IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P Nos.5728 and 8660 of 2011
and
M.P.Nos.1, 1 and 3 of 2011

1.Saravanamuthu
2.Tamil Selvi Radhakrishnan
3.S.Sengottai Selvan ... Petitioners in Crl.O.P.No.5728/2011

1.D.Radhakrishnan
2.Selvavinayagam ... Petitioners in Crl.O.P.No.8660/2011

vs.

V.Murthy ... Respondent in both the Crl.O.Ps

Common Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.797 of 2011, on the file of the learned IX Metropolitan Magistrate, Saidapet, Chennai-15 and quash the summons the proceedings in so far as the petitioners herein are concerned.

(In both the Crl.O.Ps)
For Petitioners : Mr.M.Balasubramanian

For Respondent : Mr.A.Irudayam

JUDGMENT

The above Criminal Original Petitions have been preferred seeking to quash C.C.No.797 of 2011 on the file of the learned XI Metropolitan Magistrate Court at Saidapet. Criminal O.P.No.5728 of 2011 has been preferred by A1, A4, and A5 in the complaint and Criminal O.P.No.8660 of 2011 has been preferred by A2 and A3 in the above mentioned complaint.

2.One V.Murthy claiming to be the Founder President of Tiruttani Arulmighu Murugan Education Trust has filed a private complaint before the learned IX Metropolitan Magistrate Court, Saidapet, Chennai against the petitioners above named alleging that they have committed offences under Sections 107, 108, 110, 120A, 120B, 199, 200, 405, 417 and 423 of I.P.C.

3.It is the case of the complainant that the Tiruttani Arulmighu Murugan Education Trust is a Public Trust and registered a document dated 15.09.1997 with various objectives like establishing Schools, Colleges and other Institutions. The original Founder Trustees is supposedly complainant and the 1st accused in the complaint was one of the Trustees. The Trust had acquired vast extent of lands for achieving its objectives and the sum of Rs.25 lakhs was deposited before the Central Bank of India, Kodambakkam Branch, on 31.08.1998 for the purposes of obtaining approval from A.I.C.T.E. for conducting technical courses. At the relevant time the first accused was working in a Polytechnic as Professor and the Government servant upto the year December 1999.

4. It is an admitted fact in the complaint that the Trust was running a Polytechnic college had run into several debts and hence a resolution passed on 25.10.1999 handing over the administration of the Trust to the 1st accused to discharge all the liabilities and expenditures incurred for running the Polytechnic College. It has been further stated in the complaint that an Memorandum of Understanding was entered into wherein accused No.1 had agreed to pay a sum of Rs.75 lakhs to the complainant and other Trustees in three instalments of Rs.25 lakhs each and on payment of the entire sums had been agreed that the complainant and other Trustees will not interfere in the administration of the Trust after the last payment on 31.12.2000. It is the case of the complainant without discharging the payment of the aforesaid sums found in the Memorandum of Understanding as referred above the 1st accused approached the City Civil Court, Chennai seeking for an injunction restraining the complainant not to interfere with the administration and management of the Trust. It is the case that the aforesaid suit was initially decreed on 12.01.2007 and thereafter the same was reversed by the First Appellate Court in A.S.No.324 of 2007. The complainant was also mentioned about certain other suits filed in O.S.No.2738 of 2008 before the learned XIV Assistant Judge, City Civil Court, Chennai and another suit in O.S.No.40 of 2005 before the same Court seeking for a decree of declaration that the Memorandum of Understanding dated 27.10.1999 is null and void and restraining the 1st accused for managing the affairs of the Polytechnic College.

5. It is the case of the complainant that he had filed Revision Petition before this Court in Criminal Revision Case No.2028 of 2004 seeking for recovery of the original Trust deed dated 15.09.1997 which arose out of a proceeding complaint filed by him before the Metropolitan Magistrate Court, George Town, Chennai and it was in that proceeding the complainant had come to know about the existence of a Supplementary Deed dated

10.07.2007 executed by the 1st accused along with accused 2 to 5 and registered before the Sub-Registrar Office, Saidapet and it was ordered in the above Criminal Revision Petition that the original Trust Deed be returned to the complainant. It was only thereafter the complainant states that he came to know about a resolution dated 25.10.1999 and pursuant to such resolution is a nothing but extract of minutes, and on the basis of such resolution has got the Supplementary Deed registered before the Sub-Registrar Office, Saidapet along with another non existent resolution dated 01.07.2002. It is the case that the criminal conspiracy was hatched to register the above Supplementary Deed and giving false informations before the Sub-Registrar Office and the same came into existence without honouring the earlier Memorandum of Understanding dated 27.10.1999. It is pertinent to note that various documents have been filed along with the complaint numbering about 20.

6. The above complaint is presently subject matter of quash petition. The petitioner is seeking to quash the above petition on the sole ground that the complainant will have no chances of success in the civil suit and a parallel civil proceeding has been lodged by the complainant in O.S.No.12958 of 2010 on the file of the learned City Civil Court, Chennai. It is the case in the quash petition that the entire transactions has stated in the complaint are civil in nature and the continuance of the proceedings would amount to abuse of process of Court.

7. I heard Mr.M.Balasubramanian, learned counsel for the petitioners and Mr.A.Irudayam, learned counsel for the respondent in both the Criminal Original Petition and perused the entire documents available on records.

8. The said documentation pertains to various proceedings which came into existence subsequent to the filing of this complaint. The complaint is found to be filed on 10.12.2009 as per the complaint copy available before this Court. Therefore, it has to see as to whether any offence has been committed as on the date of filing of the complaint and this Court need not go into the document which came into existence subsequent to the filing of the complaint.

9.It was vehemently contested by the learned counsel for the petitioner that the transactions complied are of civil in nature and the complainant himself had atleast filed two civil suits in O.S.No.40 of 2005 and O.S.No.2736 of 2008, on the file of the learned XIV Assistant City Civil Court, Chennai. The status of the said suits have not been divulged in the complaint. It is the categoric case of the petitioners that the Board of Trustees had passed unanimous resolutions to appoint the 1st accused to administer the Trust as per Resolution dated 25.10.1999.

10.Per contra, the learned counsel for the complainant urged that several offences have been committed by the 1st accused along with others which would attract charges under Section 107, 108, 110, 120A, 120B, 199, 200, 405 and 423 of I.P.C. It has been further urged that the execution of a Supplementary Deed is fraudulent and as on 10.07.2007 the earlier Memorandum of Understanding dated 27.10.1999 has not been honoured and based on fabricated resolutions and the Supplementary Deed has been registered before the Sub-Registrar Office, Saidapet. The learned counsel for the complainant has further urged that the pendency of the suit proceeding will not be a bar for institution of the criminal complaint and has relied on the following decisions:

(i) Medchi Chemicals and Pharma Pvt. Ltd. v. Biological Limited reported in AIR 2000 SC p.1869.

(ii) Vimal Kanthi v. Sri Sukhen Roy reported in 2004 (1) Crimes, Calcutta p.544.

(iii) M.Krishnan v. Vijay Singh AIR 2001 SC p.2014

11.Before adverting to the various judgments appended by the learned counsel for the respondent, it must be stated that admittedly the management of the Trust was handed over to the 1st accused on 25.10.1999. There was further Memorandum of Understanding entered into on 27.09.1999 wherein it has been agreed by the 1st accused that a sum of Rs.75 lakhs will be paid on or before December 2000 in three instalments of Rs.25 lakhs each and only thereafter, the other Trustees will have no right over the management of the Trust. The complainant has also admitted the pendency of atleast three civil suits in O.S.No.5851 of 2004 filed by the 1st accused as against the complainant and O.S.No.40 of 2005 and O.S.No.2736 of 2008 filed by the complainant as against the 1st accused. It was also an admitted fact by the complainant that he came to know about the Supplementary Trust Deed dated 10.07.2007 when the same was filed before this Court in another civil proceedings in Crl.R.C.No.2028 of 2004 filed by the complainant.

12.The transactions has alleged are pertaining to the administration of a polytechnic college. The non-payment of alleged money by the 1st accused to the complainant and other trustees are contractual in nature. The complainant could not have any direct knowledge about the execution of the Supplementary Trust Deed dated 10.07.2007 and hence after parting with the management in the year 1999 of the administration of the colleges cannot at this stage claim that the Supplementary Deed is fraudulent in nature though on the same breath, the legality or the illegality of the execution of the Supplementary Deed before the Sub-Registrar Office cannot be gone into by a criminal Court. Moreover, admittedly civil proceedings are pending in the City Civil Court, Chennai and the status of the said cases have not been mentioned in the complaint. The parties are trying to work out their remedies before the Civil Court and the complainant and the 1st accused are apparently trying to wrest control over the administration and management of the Polytechnic College which was allegedly founded by the complainant. All the aforesaid disputes are of only civil in nature and the entire genesis of the complaint emanates from the contractual obligations arising out of Memorandum of Understanding dated 27.10.1999. Moreover, the other Board of Trustees have not joined the complainant in filing the complaint before the learned Magistrate and therefore it cannot be said that abuses have been made out under Sections 199, 200, 405 and 423 of I.P.C. The veracity of various statements made before the Sub-Registrar Office can be gone into only before the Civil Court where the Supplementary Deed of Trust will be the subject matter of challenge. The complainant raises only the internal squabbling between the complainant and the 1st accused and hence it would not be appropriate to continue the criminal proceedings before the trial Court.

13.It is well settled principles of law that civil and criminal proceedings cannot be proceeded parallelly and this principle has been settled through a catena of decisions pronounced by this Court and the Hon'ble Supreme Court of India. The decision relied on by the learned counsel for the petitioner may not be much use since in this case the allegations is that the transactions referred into the complaint are civil in nature. In the Judgment reported in AIR 2001 SC p.3014, the Hon'ble Supreme Court has only held that the matters pertaining to forging of documents and acquiring gains of such basis the Magistrate can take cognizance of the offence and the criminal proceedings cannot be quashed only because civil suits are pending. But that is the case of forgery and each case will have to be looked into on the basis of the factual matrix. In the very same judgment the Hon'ble Supreme Court has gone into the question of cheating and fraud and however the present case does not pertains to any cheating or fraud allegedly committed. In the very same judgment the Hon'ble Supreme Court has held at factual foundations will have to be laid in the complaint. But, however, in this case it is found that the entire case arises out of contractual obligations between the 1st accused and the complainant and the other accused have been unnecessarily dragged though it has been alleged that they are the relatives of the 1st accused. There are absolutely no averments contained in the complaint in respect of allegations pertaining to 107, 108, 110, 120A and 120B.

14.In view of the aforesaid findings, both the Criminal Original Petitions in Crl.O.P.Nos.5728 and 8660 of 2011 are allowed and the complaint filed in C.C.No.797 of 2011, on the file of the learned IX Metropolitan Magistrate Court, Saidapet, Chennai, is quashed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vs

To

1.The IX Metropolitan Magistrate,
Saidapet, Chennai.

2.The Chief Metropolitan Magistrate,
Chennai.

+2cc to Mr.A.Irudayam, Advocate, S.R.No.14412,14758

+1cc to Mr.M.Balasubramanian, Advocate, S.R.No.14447

Crl.O.P Nos.5728 and 8660 of 2011
and M.P.Nos.1, 1 and 3 of 2011

RRK(19/04/2018)