IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.06.2018

DELIVERED ON: 16.08.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

Crl.O.P.No.13324 of 2013 and 13325 of 2013

and

M.P.No.1 of 2013

Chandran Ratnaswami .. Petitioner in Crl.O.P.No.13324/2013

Ramasamy Athappan .. Petitioner in Crl.O.P.No.13325/2013

Vs.

1. The State,
   represented by the Inspector of Police,
   District Crime Branch,
   Tiruppur.

2. K.C.Palanisamy ..Respondents in both petitions

Prayer in Crl.O.P.No.13324 and 13325 of 2013: Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records in FIR No.25 of 2012 of the Inspector of Police, District Crime Branch, Tiruppur and quash the same.

For Petitioner in Crl.O.P.No.13324/2013: Mr.J.Sivanandaraj for M/s Aditya Bhat, AZB partners

For Petitioner in Crl.O.P.No.13325 of 2013 : Mr.J.Sivanandaraj for Mr.K.Chandrasekaran

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

For 2nd respondent in both the petitions : Mr.B.Kumar, Senior Counsel for M/s Waran and Sai Rams

COMMON ORDER

The petitioners in Crl.O.P.No.13324 of 2013 and Crl.O.P.No.13325 of 2013 are accused in Crime No.25 of 2012 of District Crime Branch, Tiruppur.

2. The 2nd respondent /de-facto complainant has preferred a complaint dated 31.12.2012 against the petitioners for the alleged offences punishable under Sections 120B, 464, 466, 468 and 420 of the Indian Penal Code.

3. The brief facts of the case of the de-facto complainant/2nd respondent is as follows. Mr.Chandran Ratnasamy, petitioner in Crl.O.P.No.13324 of 2013 is a permanent resident of Canada and a business man with investment in different companies in India and abroad. Mr.Ramasamy Athappan, petitioner in Crl.O.P.No.13325 of 2013 is another accused in the said crime number and he is a permanent resident of Singapore and also a business man with business interest in India and Singapore. The 2nd respondent/de-facto complainant has contended that he is the Managing Director of M/s Cheran Enterprises Private Limited, Cheran Towers, Government Arts College Road, Coimbatore and also Group of Companies by name Cheran Group of Companies. According to the 2nd respondent/de-facto complainant, he along with the petitioners herein had started a Joint Venture Company by name Cheran Enterprises Private Limited (herein after referred to as CEPL) with C.G. Holdings Private Limited (in which he is the Managing Director) and ORE Holdings Limited, Mauritius holding 45% shares each and the remaining 10% shares was held by one Nandakumar Athappan s/o Ramasamy Athappan. According to the de-facto complainant, the Reserve Bank of India vide its order dated 18.06.2007, reduced the stake of Nandakumar Athappan to 1.66% in CEPL, thereby the C.G.Holdings Private Limited's share increased to 53.5% and therefore, the de-facto complainant, as the Managing Director of C.G.Holdings Private Limited, became the majority share holder of CEPL. However, even prior to the dilution of the share holdings, disputes existed with both the petitioners allegedly joining together to marginalize the role of the de-facto complainant and M/s C.G.Holdings Private Limited. It is also alleged that both the petitioners with an intention to take over control of CEPL and also its assets, which included Rs.30 crores bank balance in State Bank of India, Erode Branch, fraudulently made a Power of Attorney in favour of one R.Ravichandran, (Partner, Kochhar and Company) to act as their agent and represent the company in various foras, including courts without consulting the de-facto complainant, due to which wrongful losses were incurred by the company CEPL compelling him to file the complaint. The said R.Ravichandran is incidentally the

accused No.1.

4. The petitioners on their behalf have contended that both of them were approached by the de-facto complainant and induced to get investments for starting joint venture company (CEPL) with the share holding patterns as given below.

ORE Holdings Limited - 45%
C.G.Holdings Private Limited - 45%
Mr.N.Athappan - 10%.

5. For the sake of convenience, Mr.Chandran Ratnasamy is referred to as first petitioner and Mr.Ramasamy Athappan is referred to as 2nd petitioner. According to them, the investments through ORE Holdings Limited to the tune of Rs.75 crores was arranged by Mr.Chandran Ratnasamy, the first petitioner. The 2nd petitioner's son invested Rs.4 crores in CEPL getting 10% of the shares. Consequent upon the dispute between the two petitioners on one side and the de-facto complainant on the other, C.P.76 of 2005 was filed by the ORE Holdings Limited and C.P.No.65 of 2005 was filed by the C.G.Holdings Private Limited before the Company Law Board and both of them were settled by the Company Law Board, vide its order dated 13.08.2008, directing the de-facto complainant to return the investments and take back the shares ensuring smooth exit of both ORE Holdings Limited and Mr.Athappan from CEPL and this was approved by a Division Bench of this High Court in O.S.A.Nos.2 to 5 and 258 of 2009 and Company Appeal Nos.21, 25 to 27 and 29 of 2009. The Division Bench, in its order had also observed that

> "Given the sequence of events if KCP is placed in position to manage CEPL, KCP would again try to divert the amount to innumerable subsidiary companies floated by him."

However, notwithstanding the above order, the de-facto complainant reportedly approached the Economic Offences Wing with a complaint and the Economic Offences Wing refused to entertain the said complaint. The de-facto complainant undeterred by the decision against him, initiated criminal action by making a private complaint in C.C.No.1696 of 2006 before the Judicial Magistrate, Perunthurai, which was dismissed by the Magistrate on the ground that the complainant has to seek the remedy under the Contract Act or under the Company Law and not by filing a criminal complaint. Suppressing this fact, again, the de-facto complainant preferred a complaint before District Crime Branch, Erode, which was registered as Crime No.07 of 2007 of District Crime Branch, Erode and subsequently it was dropped by the police themselves as "mistake of fact". When the petitioners filed a petition before this court in Crl.O.P.No.12695 and 19384 of 2007 under Section 482 of the Code of Criminal Procedure, the same were closed by this court deprecating the de-facto complainant by observing that "this court would frown upon the conduct of the de-facto complainant and indulging in repeated harassment of the petitioners". The de-facto complainant unfazed by the observations made by this court, filed three complaints through his father Mr.Chenniappan, which were registered as Crime No.238 of 2007, 466 of 2007 and 468 of 2007 of Chennimalai police Station, Perunthurai, which were all quashed in various Criminal Original petitions by this court. Despite all these attempts going awry, the present complaint dated 31.12.2012 has been preferred by the de-facto complainant before the District Crime Branch, Tiruppur.

6. It is true that there has been a serious abuse of process of law by the de-fact complainant and he does not appear to have realized that a dispute which was civil in nature and which was already settled by the Company Law Board against him has been unnecessarily prolonged by filing malafide criminal complaint. There have been a series of very sharp and crucial adverse observations made against the de-facto complainant by this court as well as the Apex Court in all the orders pertaining to the earlier litigations. Despite all these, the de-facto complainant has got into the habit of filing police complaint from a different police station against the petitioners by repeating the same set of facts and alleging afresh all the allegations, which were made earlier by him to Constitute crimes under Section 120B, 464, 467 and 468 of the Indian Penal Code. This complaint once again is another attempt by the de-facto complainant to give life to a subject which is already declared dead.

7. For a clear understanding the sequence of events has to be gone through once more in the instant case though they have been repeated in every other litigations dealt with earlier. When the proceedings before the Company Law Board was in progress (as of now it is settled), the de-facto complainant on 27.02.2006 filed a complaint before the Economic Offences Wing, Chennai against the present petitioners and others for having committed offences under Section 120B read with 409, 420, 405, 471 and 389 of the Indian Penal Code, all these pertaining to the Joint Venture company (CEPL). When the Economic Offences Wing, Chennai refused to take any action, the de-facto complainant filed a Criminal Original Petiton No.9791 of 2006 before this court, seeking direction to the Economic Offence Wing to take action and this petition was later withdrawn. Thereafter, the de-facto complainant filed a similar private complaint in C.C.No.6096 of 2006 for the offences under Sections 406 read with Section 109, 420, 467 before the Judicial Magistrate, Perunthurai, which was dismissed on 13.03.2007 observing that the same was to "wreak vengeance". The de-facto complainant filed another complaint before the Judicial

Magistrate, Kangeyam, suppressing the facts of the earlier complaints and the order of the Judicial Magistrate, Perunthurai and it was registered as crime No.7 of 2007 by the District Crime Branch, Erode on the direction of the Judicial Magistrate, Kangeyam under Section 156(3) of the Code of Criminal Procedure. This again was closed on 20.05.2009. Meanwhile, the Criminal Original Petitions in Crl.O.P.No.12695 of 2007, 19384 of 2007 were filed for quashing the First Information Report by the present petitioners, in which this court vide order dated 08.02.2010, observed " this court would frown upon the conduct of the de-facto complainant in indulging in repeated harassment of the petitioners". The de-facto complainant thereafter, preferred Special Leave Petition before the Honourable Supreme Court against the order dated 08.02.2010, which was also dismissed on 22.11.2010 with a liberty to pursue a protest petition, if any. The de-facto complainant once again though in different context filed three writ petitions against the State of Tamil Nadu, Superintendent of Police, Economic Offence Wing, Chennai, Director General of Police, Tamil Nadu, Union of India, Central Bureau of Investigation and Reserve Bank of India, in which the facts about the Joint Venture Company CEPL and consequent happenings were again dealt with in an elaborate manner. In these writ petitions, a common counter affidavit filed by all the respondents mentioned above and also listed out 9 criminal cases pending against the present de-facto complainant under various provisions of the Indian Penal Code, including for the offence under Section 420 and 8 of them were in Coimbatore City Crime Branch in Crime No.37/1999, 17/2000, 62/2000, 18/2001, 25/2001, 29/2001, 20/2002 and 26/2003. The 9th case was crime No.3/2001 in Economic Offence Wing. In the order dated 19.10.2011, this court had dismissed all the three writ petitions and specifically stated that "the modus operandi of the writ petitioner (present de-facto complainant) was to defraud a person or entity and thereafter, approach the courts with multiple petitions, in order to distract attention from his own misdeeds ". Subsequently, on 02.01.2012, the Superintendent of Police, Tiruppur, reopened the crime No.7 of 2007 relying on the Supreme Court order dated 22.11.2012, which directed to pursue a protect petition, if any. This resulted in the final report in C.C.No.162 of 2012 on the file of the Judicial Magistrate No.3, Erode on 11.09.2012. The Judicial Magistrate No.3, Erode issued summons to the petitioners and subsequently, the " look out circular " was also issued against the petitioners. The petitioners were detained by immigrant authorities, when they landed in India and had to approach this court in W.P.No.1764 of 2013, in which the petitioners were directed to surrender before the trial court and accordingly they had to surrender before the Judicial magistrate No.3, Erode and consequently, the Non Bailable Warrants were recalled. However, the ' look out circular ' for restraining them from moving out of the country and writ petition Nos.2739 of 2013 and 2740 of 2013 were filed by the petitioners individually for direction to the Ministry of Home affairs, New Delhi to restrain in any manner the petitioners' entry or exit in and out of India. Subsequently, on 11.3.2013, C.C.No.162 of 2012 was stayed by the Honourable Supreme Court of India in SLP Crl.No.1947 of 2013, 1948 of 2013 and it was concluded that the Non Bailable Warrant having not been recalled, the basis of the look out circular has gone.

8. In the meanwhile, simultaneously, Mr.Chenniappan, the father of the de-facto complainant preferred a complaint in Crime No.238 of 2007 before the Chennimalai Police Station against the same set of persons, including the petitioners herein. Therefore, the present petitioners filed Crl.O.P.Nos.19382 of 2007, 19385 of 2007, 19448 of 2007 and 19449 of 2007 before this court and first information report in Crime No.238 of 2007 was quashed on 14.12.2016. The learned single Judge of this court, while describing the complainant Mr.Chenniappan had observed that

> Chenniappan, the de-facto complainant is the proud father of the famous K.C.Palanisamy, who is said to be an adept in the art of luring people into big business and entangling them in criminal prosecutions.

It is further observed that

> The petitioner is not an innocent party in filing such complaints and he himself has not obeyed the order passed by the Delhi High Court in the application for winding up and asking him to refund the amount siphoned off by him which was obtained as a loan by hands. Not only the petitioner has come to this court with unclean hands, but he himself being an accused in several cases had also suppressed the entire proceedings of the Delhi High Court, including the order directing the company to re-transfer the money siphoned of from DAIL. "

While concluding civil appeal No.4540 of 2013 arising out of SLP No.30120 of 2013, the Honourable Supreme Court of India observed that

> "Neither the High Court nor the Magisterial Court have ever applied their

> mind and considered the conduct of the respondent and continuance of criminal proceedings in respect of the disputes, which are civil in nature and finally adjudicated by the competent authority i.e. the Company Law Board and the High Court in appeal.
>
> We are of the definite opinion that the complainant has manipulated and misused the process of Court so as to deprive the appellants from their basic right to move free anywhere inside or outside the country. Moreover, it would be unfair if the appellants are to be tried in such criminal proceedings arising out of alleged breach of a Joint Venture Agreement specially when such disputes have been finally resolved by the Court of competent jurisdiction".

9. The complainant, it can be concluded, has now become 'addicted' to the practice of filing criminal complaints one after the other in different police stations with more or less the same narration of events and totally suppressing the earlier litigations and indictments against him by different courts. From all the above sequence of events, it is clear that the unfettered powers given to the police by Cr.P.C. has been thoroughly misused by the complainant making them a weapon of harassment as in the instant case. That every complaint filed by the de-facto complainant has been taken cognizance of by the police and first information report registered and further proceedings initiated makes a mockery of the entire system causing huge wastage of time, money and man power. The one common factor in all these complaints is the allegations made out against the petitioners, who have made a gross error of judgment by teaming up with the de-facto complainant for a Joint Venture company, the CEPL. It is clear that the trouble started as soon as allegations of siphoning off funds by the de-facto complainant was detected. These funds wee brought in as foreign direct Investment (FDI) from abroad only because of the efforts of the petitioners. Similarly, the Company Law Board also had paved way for the smooth exit of the petitioners from the failed Joint Venture attempt, which was when the trouble started. The Company Law Board had instructed the refund of the investments made by the petitioners and the de-facto complainant irked by such a decision has been waging this illegal battle by manipulating the provisions of the Code of the Criminal Procedure and wielding his influence through the police officials. The intentions of the de-complainant being totally malafide is deplorable and viewed with total dis favour by this court. The role of the police is also condemnable in the light

of the fact that the complainant they are dealing with has no reputation whatsoever and is notorious as already observed by various foras. It is also not certain whether the de-facto complainant would stop continuing with such attempts in future against the petitioners since he appears to get immense satisfaction by putting the petitioners under stress and mental agony.

10. The learned counsels appearing for the petitioners would contend that even if the entire complaint dated 31.12.2012 is taken to be true, no offence would be made against the petitioners herein, in the light of the earlier decision of this court as well as the Honourable Supreme Court. He also pointed out that the allegation of the de-facto complainant that Mr.Ravichandran does not have authority to represent CEPL cannot be true, because, the de-facto complainant was present at the Board Meeting that was held on 15.06.2006 and also signed minutes of the meeting. It is also specifically mentioned in the resolution that Mr.Chandran Ratnasamy had the absolute power and authority to delegate his powers to represent the CEPL before various foras. Since Mr.Chandran Ratnasamy had power to delegate his authority to Mr.Ravichandran, there is no question of forgery of Power of Attorney as alleged by the de-facto complainant. Another contention of the learned counsel appearing for the petitioners is about the allegations of the de-facto complainant that the petitioners are attempting to usurp the control of the Board of the Joint Venture Company cannot also be accepted as a Division Bench of this Madras High Court vide its order dated 05.08.2011 has clearly stated that the de-facto complainant should not be put to any control of CEPL.

11. The allegations in the First Information Report that the petitioners are having intention of grabbing the assets of the Joint Venture company cannot be true, because the Delhi High Court vide its order dated 21.01.2011 in CP No.292 of 2004 had attached the bank account in State Bank of India, Erode Branch and therefore, there is no question of misappropriation of money by the petitioners.

12. 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.

13. As far as the present case is concerned, the first information report in Crime No.25 of 2012 was registered after a lapse of several years and the delay in lodging this complaint has not been explained properly. Further more, as already observed, the de-facto complainant had suppressed the earlier litigations between him and the petitioners, in the present complaint dated 31.12.2012.

14. The learned counsels for the petitioners raised the following grounds for quashing the impugned first information report as held in State of Haryana and others Vs. Bhajanlal and others reported in 1992 Supp(1) SCC 335.

1] The two documents mentioned in the first information report are the Board Resolution dated 15.05.2006 and the Power of Attorney dated 26.04.2007 and since the de-facto complainant had attended the Board Meeting held on 15.05.2006, wherein complete power was given to Mr.Chandran Ratnasamy to appoint a person to represent him and Mr.Ravichandran was appointed as power of attorney holder by Mr.Chandran Ratnasamy on 26.04.2007, no offence under Section 466 and 420 would be made out against the present petitioners. Further more, the Board Resolution dated 15.05.2006 was accepted by a civil court and therefore, no allegation of forgery can be made.

2] The first information report does not disclose as to how these two documents are forged and all the allegations made in the first information report in this regard are bald and cannot be accepted.

3] He also relied on the decision in Dr.Vimala Vs.Delhi Administration reported in AIR 1963 SC 1572, wherein it has been held that

> "To summarize: the expression "defraud"involves two elements, namely deceit and injury to the person deceived. Injury is something other than economic loss that is deprivation of property, whether movable or immovable, or of money and it will include any harm whatsoever caused to any person in body, mind, reputation or such others". It is relevant to pint out that in the present case, it is the petitioner's property that was defrauded. Therefore, ingredients of forgery is not made out. The impugned FIR does not disclose any injury or harm caused to the second respondent/complainant. "

Since the Company Law Board vide its order dated 13.08.2008 had cleared that the Fixed Deposits in State Bank of India, Erode Branch should be used towards the refund of the investments of ORE and Mr.Athappan and the Delhi HIgh Court vide its order dated 21.01.2011 had attached the bank amounts, there is no question of misappropriation of funds and hence the offence under Section 406 of the Indian Penal Code would not be attracted in the instant case.

15. Since the de-facto complainant had filed various criminal complaints against the present petitioners and all of them were closed, cannot maintain the present complaint. In the forgoing paragraphs, all the litigations have been discussed by me and therefore, it is not necessary to repeat the same once again. In view of all the reasons stated by me, I hold that the entire proceedings in Crime No.25 of 2012 on the file of Inspector of Police, District Crime Branch, Tiruppur is liable to be quashed.

16. In the result, the Crl.O.P.No.13324 of 2013 and Crl.O.P.No.13325 of 2013 are allowed and the proceedings in Crime No.25 of 2012 on the file of the Inspector of Police, District Crime Branch, Tiruppur is quashed. The Director General of Police, Chennai is also directed to advise all the police stations under his jurisdiction not to entertain any complaint from the de-facto complainant for the same set of facts against the same petitioners. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//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.SIVANANDARAJ, Advocate, S.R.No. 56760

Crl.O.P.No.13324 and 13325 of 2013
and M.P.Nos.1 of 2013

RK(CO)
TR(30/08/2018)