IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.06.2018

DELIVERED ON: 13.07.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

Crl.O.P.No.19294 of 2015

and

Crl.M.P.Nos.1, 2 of 2012

1. Rajadurai
2. Selvadurai
3. Nalladurai
4. Vellaisamy ... Petitioners/Accused 1 to 4

Vs.

1. State Represented by
The Inspector of Police,
Central Crime Branch,
Tiruppur
(Crime No.27 of 2005) ... 1st respondent/complainant

2. K.Madeswaran, S/o K.Kumaravel,
Manager,
M/s Bidass Apparels Industries Private Limited,
51/1, Ayyappan Nagar, II Street,
Sengunthapuram, Tiruppur.

(2nd respondent impleaded as per order of this court made in Crl.M.P.No.3 of 2015 dated 03/09/2015)
... 2nd respondent/de-facto complainant

Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records in C.C.No.154 of 2008, on the file of the Judicial Magistrate No.II, Tiruppur and quash the same.

For Petitioners : Mr. R.Arumugam

For Respondent : Mr.T.Shunmugarajeswaran, Government Advocate (Crl.Side)

ORDER

The petitioners are accused No. 1 to 4 in C.C.No.154 of 2009 on the file of the Judicial Magistrate No.II, Tiruppur.

2. The de-facto complainant filed a private complaint before the Judicial Magistrate No.II, Tiruppur under Section 200 of the Code of Criminal Procedure and the same was referred to the Inspector of Police, Central Crime Branch, Tiruppur by the Judicial Magistrate No.II, Tiruppur for investigation under Section 156(3) of the Code of Criminal Procedure, consequent upon which, the Inspector of Police, Central Crime Branch, Tiruppur registered First Information Report in Crime No.27 for the alleged offences punishable under Section 409, 420, 120(B) and 506(ii) of the Indian Penal Code against the accused 1. Sathish, 2, P.Shanmugam, 3. M.Subramaniam, 4.Kumar and 5. R.Rajagopal. However, he filed the final report against the present petitioners for the alleged offences punishable under Sections 120(B), 409 and 109 of the Indian Penal Code.

3. The contention of the de-facto complainant is that he supplied raw materials to the accused mentioned in his private complainant for making ready made garments and that the accused instead of delivering the finished products to him, exported the same to various companies in Canada, conspiring with each other and committed criminal breach of trust.

4. The petitioners herein contended that the entire proceedings C.C.No.154 of 2009 on the file of the Judicial Magistrate No.II, Tiruppur is liable to be quashed on the following grounds.

1. The first and 2nd accused were Directors of M/s Bidass Apparel Limited and M/s Bidass Apparel Industries Tiruppur (P) Limited, having their office and factory at No.51/1, Ayyan Nagar, 2nd Street, Sengunthapuram, Tiruppur and one Mr.C.P.Kannan was the Managing Director. Since CBI authorities raided the business and residential premises of petitioners 1 & 2 and the said C.P.Kannan, Managing Partner, the petitioners 1 & 2 decided to withdraw themselves from all types of business activities of M/s Bidass Apparel Industries Tiruppur (P) limited and that a memorandum of understanding dated 02/06/2004 was also executed in this regard. The said C.P.Kannan instead of complying with the terms and conditions of the said memorandum of understanding dated 02.06.2004, preferred a criminal complaint dated 24.10.2004 with the respondent police with

false allegations.

2. The dispute between the parties was thereafter resolved amicably by way of executing joint affidavits dated 09.11.2004 with certain conditions and therefore, Mr.C.P.Kannan had withdrew his private complaint dated 10.11.2004.

3. Subsequently, Mr.K.Madeswaran (de-facto complainant) filed a private complaint under Section 200 of the Criminal Procedure before the Judicial Magistrate No.II, Tiruppur against 5 persons namely 1.Sathish, 2. P.Shanmugam, 3.M.Subramaniam. 4. Kumar, 5. R.Rajagopal. As per the directions of the Judicial Magistrate No.II, Tiruppur under Section 156(3) of the Code of Criminal Procedure, the First Information Report in Crime No.27 of 2005 in C.C.No.154 of 2008 came to be registered against the said persons.

4. However, the respondent/Inspector of Police, Central Crime Branch, Trippur filed a final report against the present accused, even though they are not shown as accused in the complaint preferred by the de-facto complainant/2nd respondent and the petitioners had also snapped their relationship with the Bidass Apparels and its sister concern.

5. As per the memorandum of understanding made between the petitioners herein on one part and Mr.C.P.Kannan and his family members on the other part, the petitioners are not responsible for the transaction of M/s Bidass Apparel Industries Tiruppur Private limited and M/s Bidass Apparels (P) Limited.

6. The final report filed by the Inspector of Police, Central Crime Branch, Tiruppur is also vague.

5. It is true that the first information report in Crime No.27 of 2005 was registered against 5 persons, namely 1.Sathish, 2. P.Shanmugam, 3.M.Subramaniam. 4. Kumar, 5. R.Rajagopal, based on a private complaint preferred by the de-facto complainant K.Madeswaran, s/o Kumaravel, under Section 200 of the Code of Criminal Procedure. However, the 1st respondent filed a final report, after investigation, against the present petitioners. It is also seen from the report dated 16.02.2006 of the Judicial Magistrate No.II, Tiruppur that charges in C.C.No.154 of 2008 were framed against the accused for the alleged offences punishable under Sections 120B, 409 and 109 of the Indian Penal Code and that the case is now posted for trial. It is pertinent to point out that all the allegations levelled by the petitioners against one Mr.C.P.Kannan are disputed

question of facts and this court cannot conduct a roving enquiry to find out the truth or otherwise of the said allegations. Further more, according to the prosecution, the alleged transaction took place between 14.06.2004 and 7.7.2004 and the petitioners' contention is that the memorandum of understanding was executed only on 02.06.2004 and it was not given effect to by Mr.C.P.Kannan, Managing Director of Biddas Apparels (P) Limited. It is also the contention of the petitioners that the joint affidavit was made on 09.11.2004, in which it is agreed that Mr.C.P.Kannan and his family members would be responsible for all the activities of the company. Merely based on the alleged joint affidavit dated 09.11.2004, it cannot be said that the petitioners have not committed any offence.

6. One disturbing factor in this case is that the private complaint under Section 200 of the Code of Criminal Procedure was preferred by the de-facto complainant Mr.Madeswaran s/o Kumaravel against 5 persons namely 1.Sathish, 2. P.Shanmugam, 3.M.Subramaniam. 4. Kumar, 5. R.Rajagopal. It is not known as to why the Inspector of Police filed a final report in Crime No.27 of 2005 against the present petitioners alone, leaving those accused. He has not also stated anything about the persons who were named in the first information report, while filing the final report. The statement of Mr.C.P.Kannan has been recorded under Section 161(3) of the Code of Criminal procedure, in which he has contended about the criminal misappropriation allegedly done by the present petitioners and the investigation done by the Inspector of Police, Central Crime Branch cannot be brushed aside, merely on the basis of a lapse on the part of the prosecution and it is for the learned Judicial Magistrate No.II, Tiruppur to ascertain whether the persons mentioned in the first information report have also committed the offences, as alleged by the de-facto complainant. It is also left to the prosecution to let in evidence at the time of trial before the concerned court and the Magistrate can invoke Section 319 of the Code of Criminal Procedure, which reads as follows;

> Section 319. Power to proceed against other persons appearing to be guilty of offence.
>
> (1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.
>
> (2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section(1) then

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

Inview of all these reasons stated by me, I hold that there are no good grounds to quash the proceedings in C.C.No.154 of 2008 on the file of the Judicial Magistrate No.II, Tiruppur and hence, the criminal original petition is liable to be dismissed.

7. In the result, this Criminal Original Petition is dismissed. Since the case is pending from the year 2008, the Judicial Magistrate No.II, Tiruppur is directed to dispose of the case in C.C.No.154 of 2008, within a period of six months from the date of receipt of a copy of this order. The connected criminal miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-ii)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.II,
   Tiruppur.

2. do thro Chief Judicial Magistrate, Tiruppur.

3. The Inspector of Police,
   Central Crime Branch,
   Tiruppur.

4. The Public Prosecutor,
   Madras High Court.

+1cc to Mr.R.ARUMUGAM, Advocate, S.R.No.46014

Cr.O.P.No.19294 of 2015

RJ(CO)
TR(23/07/2018)