

-IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :04.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

CrI.O.P.No.30182 of 2015

in

CrI.M.P.Nos.1 & 2 of 2015

1. S. Manonmani
2. M.Saravanan
3. S.Muthukumaran ... Petitioners

Vs.

1. The State
Rep by its Inspector of Police,
Chidambaram Town Police Station,
Chidambaram,
Cuddalore District.
2. Geetha
W/o Mr.Imayavaramban
(Impleaded the second respondent as per
the order of this Court dt.22.06.2017 in
CrI.M.P.No.263 /2016 in CrI.O.P.30182/18) ... Respondents

PRAYER: Criminal Original Petition filed under Section 482
Cr.P.C. praying to call for the records of the case in CC. No.
29 of 2015 on the file of the Judicial Magistrate No.II,
Chidambaram and quash the same.

For Petitioners : Mr.Haja Nazirudeen
Senior counsel for
Mr.H. Nazirudeen

For Respondent 1 : C.Iyyapparaj
Additional Public Prosecutor

For Respondent 2 : C.Sagadevan

ORDER

This petition is filed praying to call for the records
of the case in CC. No. 29 of 2015 on the file of the Judicial
Magistrate No.II, Chidambaram and quash the same.

2. The grievance of the petitioner is that the second respondent herein had misappropriated the partnership funds. On a perusal of the complaint, it is seen that the petitioner has admitted that the second respondent has not given the profit and loss account with regard to the partnership concern, till date. I am unable to comprehend as to how misappropriation can be concluded by the police when the petitioner/ defacto complainant had not even shown the accounts.

3. It is also brought to my notice that a suit in OS No.115 of 2014 has been filed seeking for rendition of accounts and the relief of dissolution of the partnership firm which is said to be pending. An overall reading of the complaint indicates that the dispute is with regard to breach of the terms of the partnership agreement and as such, the criminal offence may not be made out. The learned counsel relied on a judgement reported in (2001) 8 Supreme Court Cases 645, Wherein it is, observed that, in Criminal court, allegations made in the complaint have to be established independently, not withstanding the adjudication by a civil court.

4. In the present case on hand, this court is not impressed on the fact that the petitioner has subsequently approached civil court seeking for the relief of rendition of accounts, but, on the ground that the averments made in the complaint did not constitute a criminal offence and the same can only be deemed to be breach of the terms of the partnership agreement. As such, this judgement may not be helpful to the learned counsel for the respondent. The other judgements relied on by the learned counsel appearing for the respondent reported in Maratt Rubber Ltd Vs.J.K.Marattukalam ((2009) 9 Supreme Court Cases 547) and M.S.Sheriff and P.C.Damodaran Nair Vs. State of Madras (AIR 1954 SC 397) are also on the same aspect.

5. Since the dispute is civil in nature, I am of the view that the petitioner need not be made to undergo the ordeal of trial in the criminal proceedings. Hence, the proceedings in CC No.29 of 2015 on the file of the learned Judicial Magistrate No.II, Chidambaram is hereby quashed.

6. However, in case, the petitioner succeeds in the civil suit on the basis of the accounts given by the petitioner herein and if the civil court is of the view that there is misappropriation on the part of the partnership firms, the second respondent is at liberty to proceed against the petitioner herein for any such offence that have been committed.

7. With the above observation, this Criminal Original Petition stand allowed. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1. The Judicial Magistrate No.II,
Chidambaram.
 2. The Inspector of Police,
Chidambaram Town Police Station,
Chidambaram,
Cuddalore District.
 3. The Public Prosecutor
High Court, Madras.
- +2 Ccs to Mr.R. Sagadevan, Advocate sr 86060.

Cr1.O.P.No.30182 of 2015

RSI (CO)
SP(21/12/2017)

सत्यमेव जयते

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