

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON: 28.09.2018
PRONOUNCED ON : 23.10.2018

CORAM
THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.28102 of 2013
and
M.P.No.1 of 2013

1.Subbhulakshmi
2.Dhinesh
3.K.K.Muthu

... Petitioners/ Accused Nos.1, 2 and 4

Vs.

K.Kannan

... Respondent / Complainant

PRAYER: Criminal Original Petitions have been filed under Section 482 of Cr.P.C., to call for the records pertaining to the C.C.No.246 of 2013 on the file of the Judicial Magistrate No.3 at Salem and quash the same.

For Petitioners : Mr.S.Sathyaraj

For Respondent : Mr.N.A.Ravindran

O R D E R

This petition has been filed under Section 482 of Cr.P.C., by the accused Nos.1, 2 and 4 to quash the complaint against them in C.C.No.246 of 2013 on the file of the Judicial Magistrate No.3, Salem.

2. The respondent herein has filed a private complaint stating that the first petitioner herein (accused No.1) is the Franchisee of Professional Couriers at Salem and the second petitioner herein (accused No.2) is the son the first petitioner and he is responsible for the day-to-day affairs of the said Company. The third accused namely K.Muthu, S/o.K.Kuppusamy Gounder is the elder brother of the respondent herein. The third petitioner (4th accused) is also a close relative of the first petitioner and he is having charge of the affairs relating to the Professional Couriers at Gugai Branch from March 2013. The respondent was placed in charge of the Gugai branch of Professional Couriers in the year 1993. At that time, the first accused has insisted the respondent to deposit a sum of Rs.2,00,000/- as security and the said deposit will carry interest at the rate of 18% per annum. Accordingly, the respondent has deposited the said amount. The respondent and the first accused had a share of 45% and 55% respectively in the Gugai branch of the professional Courier. The fact remains so,

the accused Nos.1 and 2 could not tolerate the profit being shared by the respondent. Hence, the first accused has directed the respondent to leave the Company or otherwise he would be terminated. Under the said strained circumstances, the respondent demanded the accused Nos.1 and 2 to return the security deposit of Rs.2,00,000/- with accrued interest which accumulated to Rs.25,00,000/-. Hence, the first accused delivered a cheque dated 18.03.2018 bearing No.054628 in favour of the respondent for a sum of Rs.25,00,000/- drawn on Indian Bank, Salem - 7. The respondent has presented the said cheque in the Syndicate Bank on 23.03.2013 for encashment. But the said cheque was returned on the same day as "funds insufficient". The first accused, fearing legal action requested the accused No.3 to initiate mediation so, that the problem could be resolved amicably. At the same time, the first accused has lodged a complaint before the Sooramangalam Police Station on 23.03.2013 itself and the same was treated as C.S.R.No.79 of 2013. The respondent was not aware of the evil design of the accused persons. Since 23.03.2013 the police have been on a witch hunt to arrest the respondent. Parallely the accused No.3 thrust pressure to part with the impugned cheque lest he would have to face the consequences. On 26.03.2013, a Panchayat was initiated on the direction of the accused No.3. The third petitioner herein (A4) was deputed to represent the accused Nos.1 to 3 and finally they had resolved the dispute. It was agreed that the respondent should hand over the aforesaid cheque and the accused Nos.1 and 2 have to return the money which is due to the respondent and withdraw the complaint which was lodged before the police.

3. Based on the said settlement, a receipt was prepared and duly signed by the accused Nos.3 and 4. The respondent herein has handed over the said cheque to the accused No.3 based on the trust reposed on him. The accused No.3 colluded with the accused Nos.1 and 2 and handed over the said cheque to them. But, the accused Nos.1 and 2 did not return the money. Further they refused to withdraw the complaint also. On the contrary, they gave pressure to the police and due to the said pressure, the police have registered an FIR in Crime No.23 of 2013 on 14.04.2013 against the respondent for the offence under Sections 402, 406, 384 and 379 IPC. The respondent has obtained anticipatory bail from this Court in CrI.O.P.No.8074 of 2013 on 23.04.2013. Further, the respondent has sent a legal notice through his counsel on 21.04.2013. The first accused has received the said notice and sent a reply with false allegations. The respondent could not proceed against the first accused for the offence punishable under Sections 138 and 142 of the Negotiable Instruments Act as the original cheque was deceptively and fraudulently taken from him by his brother (accused No.3) and handed over the same to the accused No.4, which was received by the accused No.2. Hence, the respondent

has sent another legal notice to all the accused on 12.06.2013 for the offence of criminal breach of trust, misappropriation and cheating. The accused Nos.1 and 2 gave an evasive and false reply on 06.07.2013 while the accused No.3 has sent a similar false reply on 28.06.2013. Since the accused Nos.1 to 4 have induced the respondent to deliver the cheque under the pretext of resolving the dispute and the accused No.3 has received the said cheque and issued a receipt and also they failed to return the amount of Rs.25,00,000/-, the respondent has filed a private complaint to punish the accused persons under Sections 402, 406, 384 and 379 IPC.

4. Based on the aforesaid complaint, the learned Judicial Magistrate No.3, Salem has taken the case on file in C.C.No.246 of 2013 under Sections 120-B, 406, 417, 420 and 422 IPC and issued summons to the accused persons. On receipt of the summons, the accused Nos.1, 2 and 4 have filed the present petition under Section 482 of Cr.P.C. to quash the proceedings against them in C.C.No.246 of 2013 on the file of the Judicial Magistrate No.3, Salem.

5. The learned counsel for the petitioners has submitted that the respondent herein was engaged by the first petitioner for managing the branch office at Gugai and also to make payments to creditors. During the said period, the respondent used to get signatures in blank cheques from the first petitioner and used the same for the business transactions and one such cheque bearing No.054628 was not accounted. When the first petitioner enquired about the said cheque, the respondent informed her that he had handed over the said cheque to her. The first petitioner also believed the words of the respondent as he was her relative. He further submitted that when the first petitioner came to know about a case has been pending on the file of the Additional Mahila Court, Salem in C.C.No.15 of 2013 against the respondent herein, after due enquiry, she terminated him from his service in the month of February, 2013 and after such termination, the respondent herein had presented the stolen signed blank cheque by filling up for Rs.25,00,000/- with a view to take revenge for the termination and to shake the first petitioner's financial position in her business. He further submitted that after knowing that the said cheque has come up for collection, through the bank manager, the first petitioner preferred a complaint before the Inspector of Police, Sooramangalam Police Station against the respondent herein on 23.03.2013 and for that, C.S.R.No.79 of 2013 has been issued. He further submitted that the first petitioner was constrained to cause a public notice in Dinakaran news paper on 26.03.2013 to protect her reputation in her business field. He further submitted that since the Inspector of Police, Sooramangalam Police Station has not taken any action on the complaint given by the first petitioner, the first petitioner has filed

Crl.O.P.No.9062 of 2013 before this Court and in that petition, this Court has passed an order directing the police to register a case and accordingly, the police has registered a case in Cr.No.213 of 2013, against the respondent herein under Sections 379, 384, 406 and 420 IPC. The said case is still pending for investigation.

6.The learned counsel for the petitioners has further submitted that since an FIR was registered against the respondent herein, with a view to escape from that case, he has set up a false defence stating that a Panchayat was convened on 26.03.2013 and in the said Panchayat, the respondent has handed over the original cheque to the accused No.3 and the accused No.3 in turn has handed over the said cheque to the petitioner Nos.1 and 2 and also claiming a sum of Rs.25,00,000/- from the petitioner Nos.1 and 2. He further submitted that in the notice, which was sent by the respondent through his advocate dated 21.04.2013, he has stated that the first petitioner herein had borrowed a sum of Rs.25,00,000/- from him in the second week of January 2013 and only to discharge the said loan, she has issued a cheque for Rs.25,00,000/- dated 18.03.2013. But, in the second notice dated 12.06.2013, he has stated that the first petitioner herein has borrowed money from him over a period of several years which had accumulated to a huge amount of Rs.25,00,000/- and only to discharge the said debt, she has issued a cheque for Rs.25,00,000/- dated 18.03.2013. He further submitted that in the complaint, which was filed before the Judicial Magistrate, the respondent herein has stated that during the year 1993, he has been inducted as partner in the Gugai branch and at that time as insisted by the first petitioner, he has deposited a sum of Rs.2,00,000/- as security and the said amount was multiplied and has become Rs.25,00,000/- by January 2012 and only to discharge the said amount, the first petitioner has issued a cheque for a sum of Rs.25,00,000/-. He further submitted that the aforesaid contradictory statements of the respondent would clearly show that the first petitioner has not issued the said cheque to the respondent for discharging any liability and on the contrary, it was taken away by the respondent, while he was working in the first petitioner's company and subsequently, filled up the same for Rs.25,00,000/- and presented in the bank on 23.03.2013 for encashment. He further submitted that on knowing the same through bank manager, the first petitioner has lodged a complaint before the police on 23.03.2013 itself. However the police after issuing C.S.R, did not register a case and hence, the first petitioner was forced to file Crl.O.P.No.9062 of 2013 and in that petition, this Court has directed the police to register a case and only thereafter, the police has registered a case.

7. He further submitted that as per the allegations made in the complaint, the respondent herein has handed over the

cheque only to his brother namely third accused and in the copy of the receipt filed before the Court of Magistrate also, it is stated that the cheque was given by the respondent only to the third accused and in such a case, the complaint is not maintainable against the petitioners herein and therefore he prayed to quash the proceedings against the petitioners herein in C.C.No.246 of 2013 on the file of the Judicial Magistrate No.3, Salem.

8. Per contra, the learned counsel for the respondent / complainant has submitted that the allegations made in the complaint would prima facie show that the petitioners herein along with the accused No.3 have cheated the petitioner and also misappropriated the cheque. He further submitted that only with a view to discharge the debt due to the respondent, the first petitioner has issued the cheque. He further submitted that when the said cheque was presented in the bank for encashment, it was dishonoured as 'funds insufficient'. He further submitted that fearing legal action, the first petitioner requested the third accused to convene a Panchayat and settle the issue and at the same time parallelly the first petitioner lodged a complaint against the respondent before the police. He further submitted that in the said Panchayat the respondent has handed over the cheque to the third accused and the third accused in turn handed over the said cheque to the petitioners herein, but the first petitioner did not repay the amount of Rs.25,00,000/- and also did not withdraw the complaint and hence they have committed offences under Sections 120-B, 406, 417, 420 and 422 IPC.

9. Further, the learned counsel for the respondent, relying upon the decision in State of Haryana and Others Vs. Bhajan Lal and Others, 1992 Supp (1) SCC 335, contended that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases and that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint.

10. He further relying upon the decision in State of Karnataka Vs. M.Devendrappa and another, (2002) 3 SCC 89 contended that, in a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence. For the same proposition of law, he relied upon the decision in Dhanalakshmi Vs. R.Prasanna Kumar and Others, 1990 (Supp) SCC 686 and also Joginder Pal Vohra Vs. State of Haryana, 1998 criLJ 2592 (Punjab and Haryana High Court).

11. He further relying upon the decision in Tilly Gifford Vs. Michael Floyd Eshwar and another(2018) 2 SCC (Cri)

630 and Rakhi Mishra Vs. State of Bihar and Others (2018) 2 SCC (Cri) 299, contended that the power under Section 482 Cr.P.C., does not permit the High Court to go into the disputed questions of facts or to appreciate the defence of the accused.

12. The scope of exercise of power under Section 482 of Cr.P.C. and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any Court or otherwise to secure the ends of justice were set out in some detail by the Hon'ble Supreme Court in State of Haryana and Others Vs. Bhajanlal and Others (supra). A note of caution was, however, added that the power should be exercised sparingly and that too, in rarest of rare cases. The illustrative categories indicated by the Hon'ble Supreme Court are as follows:-

"(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 F.I.R. 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 155(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 155(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."

13. In this case, the respondent herein, in paragraph No.12 of his complaint, has stated that on 26.03.2013, a Panchayat was initiated on the direction of the accused No.3. He further stated that the accused No.4 was deputed to represent accused Nos.1, 2 and 3. He further stated that in the Panchayat, it was agreed that he should hand over the cheque to the accused Nos.1 and 2 and on receipt of the said cheque, the accused Nos.1 and 2 should pay the amount due to him and also withdraw the police complaint. Further it is stated in the complaint that the complainant (respondent herein), accused Nos.1 and 2 did not participate in the mediation. Further in the complaint, it is stated that he handed over the cheque to the accused No.3 and the accused No.3 has issued a receipt acknowledging the receipt of the said cheque.

14. As already pointed out that as per the own statement of the complainant, accused No.4 was deputed to represent accused Nos.1 to 3 and in such a case accused No.4 alone would have participated in the Panchayat. It is his further case that in the said Panchayat he has not participated. So, as per the aforesaid statements, neither the complainant nor the accused Nos.1 to 3 participated in the Panchayat. In the receipt said to have been issued by the accused No.3 also it is not stated that only in pursuance of the Panchayat's decision, the respondent / complainant has handed over the cheque to the accused No.3. Under the said circumstances, how the respondent / complainant could have handed over the said cheque to the accused No.3. There is no explanation for this. Further, the accused No.3 is admittedly own brother of the respondent herein. So, even if the allegations made in the complaint 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 petitioners herein. Further as per the own statement of the complainant he has not handed over the cheque to the petitioners herein. So, this case will clearly fall under No.5 of the illustrative categories indicated by the Hon'ble Supreme Court in the aforesaid decision. The allegations made in the 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 petitioners herein.

15. In State of Karnataka Vs. M.Devendrappa and another (supra), three Judges Bench of the Hon'ble Supreme Court in paragraph No.6 has observed as follows:-

"Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of process of Court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of High Courts. All Courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "quande lex aliquid aliqui concedit, concedere videtur in sine que ipsa, esse non potest" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the Section, the Court does not function as a Court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone Courts exist. Authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse. It would be an abuse of process of Court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers Court would be justified to quash any proceeding if it finds initiation/continuance of it amounts to abuse of process of Court or quashing of these proceedings

would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

16. From the aforesaid decision, it is clear that the inherent jurisdiction under Section 482 of Cr.P.C. though wide, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is also clear that the Court has power to prevent abuse of process of law. It is also clear that when no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

17. In this case, the respondent herein in the lawyer's notice dated 21.04.2013 has stated that the first petitioner herein had borrowed a sum of Rs.25,00,000/- from him in or about second week of January 2013 and only to discharge the said debt, she has issued a cheque for Rs.25,00,000/- on 18.03.2013 bearing No.054628 of Indian Bank, Naal Road, Salem. In the second notice dated 12.06.2013, he has stated that the first petitioner had several financial transactions with him and borrowed money over the period of several years which accumulated to a huge amount of Rs.25,00,000/- and to discharge the said debt, she issued a cheque bearing No.054628 dated 18.03.2013 drawn on Indian Bank, Naal Road, Salem - 7 for Rs.25,00,000/-. In the complaint, he has stated that in the year 1993, as per the instructions of the first petitioner he has deposited a sum of Rs.2,00,000/- as security deposit and the said amount will carry 18% interest per annum and the said amount matured into Rs.25,00,000/- in the month of January 2012. He further stated in the complaint that the petitioner Nos.1 and 2 directed him to leave the Company and at that time, he demanded to repay the aforesaid security deposit and only to discharge the said liability, the first petitioner herein has issued a cheque for Rs.25,00,000/- dated 18.03.2013. The aforesaid contradictory statements would clearly show that the allegations made in the complaint are totally false and no prudent person can ever reach a just conclusion based on the aforesaid allegations.

18. Further, as per the averments made in the complaint, neither the complainant (respondent herein) nor the accused Nos.1 to 3 participated in the Panchayat. As per the complaint, only accused No.4 participated in the Panchayat. Further, it is not stated in the complaint, who conducted the

alleged Panchayat and where it was conducted. Under the said circumstances the allegations made in the complaint that there was a Panchayat and in pursuance of the decision taken in the said Panchayat, the complainant (respondent herein) has handed over the said cheque to the accused No.3 are also absurd and inherently improbable on the basis of which no prudent person can reach a just conclusion. Further, as per the receipt filed by the respondent herein along with the complaint, it is only his brother (accused No.3) who has received the cheque from him. The aforesaid facts would show that only with a view to escape from the case, which was registered against him, the respondent herein has filed the above complaint. It is a clear case of abuse of process of law. Therefore, the complaint against the petitioners herein have to be quashed.

19. In the result, the Criminal Original Petition is allowed. The complaint against the petitioners herein in C.C.No.246 of 2013 on the file of the Judicial Magistrate No.3, Salem is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vsa

To

- 1.The Judicial Magistrate No.3,
Salem.
- 2.The Public Prosecutor,
Madras High Court, Chennai.
- 3.The Section officer,
Criminal Section, High Court, Chennai-104.

+2ccs to Mr.S.Sathyaraj, Advocate, S.R.No.71978

Crl.O.P.No.28102 of 2013
and
M.P.No.1 of 2013

SJ(CO)

rrs 23/11/2018