IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2018

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.OP No.10920 of 2017
and
Crl.M.P.Nos.7195 & 7196 of 2017

1.R.Jayaraman
2.J.Kalai Selvi
3.K.Subramaniyan
4.V.Seenivasan
5.Krishna Kumar
6.R.Murugesan ..Petitioners/Accused No.1 to 6

..Vs..

1.K.Ganesan
2.G.Kalyani
3.G.Ramakrishnan ..Respondents/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.2/2017 pending on the file of learned Judicial Magistrate No.I, Attur, Salem District, and quash the criminal proceeding.

For Petitioners : Mr.E.Kannadasan

For Respondents : Ms.K.Jenitha

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings pending in C.C.No.2 of 2017, on the file of the learned Judicial Magistrate No.I, Attur, Salem District.

2.The case as found in the Private Complaint is that the de-facto Complainant was conducting a Chit Business at Attur till the year 2004, and petitioners 1 to 4 were subscribers to the said Chit and had paid a sum of Rs.8,50,000/-. This amount was not settled by the first respondent, and therefore petitioners 1 to 4 compelled the first respondent to execute a Power of Attorney in their favour. Left with no other option of the respondents executed a Power of Attorney in favour of the first petitioner, and the same was duly registered before the

Sub Registrar, Attur. The first petitioner also compelled the respondents to hand over the original title deed which was a Sale Deed dated 23.08.1993. Thereafter, the second and third petitioners compelled the respondents to register another Power of Attorney and took the original title deed. Similarly, the fourth petitioner also got a Power of Attorney executed in his favour on 25.08.2004, and also received the original title deed. That apart, the petitioners also obtained signatures in three blank stamp papers. The petitioners promised that, immediately after the repayment of the chit amount of Rs.8,50,000/- they will cancel the Power of Attorney document and hand over the original title deeds.

3.It is the further case in the Complaint that on 03.11.2004, the respondents had handed over the chit amount of Rs.8,50,000/- to petitioners 1, 3 and one Ranganathan. However, in spite of the receipt of the amount, the above said persons demanded more interest to a tune of a sum of Rs.2,04,000/- from the first respondent. When the first respondent approached the petitioners 1 and 3 with the interest amount, he was informed that the property has been leased in favour of third parties for a period of three years and after the competition of three years, the amount will be received and the original documents will be handed over. Even after the lapse of three years, the above said persons refused to accept the amount and also refused to hand over the original documents and also the possession to the respondents.

4.The respondents preferred a Complaint before the Inspector of Police, Attur on 16.08.2009, against the petitioners and the said Complaint, after enquiry, was closed by advising the parties to workout their grievance before the Civil Court. Thereafter, the respondents came to know that the property has been sold in favour of petitioners 2, 5 and 6 by way of a registered Sale Deed and the names in the revenue records were also changed. Subsequently, a Panchayat was conducted but it ended in a failure. Thereafter, a Complaint was given to the land grabbing wing, but no action was taken. Therefore, the present Criminal Compliant has been filed against the petitioners for an offence under Section 420 IPC. The Court below has also taken cognizance of the Complaint against all the petitioners for an offence under Section 420 IPC.

5.The learned counsel for the petitioners would submit that the respondents have already filed a Civil Suit before the learned Additional District Judge No.II, Salem, in P.O.P. No.118 of 2016, seeking for a declaration of all the documents as null and void, and also seeking for a further relief of declaration of title and permanent injunction, and therefore, the respondents cannot parallely prosecute a Private Complaint on the same cause of action. The learned counsel would further submit that the alleged incident is said to have happened in the year 2004 to 2007, but, however a Complaint has been given only in the year 2017, and the suit has been filed in the year 2016, and that itself will show that the respondents are trying to revive a completed transaction. The learned counsel would further submit that no offence under Section 420 IPC has been made out even on the entire reading of the Complaint filed by the respondents. Therefore, the learned counsel would submit that the Private Complaint given by the respondents is liable to be quashed.

6.The learned counsel for the respondents would submit that the respondents were forced to execute a Power of Attorney in favour of petitioners 1,3 and one Ranganathan, and this Power of Attorney has been misused and the property has been sold in favour of petitioners 2, 4 and 6. The learned counsel would further submit that the pendency of the Civil Suit is not a bar to parallely prosecute a Criminal Complaint, if an offence is made out. The learned counsel further submitted that a prima facie case has been made out in the Complaint for an offence of cheating, and the petitioners can raise all the issues before the Court below only during the course of trial, and there is no ground to interfere with the proceedings at this stage.

7.This Court has carefully considered the submissions made on either side. On the allegations made in the Private Complaint, this Court has to see whether an offence under Section 420 IPC has been made out.

8.It will be useful to refer to the judgment of the Hon'ble Apex Court in Dalit Kaur and Ors .vs. Jagnar Singh and Anr. reported in [2017(3) MWN (Cr) 335 (SC)]. It will be relevant to extract para 9 to 11 of the judgment hereunder:

> "9.The ingredients of Section 420 of the Indian Penal Code are :
>
> "(i) Deception of any persons;
> (ii) Fraudulently or dishonestly inducing any person to deliver any property; or
> (iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit."
>
> 10. The High Court, therefore, should have posed a question as to whether any act of inducement on the part of the appellant has been raised by the second respondent and whether the appellant had an intention to

cheat him from the very inception. If the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating. Similar is the legal position in respect of an offence of criminal breach of trust having regard to its definition contained in Section 405 of the Indian Penal Code. {See Ajay Mitra v. State of M.P. [(2003) 3 SCC 11]}.

11.There cannot furthermore be any doubt that the High Court would exercise its inherent jurisdiction only when one or the other propositions of law, as laid down in R. Kalyani v. Janak C. Mehta & Ors. [(2009 (1) SCC 516] is attracted, which are as under:

"(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a First Information Report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue."

9.In the facts of this case, it is seen that, the first respondent was running a Chit Business and had collected money to the tune of Rs.8,50,000/- from respondents 1 to 4, who were subscribers. Since the amount was not repaid, the respondents have executed Power of Attorney in favour of petitioners 1, 3 and one Ranganathan and also had handed over the original title deeds. There is nothing on record to show that the first respondent repaid back the sum of Rs.8,50,000/-, except the statement made by him in the Complaint. In the Complaint it is stated that a receipt was given to him acknowledging the repayment of Rs.8,50,000/-. However, that receipt was not even filed along with the Complaint. The Sale Deed has been executed in favour of petitioners 2, 5 and 6 in the year 2004. However, the first Complaint that was given before the Attur Police Station was in the year 2009, and that according to the respondents was closed after enquiry, directing the parties to go before a Civil Court. Thereafter only in the year 2017, the present Private Complaint has been filed by the respondents. Surprisingly, even in the Private Complaint neither the Power of Attorney documents nor the Sale deeds have been filed as annexures. It is also seen from records that the respondents have filed the suit in the year 2016, challenging the Sale Deeds and also seeking for the relief of declaration of title and permanent injunction, and the said suit is pending.

10.It will be relevant to refer to the judgment of the Hon'ble Supreme Court in All Carogo Movers (I) Pvt. Ltd. v. Dhanesh Badarmal Jain & Anr. [2007 (12) SCALE 391], stating:

> " 16... For the said purpose, allegations in the complaint petition must disclose the necessary ingredients therefor. Where a civil suit is pending and the complaint petition has been filed one year after filing of the civil suit, we may for the purpose of finding out as to whether the said allegations are prima facie cannot notice the correspondences exchanged by the parties and other admitted documents. It is one thing to say that the Court at this juncture would not consider the defence of the accused but it is another thing to say that for exercising the inherent jurisdiction of this Court, it is impermissible also to look to the admitted documents. Criminal proceedings should not be encouraged, when it is found to be mala fide or otherwise an abuse of the process of the Court. Superior Courts while exercising this power should also strive to serve the ends of justice."

11.From the above facts, this Court is not convinced that an offence under Section 420 IPC has been made out in this case. The respondents have executed the Power of Attorney and handed over the original title documents, since they were not able to repay back the Chit amount. Therefore, only if there is a material to show that this Chit

amount was repaid back and in spite of it, Sale Deeds were executed in favour of petitioners 2, 5 and 6, there can be a prima facie case for cheating. However, in this case the respondents have neither produced the receipt for the alleged repayment nor have they annexed the Power of Attorney documents and the Sale Deeds along with the Complaint and this Court is not able to understand as to how the Court below took cognizance of the Private Complaint under Section 420 of IPC. The ingredients of Section 420 IPC, as spoken by the Hon'ble Apex Court, has not been satisfied in this case. There is absolutely no fraudulent or dishonest intention on the part of the petitioners at the inception.

12.This Court is also of the considered view that the issue involved is purely Civil in nature, and the same has been given a criminal colour. There respondents have already filed the suit against the petitioners claiming for various reliefs including the relief of declaration of title and it is for the respondents to establish the same before the Competent Civil Court, where the suit is pending. The continuation of the Private Complaint will amount to an abuse of process of Court and it requires interference by this Court in exercise of its jurisdiction under 482 of Cr.P.C.

13.In the result, the proceedings in C.C.No.2 of 2017, on the file of the learned Judicial Magistrate No.I Attur, Salem District, is hereby quashed. Accordingly, the Criminal Original Petition is allowed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

KP

To

1. Judicial Magistrate No.I,
   Attur, Salem District.

+1cc to Mr.E.Kannadasan, Advocate SR.No.78924

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KJ(CO)

GMY(17/12/2018)