

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.10.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

Crl.OP.Nos.18130, 13472, 13473 and 15575 of 2013
and
MP.Nos.1 and 2 of 2013, 1 of 2013, 1 of 2013,
1 and 2 of 2013

Crl.OP.No.18130 of 2013

1.M/s. Shri Vari Pharma Agency,
Represented by its Managing Partner
R.Sreedhar

2. R.Sreedhar
Managing Partner of
M/s. Shri Vari Pharma Agency

... Petitioners/Accused 1&2

Vs.

S.Sankar ... Respondent/Complainant

Crl.OP.No.13472 of 2013

R.Sreedhar
Managing Partner of
M/s. Shri Vari pharma Agency ... Petitioner/Accused 2

Vs.

S.Sankar ... Respondent/Complainant

Crl.OP.No.13473 of 2013

R.Sreedhar
Managing Partner of
M/s. Shri Vari Pharma Agency ... Petitioner/Accused 2

Vs.

S.Sankar ... Respondent/complainant

Crl.OP.No.15575 of 2013

1.M/s. Shri Vari Pharma Agency,
Represented by its
Managing Partner R.Sreedhar

2. R.Sreedhar

Managing Partner of

M/s. Shri vari pharma Agency.. Petitioners/Accused 1 &2

Vs.

S.Sankar ... Respondent/Complainant

COMMON PRAYER : These Criminal Original Petitions have been filed under Section 482 of Cr.P.C, praying to call for the records in S.T.C.Nos.387, 263, 264 and 283 of 2013 pending on the file of learned Judicial Magistrate- IV at Salem to quash the same as against the petitioners.

For Petitioners : Mr.V.Vijayakumar
(in all Crl.OPs)
For Respondent : Ms.R.Divya
for Mr.M.R.Elavarasan
(in all Crl.OPs)

COMMON ORDER

These petitions have been filed by the accused Nos.1 and 2 to quash the proceedings against them in S.T.C.Nos.387, 263, 264 and 283 of 2013 respectively on the file of the Judicial Magistrate IV, Salem.

2.The learned counsel for the petitioners has submitted that the first petitioner is the Partnership Firm which was started as per the Partnership deed dated 18.10.2007 in which the second petitioner, one Mr.R.K.Vasudevan and respondent herein are partners. He further submitted that the said R.K.Vasudevan and the respondent herein informed the second petitioner that they want to retire from the partnership and insisted the second petitioner to return a sum of Rs.7,00,000/- and relieve them from the partnership. He further submitted that the second petitioner has explained to them that only after clearing the stocks by selling it in market, their demand will be fulfilled, but, the said R.K.Vasudevan and the respondent had started to threaten the second petitioner with goondas and rowdy elements and also lodged a complaint before the Adambakkam Police Station, Chennai and based on the said complaint, the Police authorities conducted "Kattapanchayat" and threatened the second petitioner as they will foist a false criminal case unless he settle the issue. He further submitted that the second petitioner herein on fear of arrest has filed Crl.OP.No.27349 of 2013 before this Court seeking anticipatory bail and when the said petition came up for hearing on 06.11.2012, the learned counsel for the respondent has submitted that the de facto complainant has withdrawn the complaint and on that basis, the said petition was dismissed.

3.He further submitted that on the fear of arrest and criminal case, on 04.11.2012, the second petitioner obliged for the forceful settlement arrived at the police station. He further submitted that in pursuance of the coercion exercised by the police, the respondent came to the second

petitioner's place of business and threatened and also exercised coercion and snatched away five signed cheques drawn on Canara Bank, Adambakkam Branch, Chennai. He further submitted that the respondent had collected a sum of Rs.3,25,000/- immediately on 08.11.2012 by using a cheque bearing No.516188. He further submitted that after relieving from the police threat and coercion, the second petitioner has issued " Stop Payment" instruction to his bank and also filed a suit in OS.No.7900 of 2012 on 18.12.2012 on the file of the City Civil Court, Chennai against the respondent herein to direct him to return a sum of Rs.3,25,000/- which was forcibly withdrawn from the second petitioner's account and also to declare the settlement dated 04.11.2012 as null and void and also to declare that the statement dated 06.11.2012 on stamp papers and cheque leaves obtained by second defendant as null and void and for permanent injunction restraining them from interfering with his business. He further submitted that as per the partnership deed, if any one of the partners wants to retire from the partnership, he has to give a notice in writing to other partners not less than one month ending with last date of the immediately following month, severe his or her connection with the partnership and such parties accounts will be settled within six months from the date of retirement. He further submitted that since the respondent herein has not issued notice as per the terms of the partnership deed, he has not legally retired from the partnership. He further submitted that if he retired by giving notice, the other partners will have to settle his account within six months from the date of retirement, but, instead of following the aforesaid procedure, the respondent has lodged a false complaint before the police and with the help of police, the second petitioner was compelled to come for settlement and also obtained cheques and therefore, there is no legally enforceable debt.

4.The learned counsel for the petitioners, in support of his contentions, relied upon the following decisions:

(i) Rajiv Thapar and Others /vs/ Madan Lal Kapoor, 2013 CRI.

L.J. 1272.

(ii) K.Samisundara Raj /vs/ The Inspector of Police, Guindy

Police Station, Chennai and another, (2004) (M.L.J (CrI.)

210.

(iii) Rajendran /vs/ N. Radhakrishnan 2013 (1) MWN (CRI) DCC-

85

(iv) Harihar Davey /Vs/ Kamlesh Steel Enterprises, a Partnership firm, represented by its Partners,

Jaya D.Davey,
2005 (3) CTC 497.
(v) Subburam /vs/ Raja Guru, 2007 (5) CTC 251

5. The learned counsel for the respondent, on the contrary has contended that on 06.11.2012 a deed of retirement was executed, wherein, all the partners have signed and as per the said document, the two partners namely R.K.Vasudevan and the respondent herein were discharged from the firm. He further submitted that since only there are three partners and out of them, two partners retired, then automatically, the partnership firm will be dissolved. She further submitted that challenging the said retirement deed and also to restrain the respondent from presenting the cheques and also for recovery of the amount, the second petitioner has filed a suit in O.S.No.7900 of 2012 on the file of the City Civil Court, Chennai and the said suit was dismissed, after full trial on 19.11.2014. As against the same, the second petitioner herein has filed an appeal in AS.No.20 of 2015 and the same was also dismissed on 23.06.2017. Thereafter, no second appeal has been filed. She further submitted that since the Civil Court has not accepted the contention of the second petitioner herein that the settlement was arrived by coercion and the cheques were obtained by exercising coercion, this Court cannot interfere in the criminal proceedings which were initiated on the basis of the cheques issued by the second petitioner herein on behalf of the first petitioner. She further submitted that in the petition, the petitioner herein has stated that the cheques were collected by the police from the petitioner under the threat of criminal case and handedover to the respondent, whereas, in the Civil suit, the petitioners herein stated that the respondent came to their business place and snatched signed blank cheques. She further submitted that the disputed question of facts cannot be decided by this Court under section 482 Cr.P.C. Hence, she prayed to dismiss these petitions.

6.It is seen from the copy of the partnership deed filed by the petitioners that on 18.10.2007, the second petitioner, one R.K.Vasudevan and the respondent herein have entered in to partnership. In the said document, clause 10, reads thus:-

"Any of the parties hereto made after giving notice in writing to the other parties of not less than one month ending with the last date of the immediately following month, sever his or her connection with the partnership and such parties accounts will be settled within six months from the date of retirement".

Relying upon the aforesaid clause, the learned counsel for the petitioners has submitted that since the respondent has not issued notice expressing his intention that he will retire from the partnership, it cannot be said that he has legally retired from the partnership.

7. The petitioners also enclosed a copy of the deed of retirement dated 06.11.2012. A perusal of the said document shows that after execution of the partnership deed dated 18.10.2007, on 27.10.2009, the partnership was reconstituted and thereby one more partner namely Sri.RagavanRaman was inducted as fourth partner. The petitioners herein have not produced the said reconstituted partnership deed dated 27.10.2009. After execution of a new partnership deed, the petitioners cannot rely upon the old partnership deed dated 18.10.2007. Unless the new partnership deed dated 27.10.2009 is produced, this Court cannot take a decision with regard to how a partner can retire from the partnership.

8. A perusal of the said retirement deed also shows that the second petitioner herein and Sri Ragavan Raman have decided to retain the partnership business and discharge the respondent herein and R.K.Vasudevan and in the said partnership all the aforesaid persons have signed. It is pertinent to note that the 4th partner namely Sri Ragavan Raman has not filed any suit to declare the said deed of retirement as null and void.

9. It is also to be pointed out that in paragraph No.3 (v) of the petition, the petitioners have stated that the police had collected the cheques from the 2nd petitioner under the threat of criminal case and handed over the same to the respondent, but in the plaint filed in O.S.No.7900 of 2012, in paragraph No.6, he has stated that the respondent herein came to his place of business and by threatening, snatched away five signed cheques in pursuance of coercive settlement arrived in the police station on 04.11.2012. So it is clear that the cheques were not collected by the police from the petitioners and handed over to the respondent.

10. It is also to be pointed out that the Civil Suit which was filed by the petitioners herein came to be dismissed on 19.11.2014. The appeal filed by the petitioners herein in A.S.No.20 of 2015 was also dismissed on 23.06.2017. Though, the learned counsel for the petitioners has submitted that the petitioners herein are taking steps for filing second appeal, to substantiate the same, he has not produced any material before this court.

Therefore, as on date the Civil Court's decisions are against the petitioners herein. Under the said circumstances, this Court is of the view that the disputed facts cannot be decided by this Court in the petitions filed under Section 482 Cr.P.C.

11. Since the second petitioner himself has stated in his plaint filed in O.S.No.7900 of 2012, that the respondent herein has obtained cheques from his business place, the decisions relied upon by the learned counsel for the petitioners cannot be applied to the facts of this case. In those cases, the cheques were obtained by the police from the accused and handed over to the Defacto complainant, whereas, in this case, as per the own statement of the petitioners, the respondent has snatched the cheques from the work place of the petitioners. So the aforesaid decisions will not apply to the facts of this case.

12. For the aforesaid reasons, these petitions are not maintainable and are liable to be dismissed. Accordingly, these petitions are dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/--

Assistant Registrar (CS v)

//True Copy//

Sub Assistant Registrar

vsn/vv
To

1. The Judicial Magistrate- IV,
Salem.

2. The Chief Judicial Magistrate, Salem.

3. The Public Prosecutor,
High Court, Madras.

+4cc to Mr. V.Vijayakumar, Advocate SR.No. 71039
+1cc to Mr.M.R.Elavarasan , Advocate SR.No. 71280

CrI.OP.Nos.18130, 13472,13473 and 15575 of 2013
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MP.Nos.1 and 2 of 2013,
1 of 2013, 1 of 2013 and 1 and 2 of 2013

ASK (03/12/2018)