

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Cr1.O.P No.21379 of 2011
and
M.P.No.1 of 2011

Ramesh

... Petitioner

vs.

M/s.Balaji Theatre, Pondicherry,
Rep. by its Partner:

1.R.Perumal @ Kaliya Perumal

2.P.Appasamy

(Having their office at 118,
Kamaraj Salai, Pondicherry-605011)

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the C.C.No.239 of 2005 on the file of the learned Chief Judicial Magistrate, Pudhuchery and quash the same.

For Petitioner : Mr.V.Manohar

For Respondents : Mr.D.Ravichander

सत्यमेव जयते

JUDGMENT

The petitioner is before this Court invoking the inherent power under Section 482 of Cr.P.C. to quash the above charge sheet in C.C.No.239 of 2005 by challenging the same as an abuse of process of law.

2.The sum and substance of the petitioner's case is that he is one amongst the partners of the complainant firm. Their firm consisted of three partners namely one Mr.Perumal alias Kaliyaperumal, P.Apparsamy and this petitioner.

3.The complainant firm is a cinema theatre executing films regularly for public viewing on payment. Due to some difference of opinion and some other problems, there arose a serious dispute amongst the partners of the firm. The petitioner herein is none other but the son of the 1st respondent herein, who is also a partner. The partners of the firm are altogether liable for any act of the partnership firm. While so the 1st respondent herein, who is petitioner's father along with the other partner has come up with above private complaint, by leveling allegations as if the petitioner misconduct the business and thereby misappropriated the funds of the theatre. Yet another allegation was that the respondents were intimidated by the petitioner. It was also alleged as if the petitioner herein during the course of administration had stolen some of the blank cheques signed by the respondents, drawn towards the liability of the firm.

4.According to the petitioner, all the allegations leveled against him are untrue and further the above complaint is not maintainable for the reason that the partner cannot be prosecuted by another partner of the same firm.

5.It is further case of the petitioner that originally the above complaint came to be filed as against the petitioner and three other persons namely Amirtha lingam, Kalaimani and Illanchezian, arrayed as accused 2 to 4 in the above private complaint. The respondents by projecting as though the above three persons conspired with the petitioner for illegal purpose of extorting money from the respondents by misusing the stolen cheque, has come up with the above complaint.

6.In the said backdrop, the petitioner as well as all the other accused filed a petition to discharge from the above false complaint. On proper appreciation of the fact that the case of the respondents herein projecting the above three persons as if conspirators is baseless and not supported by any evidence by the respondents herein, the learned trial judge by an order dated 28.06.2011 was pleased to discharge all the other accused, excepting the petitioner herein. Furthermore by rightly holding that a partner who is under active administration of a firm cannot be attributed with an offence of theft of cheques, which are to be handled on behalf of the firm, the learned judge was pleased to discharge the petitioner herein from the offence of section 379 IPC. However, the learned judge on misconception of law and facts chose to proceed with offences under section 406, 403, 418 and 420 IPC as against petitioner herein. Aggrieved over the same as abuse of process of law, the petitioner is before this Court through the present petition.

7.I heard Mr.V.Manohar, learned counsel appearing for the petitioner and Mr.D.Ravichander, learned counsel appearing for the respondents and perused the entire records.

8.The prime contentions of the Learned Counsel for the petitioner are as following that the learned judge failed to notice that the issue on hand is a typical civil dispute and there is a civil litigation pending with regard to the misuse of partnership funds by the respondents herein. There is also a positive decree as against the respondents to furnish accounts and to vouch for the amount spent out of the partnership business in a Civil Suit. While the learned trial judge found that the complaint do not make a case against the other accused, has not clarified as to how the complaint made out a case as against the petitioner. When there is a litigation continuing with regard to the determination of the right of the parties as the partner in the business run in partnership it is not correct to entertain the allegations made by the respondents to maintain the complaint. The respondents should have been directed to resolve their issue in the civil forum rather than maintaining under the criminal proceedings, further no attempt was made by the Learned Judge to understand the veracity attached to the complaint made by the respondents.

9.Per contra, the respondents herein strenuously contended that in so far as the allegation of cheating, misappropriation are concerned, it is a matter for trial and all the allegations could be proved only at the time of trial and the same cannot be quashed at the threshold itself. The respondents have made a specific allegation and all the above said averments have to be gone into only after adducing oral evidence.

10.It is needless to say that the petitioner ought to have resorted to a Revision, if aggrieved over the order of the Learned Trial Judge, whereas he had resorted to invoke the Inherent Power under section 482 CrPC to quash the very complaint.

11.In as much as the scope of power under Section 482 of Code of Criminal Procedure is concerned, as reiterated by the Hon'ble Apex Court, it is to be exercised cautiously and sparingly for quashing the criminal proceedings, when the allegations made in the complaint do not constitute an offence or if such proceeding is an abuse of process of Court.

12. Coming to the case on hand the allegations in the complaint are found specific with alleged date of occurrence, time and other particulars. It is for the accused to rebut the same by adducing evidence in the course of Trial. On a perusal of the complaint, it prima facie discloses ingredients of a criminal offence. It is noteworthy that the petitioner categorically admits that he was under Active management of firm, who looked after day today affairs of the firm.

13. At this stage the only question for consideration would be as to whether continuance of the proceedings would be an abuse of process of law, in the light of the allegations made in the complaint and the sworn statement of the complainant.

14. The next question arise before this Court is as to whether the Criminal proceeding on hand is liable to be quashed in view of the order made by a civil forum directing the respondents to account for expenditures.

15. In this context it would be relevant to look into a decision of the Hon'ble Apex Court in the matter of Maratt Rubber Ltd Vs. J.K. Marattukalam reported in 2000 (4) Crimes 29 (SC), in an identical situation, discussed the scope of power conferred to the High Court under section 482 Cr.P.C. to quash a criminal proceeding, while the Learned Trial judge had opined that there is a prima facie case made out as against the accused and also had taken the charge sheet on file for Trial by holding that mere pendency of civil suit is not a bar for a criminal prosecution for criminal deeds. The Hon'ble Apex Court was pleased to hold as follows:

"The accused-respondent appeared before the learned Magistrate and filed an application under Section 245 praying for discharge. The gravamen of the allegations in the application for discharge was that civil suit being pending in different forums it would not be appropriate for the criminal Court to proceed with the complaint case. The Magistrate, however, came to the conclusion that pendency of civil suit will not be a bar either in institution or proceeding with the criminal complaint. Once, the allegations made in the complaint petition make out an offence in which cognizance has been taken, we fail to understand as to how an application could be filed under Section 245 of the Code of Criminal Procedure. When a complaint is filed, the Magistrate after examining the complainant on oath and the witnesses produced by him, if comes to the conclusion that a prima facie case is made out, then he takes cognizance of the offence and directs issuance of process. If the magistrate thinks that further enquiry is necessary, he can postpone issuance

of process and either enquire into the case himself or direct further investigation to be made for the purpose of deciding whether or not there is sufficient ground for proceeding, as provided in Section 202 Cr.P.C. If ultimately on consideration of the statements of the complainant and his witnesses and the result of inquiry or investigation (if any) under Section 202 Cr.P.C. the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint as provided under Section 203 Cr.P.C. Obviously, in the case in hand, the Magistrate did not think it proper to dismiss the complaint on the materials produced by the complainant and took cognizance of the offence and issued process. That apart, we are in agreement with the view of the learned Magistrate that mere pendency of a civil proceeding before any civil Court will not be a ground for quashing of the criminal proceeding or not to frame a charge against an accused, even if the assertions in the complaint petition together with the materials produced by the complainant would constitute an offence. After the Magistrate rejected the prayer of the accused, the matter was carried to the High Court by invoking the powers of the High Court under Section 482 of the Code of Criminal Procedure. The High Court by a very lengthy judgment went into civil suits filed by the parties as well as the observations/directions given by the civil Court in some of those cases and came to the conclusion that this is a fit case where the inherent power of the High Court should be invoked, as otherwise it would be a case of miscarriage of justice. In exercising the power under Section 482, the High Court considered some observations made by the civil Court in a suit for injunction filed by the company complainant, to the effect that the property in question had not been delivered to the accused as a Director of the company and on that basis quashed that proceeding. It has been repeatedly held by this Court that the power of High Court under Section 482 Cr.P.C. should be sparingly and cautiously exercised and only when the Court on consideration, comes to a conclusion that otherwise it would be a case of abuse of process of Court or that there will be gross miscarriage of justice. In a case instituted on complaint, the High Court was possibly not entitled to look to the several documents purported to have been filed by the accused in several civil proceedings, and rely on some orders/observations made thereunder. A bare scrutiny of the impugned judgment would indicate that the High

Court has thought, as if it is trying the case, and then after weighing the materials it has come to a conclusion one way or the other. This is certainly in excess of the jurisdiction conferred on the High Court under Section 482 of the Code of Criminal Procedure. In that view of the matter, we have no hesitation to come to the conclusion that the High Court by the impugned order has exceeded its jurisdiction vested under Section 482, Cr.P.C. in quashing the criminal proceeding."

16. Therefore, it is precise that mere pendency of a civil proceeding before any civil Court cannot be a ground for quashing of the criminal proceeding or not to frame a charge against an accused, if the assertions in the complaint would constitute an offence.

17. As far as the other contentions of the petitioner is concerned it is obvious that all such contentions involve disputed question of fact, which cannot be considered by this Court while exercising its inherent powers under Section 482 Cr.P.C.

18. In view of the above legal proposition and factual matrix involved in the case, this Criminal Original Petition fails and the same is hereby dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vs
To

1. The Chief Judicial Magistrate,
Pudhuchery.

+1cc to Mr.D.Ravichander, Advocate, S.R.No.510

+1cc to Mr.V.Manohar, Advocate, S.R.No.407

CrI.O.P.No.21379 of 2011
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CS/19/01/18