

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.07.2018

DELIVERED ON: 16.08.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

Crl.O.P.Nos.32155 and 32156 of 2012 and

Crl.O.P.Nos.640 and 641 of 2013

and

M.P.No.1 of 2012 and 1 of 2013

Ramasamy Athappan ... Petitioner in Crl.O.P.No.32155/2012

Paul Rivett ... Petitioner in Crl.O.P.No.32156/2012

Prem Watsa ... Petitioner in Crl.O.P.No.640 of 2013

Chandran Ratnaswami ... Petitioner in Crl.O.P.No.641 of 2013

1. The State

by the Inspector of Police,
City Crime Branch,
Coimbatore.

2. K.C.Palanisamy ... Respondents in all the petitions

Prayer in Crl.O.P.No.32155, 32156 of 2012 and 640 and 641 of 2013: Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records in Crime No.85 of 2012 of District Crime Branch, Tiruppur, and quash the same.

For Petitioner in Mr.E.K.Kumaresan for
Crl.O.P.No.32155 of 2012 : M/s Roshan Balasubramaniam

For Petitioner in
Crl.O.P.No.32156 of 2012 : M/s K. Chandrasekaran

For Petitioner in Mr.E.K.Kumaresan for
Crl.O.P.No.640 & 641 of 2013 : M/s Aditya Bhat

For 1st Respondent
in all the petitions : Mr.T.Shunmugarajeswaran
Govt. Advocate (Crl. Side)

For 2nd Respondent
in Crl.OP.No.32156/2012 : Mr.V.Raghavachari

For 2nd respondent in
Crl.O.P.No.32155 of 2012 : Mr.B.Kumar, Senior Counsel,
640, 641/2013 M/s Waron and Sai Ram

COMMON ORDER

All the petitioners are accused in Crime No.85 of 2012 of City Crime Branch, Coimbatore City.

2. The de-facto complainant K.C.Palanisamy is an Ex. M.L.A and Ex.M.P of AIADMK and also Managing Director of Cheran Enterprises Private Limited (herein after referred to as ' CEPL'), a subsidiary company of M/s C.G.Holdings.

3. The brief facts case of the de-facto complainant are as follows:- The CEPL entered into an agreement with M/s Sporting Pastime India Limited (herein after referred to as 'SPIL'), a subsidiary of a company M/s Kasthuri & Sons Limited of " Hindu " daily Newspaper group, Chennai. SPIL had about 400 acres of land on East Coast Road to set up a golf course of International Standards and it was offered for sale for CEPL for 30 crores. After the purchase was effected in 2004, M/s Kasthuri and sons with the political backing of the then DMK Government, compelled the complainant to return the SPIL for the original value of Rs.30 crores, though the market value had shot up by 10 times i.e. Rs.300 crores. Litigations were already on between the complainant and M/s Kasthuri & Sons Limited on one side and litigations with other petitioners were also pending. One Mr.Chandran Ratnasamy filed a complaint against the de-facto complainant in Crime No.776 of 2007 of Central Crime Branch, Chennai, in which, a house search warrant was issued by the Additional Chief Metropolitan Magistrate, Chennai to search the office of the de-facto complainant. Mr.T.A.J.Lamech, Inspector of Police, Central Crime Branch, Chennai made the search at the office of the M/s C.G.Holdings at Cheran Towers, Coimbatore on 24.02.2008 and again on 25.02.2008 and was accompanied by 4 or 5 persons, who were not in police uniform. The complaint further reads that two of the office staff one Mr.Karunakaran and another Mr.Vinothkumar were present in the office during the search. After completion of the search at 2.30 p.m., the seizure of some documents were listed in a mahazar and signatures of the said Mr.K.Karunakaran and Mr.Vinothkumar were obtained. However, it is alleged that at about 5.30 p.m., on the same day, Mr.T.A.J.Lamech, the Inspector of Police came along with 3 unknown persons, identifying themselves as advocates and repeated the search again in the presence of Mr.K.Karunakaran and Mr.Vinothkumar and a large number of original documents were taken away by them. However, the original documents of SPIL were not located and their intention was to take away the original property documents of SPIL and this was also admitted by the present Inspector of Police, Central Crime Branch Team, Chennai in his affidavit in O.A.No.2734 of 2008 dated 10.06.2008 before the court. However, it was later found that the other petitioners namely, Prem Watsa, Chandran Ratnasamy, Ramasamy Athappan and Paul Rivett had conspired and removed the vital documents necessary for the Arbitration Proceedings, connected with CEPL,

SPIL and C.G.Holdings Private Limited. These persons were put up in Hotel Residency and took the stolen documents from the Inspector of Police, thereby committing robbery. Later on, it was found that one Jyothimani Son-in-law of Mrs.Selvi, one of the daughters of former Chief Minister, Mr.K.Karunanidhi was also involved in this conspiracy and hence, the complaint for the offence under Section 120B, 457 and 395 of the Indian Penal Code.

4. The petitioners in their petition have contended that the de-facto complainant has a track record of making frivolous police complaints thereby intimidating the other parties with whom he has business transaction and this very complaint was to counter the first information report in Crime No.776 of 2007 of Central Crime Branch, Egmore filed against him by Mr.Chandran Ratnasamy, one of the petitioners herein (Crl.O.P.No.641 of 2013). In fact, this particular complaint in C.C.No.776 of 2007 resulted in the arrest of the de-facto complainant K.C.Palanisamy and he was detained nearly for 90 days and subsequently, during the investigation of the C.C.No.776 of 2007, a search warrant issued. Further, the petitioners have contended that there have been a series of criminal complaints filed by the de-facto complainant on all the petitioners for various disputes in the Joint Venture Agreement for the advent of CEPL. It has also been pointed out that Mr.T.A.J.Lamech, Inspector of Police, Central Crime Branch, Chennai had executed the search based on the warrant issued by Additional Chief Metropolitan Magistrate, Chennai and there was no question of any illegality, as the mahazar was duly witnessed by the staff members of the C.G.Holdings Private Limited and other independent witnesses. According to the petitioners, the non inclusion of Mr.T.A.J.Lamech, Inspector of Police, Central Crime Branch, as an accused, goes to show that the entire version of Mr.T.A.J.Lamech re-entering the premises under the guise of search, after the official search was completed is concocted and a figment of imagination. It has also been mentioned by the petitioners that the Assistant Commissioner of Police, Coimbatore City had made an independent investigation on the said complaint filed by the de-facto complainant and also filed a closure report on 06.03.2012. Suppressing the same, the de-facto complainant filed a petition in Crl.O.P.No.8181 of 2012 before this court praying for a direction to register the F.I.R. and the same was allowed by this court on 30.03.2012 and thus, the present First Information Report in Crime No.85 of 2012 came to be registered.

5. On a scrutiny of all the related papers and documents produced before this court and on hearing the various arguments put forth on both the sides, it is clear that the dispute between the complainant and M/s Kasthuri & Sons regarding the proposed sale of SPIL was settled by National Company Law Tribunal vide an order dated 06.03.2017 and the same was confirmed by National Company Law Appellate Tribunal vide its order dated 18.07.2015. The de-facto complainant aggrieved

over the said orders, which were not favouring him, went on an appeal to the Supreme Court of India in Civil Appeal Nos.10025 of 2007 and 10026 of 2006, which also confirmed the orders of the National Company Law Appellate Tribunal, thereby concluding the issue in favour of M/s Kasthuri & Sons Limited.

6. In the meanwhile, the complainant, who has been in the habit of filing frivolous complainant many times even for civil disputes, lodged a complaint on 07.10.2008 before the Assistant Commissioner of Police, City Crime Branch, Egmore, Chennai regarding threat for his life by all the petitioners and also 'Hindu' Ram and Murali of Kasthuri & Sons and five others, claiming that he was threatened to return the East Coast Road Property, which he had bought from M/s Kasthuri & Sons Limited and that this incident took place on 04.03.2008, when he was taken in police custody. It can be easily observed that the date of the complaint is about 6 months after the alleged incident of threat to his life. Surprisingly, this compliant does not speak about the house search, which reportedly happened on 24.02.2008. The complaint, which is sought to be quashed by the petitioners is dated 24.09.2012 i.e. roughly after 4 years from the date of the search conducted in his office premises.

7. The learned counsels appearing for the petitioners relied on the decisions in G.Sagar Suri and another V. State of Uttar Pradesh and others reported in 2000(2) SCC 636 and contended that when a matter of civil nature has been given a cloak of criminal offence, the jurisdiction under Section 482 of the Code of Criminal Procedure by the High Court and the criminal proceedings are not a a shortcut of other remedies available in law. He also relied on the decision in Kishan Singh V. Gurpal Singh and others reported in (2010)8 Supreme Court Cases 775 and contended that where there is a delay in lodging the first information report, the court has to look for a plausible explanation for such delay and in the absence of such an explanation, the delay should be fatal.

8. At this juncture, learned counsels for the petitioners have contended that if the version of the de-facto complainant that the Inspector of Police Mr.T.A.J.Lamech had re-visited the office premises along with 3 unknown persons making the total number to 4, it would not attract the provisions of Section 395 of the Indian Penal Code, since atleast 5 persons are to be involved. It is also not explained as to why Mr.T.A.J.Lawmech, the Inspector of Police, Central Crime Branch has not been arraigned as an accused, when the other three persons have been termed as unknown and allegedly hired by the petitioners. Even in the undated letter to the National Human Rights Commission, the de-facto complainant has not mentioned anything about the alleged occurrence. Curiously, the police, Information Report in Crime No.85 of 2012, left blank the column No.9, which pertains to the properties stolen/involved, especially when Section 395 of the Indian Penal

Code seems to be the main offence alleged against the present petitioners. The contention of the learned counsel appearing for the petitioners is that the de-facto complainant has a dubious distinction of wielding his political influence and getting complaints registered by the police on flimsy grounds with the sole intention of settling scores with his business opponents. It is further seen that he has been in the habit of luring business man for business transactions and utilizing the funds, thus collected for purposes, other than intended for. In the instant case, the First Information Report in Crime No.776 of 2007 dated 05.12.2007 tells the entire story of the acts of the de-facto complainant stepping down to any level to achieve his business interest. All the civil litigations he initiated, met with failures and as is his habit, simultaneous criminal proceeding has kept his business rivals on toes and always on pressure. For all the reasons stated supra, I hold that the entire proceedings in Crime No.85 of 2012 on the file of the Inspector of Police, District Crime Branch, Tiruppur is liable to be quashed.

9. In the result, the CrI.O.P.No.32155 of 2012, CrI.O.P.No.32156 of 2012, CrI.O.P.No.640 of 2013 and CrI.O.P.No.641 of 2013 are allowed and the proceedings in Crime No.85 of 2012 on the file of the Inspector of Police, District Crime Branch, Tiruppur is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mst
To

1. The Director General Of Police,
DGP Office, Chennai.
2. The Inspector of Police,
District Crime Branch, Tiruppur.
3. The Public Prosecutor,
Madras High Court.

+1cc to Mr.J.Sivanandaraaj, Advocate SR.NO..No.56761
+1cc to Mr.Roshan Balasubramaniam, Advocate SR.NO.56762
+1cc to Mr.E.K.Kumaresan, Advocate SR.NO.56640

SSI(CO)
sm:3.9.2018