

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 05.10.2017
CORAM
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
Crl.O.P No.29113 of 2010
and
M.P.Nos.1 and 2 of 2010

1.Tony Abraham
2.Julie Tony

... Petitioners/Accused

vs.

Uma Keshav

.... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining in C.C.No.279 of 2010, on the file of the Learned Judicial Magistrate No.1, Poonamallee and quash the same.

For Petitioners : Mr.A.M.Rahamath Ali

For Respondent : No Appearance

JUDGMENT

The petitioner has filed this Criminal Original Petition to call for the Records pending in C.C.No.279 of 2010 on the file of the Learned Judicial Magistrate No.1, Poonamallee.

2.The instant Criminal Original Petition is filed by the petitioners herein/accused to quash the proceedings in C.C.No.279 of 2010 on the file of the Learned Judicial Magistrate No.1, Poonamallee, which was filed by the respondent herein by way of protest petition.

3.According to the petitioners, the 1st petitioner is the husband of the 2nd petitioner. The 2nd petitioner, the respondent herein and one Devina Hemdev have started a partnership firm under the name and style of 'Washeffex' with the shares of 50%, 25% and 25% respectively. The said partnership firm ceased to function from 31.08.2007. Thereafter the petitioners and the respondent did not have good relationship and hence the above said partnership firm was closed. Thereupon the 2nd petitioner

wrote a letter on 16.03.2009 to the respondent seeking for dissolution of partnership firm and the same was returned as unclaimed by the respondent herein. Therefore the 2nd petitioner has raised a dispute by initiating arbitration proceedings on 30.09.2009 in terms of clause 17 of the partnership deed dated 27.07.2004 and the same was returned by the respondent with an endorsement 'refused'. Thereafter, the 2nd petitioner filed Arbitration Application No.209 of 2009 before this Court seeking inspection of the premises to take inventory of the machinery lying therein. This Court was pleased to appoint an Advocate Commissioner and the Learned Commissioner has also taken inventory of the capital goods lying in the factory premises. Thereafter this Court passed final order in the said arbitration case on 01.12.2010. Similarly, the 1st petitioner has also filed a suit against firm and its partners for recovery of a sum of Rs.2.09 Crores and obtained leave to sue from this Court on 16.04.2009 in Application No.1178 of 2009.

4.It is the further case of the petitioners that when the facts are being so, the respondent herein filed a complaint before the Inspector of Police, Central Crime Branch, Chennai Sub-Urban Police, St. Thomas Mount, Chennai and a case was registered against the petitioners in Crime No.34 of 2009 for the offence under Section 420 of IPC. After investigation, the police has filed final report and closed the Criminal Case as mistake of fact by holding that the averments in the complaint are of civil in nature and there was no Mensrea on the part of the petitioners herein to commit the above said offence. As against the above said final report, the respondent herein filed a protest petition on 17.08.2009 before the learned Judicial Magistrate No.1, Poonamallee, who has taken cognizance of the same on 15.09.2010 and issued summons to the petitioners. On receipt of the summons, the petitioners appeared before the Court below on the said date, but the petitioners were not furnished with the complaint copies. Further the petition filed under Section 205 of Cr.P.C. to dispense with the personal appearance of the petitioners herein was returned without any endorsement.

5.According to the petitioners, the issue involved between the parties is a pure civil dispute without involving any Mensrea and therefore the Learned Magistrate ought not to have taken cognizance of the protest petition as a private complaint, overlooking the final report filed by the investigating officer is nothing but a malicious prosecution. Hence the petitioners approached this Hon'ble Court to quash the above said criminal case.

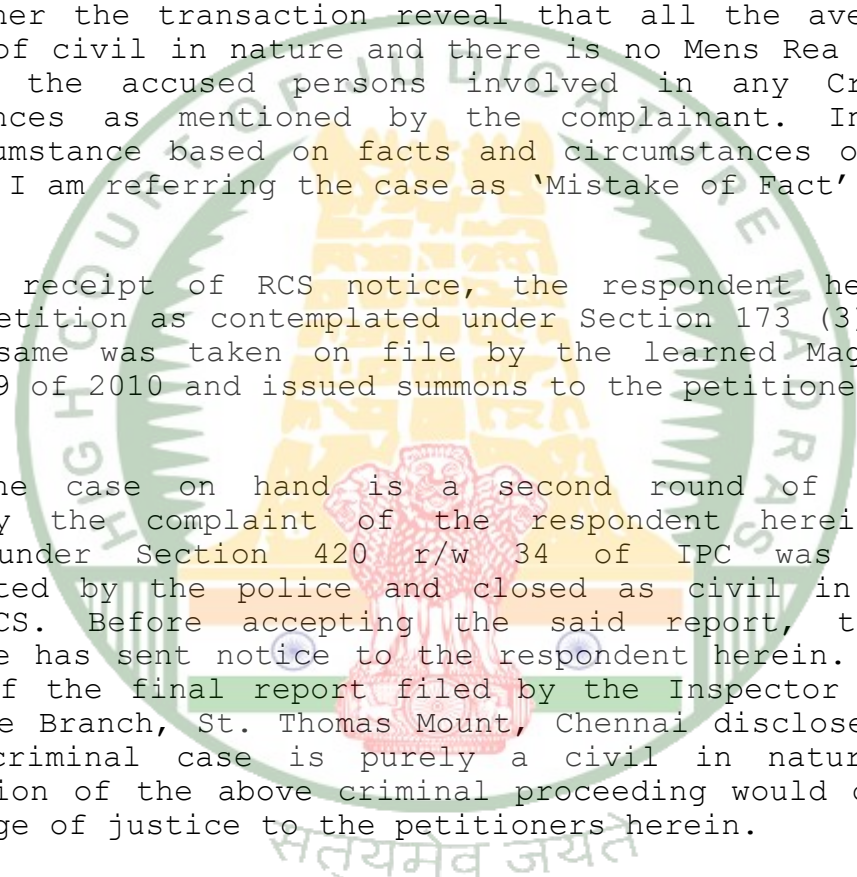
6.I heard Mr.A.M.Rahamath Ali, learned counsel appearing for the petitioners and there is no representation on behalf of the respondent and perused the entire records.

7.It is seen from the records that the respondent herein along with the 2nd petitioner and one Devina Hemdev have started a partnership firm in the name and style of "Washeffex". Due to some dispute between them, the said partnership firm was closed. It seems from the records that the 2nd petitioner initiated arbitration proceedings and filed application before this Court for appointing advocate commissioner to take inventories of the capital goods of the factory, besides sought for injunction against the respondent herein not to use the machineries of the factory. In pursuant to the order passed by this Court, the learned Advocate Commissioner taken inventory of the factory. Thereafter, the above said Arbitration Application No.2099 of 2009 was closed after recording the undertaking given by the learned senior counsel for the respondent herein to the effect that the machinery of the firm will not be used.

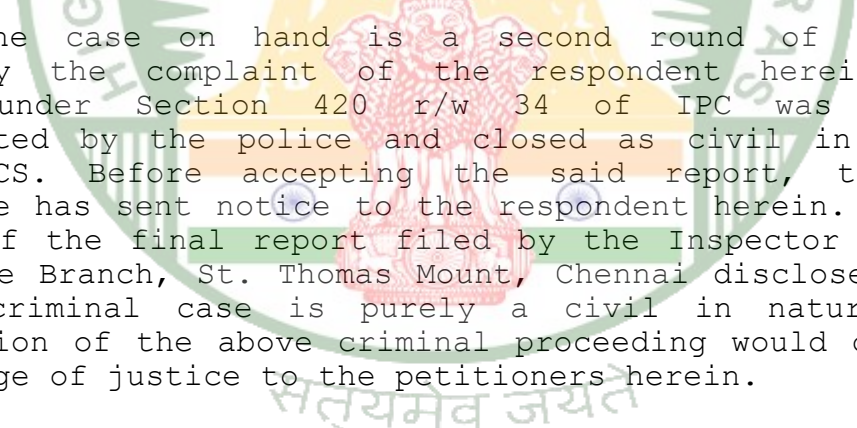
8.That apart, the 1st petitioner herein also filed a civil suit against the partnership firm viz., "Washeffex" for recovery of a sum of Rs.2.09 crores and obtained an order of leave to sue from this Court on 16.04.2009 in Application No:1178 of 2009. While so, the respondent herein filed a criminal complaint against the petitioners herein for the offence under section 420 of I P C. The said complaint was registered in Crime No:34 of 2009 and investigated by the Inspector of Police, City Crime Branch, St. Thomas Mount. After investigation, the Investigating Officer filed final report before the learned Judicial Magistrate No.I, Poonamallee on 04.08.2009 by referring the case as "Mistake of Fact". In the final report, the Inspector of Police has clearly held that there is no mensrea to commit the offence by the petitioners herein and all the allegations are civil in nature and no case is made out against the petitioners to charge them under Section 420 of IPC. It is useful to extract the relevant portion of the final report filed by the Investigation Officer hereunder:

"On perusal of the documents and the examination of witnesses, which does not substantiated with the allegations of the complainant against the accused persons. Investigation also reveals that the accounts between the parties have not been settled and there is an arbitration proceeding as initiated by Second accused Julie Tony who is also obtained an order of interim injunction on 30.04.2009 in O.A.No.158 of 2009. The first accused also initiated civil suit against the complainant and others claiming his dues from the firm.

Hence the matter seems to be one where the accounts have to be finally settled in any event are Sub-judice. On the examination of witnesses and in collection of documents, there is no tangible evidence on the proposition/allegation of the complainant, which is vital to prosecute the accused persons.

I have carefully collected and gone through by applying mind on the material evidence available with regard to the averments and also the transaction between the complainant and the accused persons. Further the transaction reveals that all the averments are of civil in nature and there is no Mens Rea to say that the accused persons involved in any Criminal Offences as mentioned by the complainant. In this circumstance based on facts and circumstances of this case I am referring the case as 'Mistake of Fact' ".


9. On receipt of RCS notice, the respondent herein filed protest petition as contemplated under Section 173 (3) of Cr.P.C and the same was taken on file by the learned Magistrate in C.C.No.279 of 2010 and issued summons to the petitioners.

10. The case on hand is a second round of litigation. Previously the complaint of the respondent herein for the offence under Section 420 r/w 34 of IPC was thoroughly investigated by the police and closed as civil in nature by filing RCS. Before accepting the said report, the Learned Magistrate has sent notice to the respondent herein. On careful perusal of the final report filed by the Inspector of Police, City Crime Branch, St. Thomas Mount, Chennai discloses that the present criminal case is purely a civil in nature and the continuation of the above criminal proceeding would cause grave miscarriage of justice to the petitioners herein.


11. The materials available on record would show that this is the case, there was an arbitration proceeding initiated by the 2nd petitioner herein against the respondent herein and the 1st petitioner has filed a civil suit against all the partners of the partnership firm. It is an admitted fact that a civil suit is pending in connection with the issue involved in the complaint and the same has clearly been adverted into by the investigation officer in his final report. As far as criminal case is concerned that though lodging of criminal prosecution is not a bar to initiate civil proceedings, in this case, the complaint of the respondent has been investigated and final

report was filed by the police as the complaint does not disclose any cognizance of offence. So, an impartial enquiry is to be conducted in the above said civil proceedings.

12. In such an event the instant proceedings of the calendar case would be an impediment for the same. Moreover, one of the documents enclosed by the petitioners herein in the typed set of papers would falsify the case of the respondent that new proprietary concern started by the first petitioner is unknown to the respondent. From the document dated 02.09.2006 addressed to the Commercial Tax Officer, Chennai by the respondent herein disclose that the respondent herself introduced the 1st petitioner and recommended to the Commercial Tax Department to start a new business.

13. Further, as rightly pointed out by the learned counsel for the petitioners that there is no fresh material brought out by the respondent herein in the protest petition to take cognizance of the offence against the petitioners. Therefore in the absence of any fresh material for the commission of offence, the cognizance taken by the learned Magistrate is nothing but abuse of process of law. In the above background of the case, this Court is not able to find that the petitioners are having Manresa to cheat the Defacto Complainant /respondent herein. Further, there is no prima facie case made out to attract the offence under section 420 of IPC.

14. Therefore, in the interest of justice and also on the perusal of the final report filed by the Investigation Officer and Protest Petition, it is not advisable to allow the prosecution to further proceed with the calendar case in C.C.No.279 of 2010, on the file of the Learned Judicial Magistrate No.I, Poonamallee.

15. In result, the Calendar Case No.279 of 2010, on the file of the learned Judicial Magistrate No.I, Poonamallee is hereby quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vs

To

The Judicial Magistrate No.1,
Poonamallee.

+1 cc to Mr.A.M.Rahamath Ali Advocate sr 71876

Cr1.O.P. No.29113 of 2010
and
M.P.Nos.1 and 2 of 2010

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