IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 11.08.2018

PRONOUNCED ON: 21.08.2018

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. No.8706 of 2017 & Crl.M.P. Nos.6209 & 7483 of 2017

1 Hitesh Kothari

2 Rajesh Kothari ... Petitioners

vs.

1 The Inspector of Police
Central Crime Branch
Team II, EDF I Wing
Vepery, Chennai 600 007

(Ref. Cr. No.146 of 2015 dated 20.04.2015)

2 Sarad Kumar Jain ... Respondents

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for the records and quash the prosecution in Cr. No.146 of 2015, pending on the file of the first respondent police.

For petitioner Mr. R. Singaravelan, Sr. Counsel for Mr. S.N. Kirubanandham

For R1 Mr. C. Raghavan Government Advocate (Criminal Side)

For R2 Mr. A.M. Venkatakrishnan

ORDER

This Criminal Original Petition has been filed seeking to call for the records and quash the prosecution in Cr. No.146 of 2015, pending on the file of the first respondent police.

2 Sarad Kumar Jain (de facto complainant/petitioner herein) filed Crl.M.P.No.5575 of 2014 before the Chief Metropolitan Magistrate, Egmore, Chennai and on the directions of the Magistrate under Section 156(3) Cr.P.C., the first

respondent registered a case in Cr. No.146 of 2015 on 20.04.2015 under Sections 406 and 420 IPC against Hitesh Kothari (A1) and Rajesh Kothari (A2), for quashing which, the accused are before this Court.

3. To appreciate the rival contentions, it may be necessary to succinctly state the averments in the FIR.

3.1 It is the case of the de facto complainant that the accused, representing that they are partners in J.K. Petro Chemicals, invited the de facto complainant and his brother to join the firm, pursuant to which, a deed of partnership was entered into on 18.05.2010 with effect from 01.04.2010; the de facto complainant and his brother invested huge amounts of money and vide balance sheet dated 27.01.2012 as on 31.03.2011, the de facto complainant was entitled to Rs.5,02,16,598/- and his brother was entitled to Rs.4,46,66,598/-, which were illegally and unjustly denied to them by the accused enriching themselves by siphoning off the funds.

3.2 The investigation by the Directorate of Revenue Intelligence commenced against J.K. Petrochemicals, pursuant to which, when sleuths of the DRI interrogated the accused, it came to light that the accused had started fake concerns and had diverted huge sums of money into those concerns in order to cheat the de facto complainant.

3.3 During the course of investigation by the police, it came to light that the accused had raised loans with State Bank of Bikaner and Jaipur by submitting affidavits by forging the signatures of the de facto complainant and his brother and had obtained a huge amount of loan and had defaulted in repaying the same. Therefore, the Investigating Officer filed an alteration report before the jurisdictional Magistrate altering the offences to Sections 406, 420,467,468,471 read with 120-B IPC on 12.04.2017.

4 On a perusal of the case diary, it is seen that the police had sent the signatures found in the affidavits submitted to the bank, with the admitted signatures of the de facto complainant and his brother, to the Forensic Science Laboratory for the purpose of comparison and received a report which showed that the signatures found in the affidavits were not those of the de facto complainant and his brother. Hence, the alteration report was filed on 12.04.2017, as stated above.

5 Hitesh Kothari (A1) was arrested in New Delhi on 18.04.2017 and was sent to judicial custody. However, Rajesh Kothari (A2) was granted anticipatory bail.

6 In this factual scenario, Mr. R. Singgaravelan, learned Senior Counsel, made the following submissions:

i A simple partnership dispute has been given a criminal colour; the de facto complainant and his brother are no angels and on the complaint given by the accused, a final report has been filed against the de facto complainant and his brother in the Court of the Metropolitan Magistrate, Tis Hazari, New Delhi for the offences under Sections 420,406,467,468,471 and 34 IPC and therefore, the FIR in Cr. No.146 of 2015 is a counter blast for the prosecution before the Tis Hazari Court, New Delhi and hence, the same is liable to be quashed;

ii The de facto complainant and his brother have filed a civil suit in C.S. No.448 of 2015 before this Court against the accused and therefore, the impugned FIR is liable to be quashed.

iii In the balance sheet dated 27.01.2012 as on 31.03.2011, which bears the signature of the de facto complainant, the liabilities have been crystallised and the same has also been accepted by the de facto complainant, after which, he cannot be heard to say that he was cheated; and

iv Since State Bank of Bikaner and Jaipur have initiated recovery proceedings before the Debts Recovery Tribunal, the complaint, based on which, the impugned FIR has been lodged, has been given by the de facto complainant only in order to wriggle out of the said proceedings before the Debts Recovery Tribunal.

7 The learned Senior Counsel has also filed written submissions reiterating his oral arguments.

8 Per contra, Mr. C. Raghavan, learned Government Advocate (Crl.Side) and Mr. A.M. Venkatakrishnan, learned counsel for the de facto complainant refuted the contentions put forth by the learned counsel for the accused.

9 The police have filed a counter affidavit narrating the sequence of events and the incriminating materials gathered by the police against the accused during investigation. It may be apposite to extract paragraph nos.5 and 6 of the counter affidavit filed by the police:

"5 I respectfully submit during investigation, it came to that came to know that 1st accused was arrested by the Directorate of Revenue Intelligence on 31.03.2011 for operating number of dummy fraud with the Government Revenue Departments by way of converting black money to while as hawala transaction. At that juncture, they realised the foul play committed by the accused. Thereafter, the de facto complaint and his brother resigned from the partnership firm on 06.12.2011 and requested the accused to render books of account to him. Thereafter, they have received a notice from the Debts Recovery Tribunal, Delhi through which they realised the fact that a loan was obtained in the name of M/s. JK Petro Chemicals by forging the complainant and his brother signatures in the Guarantee Affidavit. Moreover during the period April 2010 to March 2011, M/s. JK Petro Chemicals has incurred the profit of 31 crores out of which Rs.15 crores were due to them and to his brother Mr. Madanlal. The same is reflected in the audited balance sheet of the firm. The balance sheet also reveals that only Rs.5.5 crores was paid to the de facto complainant and his brother Mr. Madanlal and balance amount of Rs.9.5 crores has been misappropriated by the accused. Further a sum of Rs.2.11 crores was obtained by the accused as a loan from State Bank of Bikaner and Jaipur by forging the de facto complainant and his brother's signatures. Though a letter was sent by the complainant brother Mr.Madanlal on 25.07.2014, no explanation was given by the accused and no accounts were rendered to them till date.

6 I respectfully submit that the properties of the complainant and his brother are under the charge of the DRT, Delhi. By suppressing these facts, the accused have obtained an interim order in the above quash petition. The Hon'ble Apex Court has held time and again that FIR should be quashed only on a rare occasion and investigation should not be stayed at all. The report of the Forensic Laboratory is also received which reveals that the de facto complainant and his brother signatures have been forged. Based on the Forensic Science Laboratory report, the section was altered into 406, 420,467,468,471 r/w 120-B IPC from u/s. 406 and 420 IPC and the same was submitted before the Metropolitan Magistrate Court, CCB and CBCID on 12.04.2017."

10 From a reading of the above, it is limpid that, initially, the FIR was registered for the offences under Sections 406 and 420 IPC and during the course of investigation, it came to light that the accused had forged the signatures of the de facto complainant and his brother, in the affidavits filed by them with State Bank of Bikaner and Jaipur for obtaining loan in the name of J.K. Petrochemicals, which fact has been confirmed. The Forensic Science Laboratory report that has been obtained by the police is an incriminating piece of evidence against the accused. The said report says that the signatures found in the affidavits do not tally with the admitted signatures of the de facto complainant and his brother. That is the reason why the police have filed the alteration report on 12.04.2017 altering the offences to Sections 406,420,467,468 and 471 IPC read with 120-B IPC. The accused have suppressed this development and have filed this quash application by contending that the transactions relate to a simple partnership dispute. Of course, the accused may take a stand that they were not aware of the alteration report.

11 Be that as it may, when the police have collected incriminating materials against the accused, it cannot be stated that the ongoing investigation is an abuse of process of law.

12 As regards the contention of the learned Senior Counsel appearing for the accused that a civil suit has been filed, this Court is of the view that for recovering monies due to them, the de facto complainant and his brother have to perforce take recourse to filing of a civil suit and the police machinery cannot be used for this purpose. Even in the plaint, there is a clear averment to the effect that the defendants (accused) had forged the signatures of the plaintiffs (de facto complainant and his brother). The relevant portion in the plaint in this regard reads thus:

> "The plaintiffs to their surprise and shock came to know that the second defendant had filed an affidavit forging the signature of the plaintiffs."

Thus, filing of the civil suit for recovery of money can, by no stretch of imagination, be a valid reason for quashing the FIR.

13 As regards the contention of Mr. Singgaravelan that the de facto complainant is facing prosecution in Tis Hazari, New

Delhi, and therefore, the present FIR was launched in order to torpedo that trial, this Court is unable to find much force in the said submission, because, the investigation so far conducted in this case reveals that forged affidavits have been submitted to State Bank of Bikaner and Jaipur by the accused for obtaining huge amount of loan. The de facto complainant will have to face the prosecution before the Tis Hazari Court, New Delhi or challenge it in accordance with law before the jurisdictional High Court and based on this, this Court cannot give a finding that the ongoing investigation in Cr. No.146 of 2015 against the accused is an abuse of process of law.

14 Mr. Singgaravelan contended that the de facto complainant has taken his profit of Rs.7.50 crores from 01.04.2010 to 31.03.2011 which is reflected in the balance sheet for the financial year 01.04.2010 to 31.03.2011. He also submitted that the de facto complainant was aware that there was a loan of Rs.1.61 crores at the time of joining the firm and that they had signed the affidavits in the presence of the officials of State Bank of Bikaner and Jaipur, Kirti Nagar Branch, New Delhi, as per the RBI guidelines, in the capacity of partners of the firm for the continuation of the credit limit. However, on a perusal of the impugned affidavits, there is nothing to show that they were signed in the presence of the bank officials, as submitted by the learned Senior Counsel. Those affidavits have been signed before a Notary Public in New Delhi. As stated above, investigation conducted so far by the police reveals that the signatures in those affidavits have been forged. At the risk of repetition, the opinion obtained by the police from the Forensic Science Laboratory vindicates the stand of the de facto complainant. Just because the de facto complainant had signed the balance sheet, it cannot absolve the accused from the charge of submitting forged affidavits to the bank. There cannot be acquiescence by the de facto complainant in respect of a charge of forgery to cheat a public sector bank for raising huge loans.

15 As regards the last contention of the learned Senior Counsel appearing for the accused that in order to wriggle out of the DRT proceedings, the present FIR has been registered, this Court is of the view that it has always been the defence of the de facto complainant that the accused had siphoned off the profits into the kitty of the bogus concerns started by them and as observed earlier, even in the plaint, the de facto complainant has stated that the accused had forged the signature of himself and his brother in the affidavit filed with State Bank of Bikaner and Jaipur. It is for the Debts Recovery Tribunal to decide whether the de facto complainant can be

absolved of the liability to the bank and on that score, the present investigation against the accused cannot be quashed.

16 Thus, in the light of the aforesaid discussion, this Court is of the view that the facts obtaining in this case do not pass muster the law laid down by the Supreme Court in State of Haryana v. Bhajan Lal & Others [AIR 1992 SC 604:1992 Supp (1) SCC 335] for quashment of FIR and in such perspective of the matter, the impugned FIR cannot be quashed.

In the result, this Criminal Original Petition is dismissed as being devoid of merits. Connected Crl.M.Ps. are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

cad

To

1 The Inspector of Police
Central Crime Branch
Team II, EDF I Wing
Vepery, Chennai 600 007

2 The Public Prosecutor
High Court, Madras-104.

+1cc to M/S.Ojas Law firm, Advocate Sr.57418

Crl.O.P. No.8706 of 2017

vd[co]
srg 4/9/2018