Section 482 Cr. P.C. and quashed the criminal proceedings."

16. The impugned charge sheet has been filed with the details of other criminal cases pending as against the 1st accused with a view to provide criminal flavor to the case on hand. Further, there can be no justifiable reason for including the 2nd to 4th accused in the impugned prosecution. The only explanation for

the same can be that the impugned prosecution is motivated by malafides and as such the same is sheer abuse of process of law, deserving exercise of the inherent jurisdiction under Section 482 of Cr.P.C.

17.In the result:

(a) both the Criminal Original Petition Nos.19240 and 21761 of 2011 are allowed;

(b) the charge sheet in C.C.No.392 of 2011, pending on the file of the Judicial Magistrate No.1, Tirupur, is quashed. Consequently, connected miscellaneous petitions stand closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vs

To

- 1.The Judicial Magistrate No.1,
Tirupur.
- 2.The Inspector of Police,
CCB, Tiruppur. Coimbatore District
3. The Public Prosecutor
High Court Madras

+1 cc to Mr.K.Surrender Advocate sr 24318
+2 ccs to Mr.S.Raveekumar Advocate sr 24323
+2 ccs to Mr.S.Raveekumar Advocate sr 24324

CrI.O.P Nos.19240 and 21761 of 2011

msm(co)
aa12/07/2017