IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 13.12.2018	Delivered on 20.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P.Nos.27820, 28361 & 28362 of 2017
and
Crl.M.P.Nos.15835, 15836, 16109 to 16112 of 2017

Raghavan ..Petitioner/Accused No:4 in Crl.O.P.No.27820/2017

Asha Raghavan .. Petitioner/Accused No:3 in Crl.O.P.No.28361/2017

1.Vivan A.Prabha
2.Vyas ..Petitioners/Accused No:1 Accused No:2 in Crl.O.P.No.28362/2017

..Vs..

1.State by:
The Inspector of Police,
S-8, Adambakkam Police Station,
St.Thomas Mount,
Chennai-88.

2.Suresh K.J.
..Respondents/Complainant/Defacto Complainant in All Crl.OPs

COMMON PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.887 of 2017, now pending on the file of the learned Judicial Magistrate, Alandur and quash same.

For Petitioner/s (All Crl.OPs) : Mr.R.Shankara Narayanan, Sr. counsel for M/s.K.Sumathi

For Respondents (All Crl.OPs) : Mr.M.Mohamed Riyaz, APP for R1
Mr.M.Venkataraman, Sr. counsel for Mr.M.Palanivel for R2

COMMON ORDER

These Criminal Original Petitions have been filed challenging the proceedings pending in C.C.No.887 of 2017, on the file of the Judicial Magistrate Court, Alandur.

2.The petitioners in these petitions are shown as A-1 to A-4 in the Final Report. The Final Report has been filed for an alleged offence under Section 347, 323 and 506(ii) IPC.

3.The case of the prosecution is that A3 and A4 are the shareholders of Lotus Sintered Metals (India) Private Limited, and A1 and A2 are the relatives of A3 and A4. During the course of business there was a loss, therefore the accused persons made the 2nd respondent come to a Company called as Hydro Electrical Systems on 09.03.2017, at about 11.00 a.m., and forced him to sign in certain documents and in the course of the same transaction, the 2nd respondent was also illegally restrained and beaten with hands by A1 and A2. Therefore, based on the complaint given by the defacto-complainant, the respondent Police registered an FIR in Crime No.531 of 2017 on 13.03.2017, and on completion of the investigation filed a Final Report before the Court below, and the same has been taken cognizance for the above said offences against the petitioners.

4.Mr.R.Shankara Narayanan, Sernior Advocate representing the counsel for the petitioners made the following submissions:

- The de-facto complainant is the first cousin of A-4 [Raghavan]. He was carrying on business in two or three companies and one such Company is Lotus Sintered Metals (India) Private Limited. In or around 2013, the de-facto complainant contacted A3 and A4 and represented that the Company had availed loan facilities from Lakshmi Vilas Bank, and he had given personal guarantee and personal properties as security and he had a problem in repaying back the loan to the Bank. Therefore, the de-facto complainant requested A4 to bail him out of the situation by paying the money to the Bank. The de-facto complainant being a close relative, A-4 agreed to help him. The arrangement was that A3 and A4 will be inducted as directors of the Company and will be allotted shares, and the share consideration could be adjusted towards repayment of the loan amount to the Bank. A3 was inducted as an additional Director in October, 2013. She was requesting the de-facto complainant to furnish the financial statements. However, he was evading the same and A-3 was made to even incur the administrative expenses of the Company including payment of salary to the employees. No Board Meeting was convened for more than a year, and therefore the appointment of A-3 as an additional Director came to an end by operation of law on 30.09.2014. The de-facto complainant did not convene any Board Meeting or General Meeting and in the middle of 2015, A3 requested the de-facto complainant to refund the money paid to the Bank and also the expenses that were incurred for maintaining the Company. The de-facto complainant agreed to refund the amount.

- On 16.01.2016, the de-facto complainant had a meeting with A3 and A4 and the minutes of the meeting was also reduced to writing, wherein the de-facto complainant agreed to arrange for the payment of Rs.30 lakhs to A3, and promised that remaining amount will also be repaid in the course of time. On 30.03.2016, the de-facto complainant signed a statement engrossed in a stamp paper stating that A3 is relieved from the Board of Directors of the Company and apart from other things, the de-facto complainant also acknowledged the liability of Rs.316 Lakhs and agreed that he will transfer certain equipments of the Company in partial discharge of the loan amount.

- The de-facto complainant did not honour this commitment and after several meetings, he again entered into a MOU [Memorandum of Understanding] with A-3 on 09.03.2017, acknowledging the liability of 316 lakhs and offered his personal assets, and the assets of the Company towards discharge of the liability. That apart 16 cheques were given, signed by the son of the 2nd respondent, viz; Siddharth and delivered to A3, representing a total value of Rs.1.85,05,000/-, and thereby agreed to discharge the entire liability.

- On 13.03.2017, the de-facto complainant proceeded to give a complaint before the respondent Police, and the FIR was registered on the same day and A1 and A2 were taken into custody and later released on bail, and A3 and A4 were granted anticipatory bail.

- The learned Senior counsel read the 161 statement given by the 2nd respondent, his son and his wife and submitted that there is total contradiction in these statements even with regard to the time of incident and the so called hurt caused by A1 and A2. In the initial statement to the Police, the 2nd respondent states that unknown persons attacked him with hands. However, subsequently he improves his version and states that A1 and A2 attacked him with hands.

- There is no dispute with regard to the statement signed by the de-facto complainant on 30.03.2016, acknowledging a total liability of 316 lakhs. This was also stated by him in the complaint. Therefore, there was no requirement for the petitioners to threaten him and make him enter into a memorandum of understanding on 09.03.2017, and therefore the entire complaint according to the learned Senior counsel, is false and has been given only to prevent the petitioners from claiming the amount due from the 2nd respondent.

- Even as per the details available with the Ministry of Corporate Affairs, the authorised share capital of the Company is only Rs.50 lakhs and the paid up capital is only Rs.30 lakhs, and therefore the allegations of the de-facto complainant that A3 after becoming a share holder to an extent of 50% in the Company could not have paid a sum of Rs.1,68,00,000/-, and that by itself shows the artificial manner in which the entire complaint has been cooked up by the 2nd respondent.

- A3 and A4 along with Hydro Electrical Systems has already filed a suit in COS No.5/2018, before the Principal District Judge of Chengalpattu against Lotus Sintered Metals India Pvt.Ltd., the 2nd respondent and his son, for recovery of a sum of Rs.316 lakhs along with interest and the said suit is pending.

- A transaction which is purely civil in nature, has been given a criminal colour and the entire proceedings is an abuse of process of Court, and the same requires the interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

- The learned Senior counsel relied upon the following judgments in order to substantiate his submissions:

1. R.P.Kapur .Vs. State of Punjab reported in (1960) 3 SCR 388: AIR 1960 SC 866: 1960 Crl.L.j. 1239.
2. Lalitha Kumari .Vs. Government of Uttar Pradesh and Others reported in (2014) 2 SCC 1.
3. Anand Kumar Mohatta .Vs. State (Gov. of NCT of Delhi) reported in [2018 SCC Online SC 2447].
4. Baijanath jha .Vs. Sita ram & Others reported in (2008) 8 SCC 77.

5.Per contra, Mr.M.Venkataraman, learned Senior counsel representing the counsel for the 2nd respondent submitted that prima facie materials are available against the petitioners, and therefore the charges can be framed with the available materials and all the other issues raised on the side of the petitioners can be gone into only during trial, and this Court cannot conduct a roving enquiry at this stage. The learned Senior counsel would further submit that by using the disputed MOU which was taken from the 2nd respondent, A3 and A4 have filed a suit and pendency of the suit will not have any bearing on the criminal proceedings. The learned Senior counsel in order to substantiate his submissions relied upon the following judgments:

1. T.Vengama Naidu .Vs. T.Dora Swamu Naidu And Others reported in (2008) 2 SCC (Cri) 231.

2. Central Bureau of Investigation .Vs. K.M.Sharan reported in (2208) 2 SCC (Cri) 430.

3. State of Tamil Nadu .VS. Thirukkural Perumal reported in 1995 SCC (2) 449 reported in [1995 SCC (2) 449].

6.The learned Additional Public Prosecutor for the 1st respondent Police, would submit that the 1st respondent Police have collected sufficient materials in the course of the investigation and all the grounds raised by the learned Senior counsel for the petitioners are factual in nature, and the same cannot be considered at this stage since it will amount to appreciation of evidence. Therefore, the learned counsel would submit that this Court should not interfere with the proceedings at this stage.

7.This Court has carefully considered the submissions made on either side and also the materials available on record. The sum and substance of the case of the prosecution is that the de-facto Complainant and A-4 are close relatives, and the de-facto Complainant had some financial difficulties and he approached A3 and A4. There was an arrangement between the parties to repay back the amount to the Bank and to run the Company. After sometime there was some misunderstanding between the parties, as a result of which A3 and A4 started claiming for a sum of Rs.316 lakhs from the 2nd respondent. According to A3 and A4, the 2nd respondent acknowledged the liability by entering into a MOU dated 09.03.2017. According to the 2nd respondent, this MOU was taken from him by force and threat. This Court cannot get into the exercise of analysing the various facts put forth by the parties, and at this stage this Court has to only see whether on the available materials, an offence has been made out against the petitioners and whether the entire proceedings is attended with malafides, and the entire incident is so absurd and improbable that it could not have happened as attempted to be projected by the 2nd respondent .

8.The 2nd respondent while giving the complaint on 13.03.2017, took a specific stand that two unknown persons beat him with hands and caused internal injury and made his son Siddarth come to the scene of occurrence, and threatened the 2nd respondent to sign in a stamp paper and forcibly took 16 cheques from his son Siddarth. The 1st respondent Police while filing the alteration report before the Judicial Magistrate, Alandur, based on the statement given by the witnesses, has stated that only A1 to A4 were present in the scene of occurrence and there was no one else present there, and therefore they have removed Section 147 from the list of offences. It is also relevant to look into the statement given by the de-facto Complainant before the Investigating Officer, where he takes a completely contrary stand to the effect that A1 and A2, on the instigation of the A3 and A4 beat him with hands and he did not sustain any external injuries.

9.The 2nd respondent's son viz; Siddarth in his statement states that he was made to come to the scene of occurrence at about 1.00 p.m. on 09.03.2017, and was forced to give cheques to A3. The de-facto Complainant's wife Lalitha makes a statement that A1 and A2 came to her house on 09.03.2017, at 2.00 p.m., and told her that her husband has been kept in custody and only if she comes along with them, to the scene of occurrence, her husband will be relieved and therefore she also came to the scene of occurrence.

10.From the above, it is very clear that there is a total contradiction with regard to the very incident itself.

11.The de-facto complainant both in his complaint as well as the statement speaks about execution of an invoice on 31.03.2016. It is seen from records that the de-facto Complainant himself has signed a statement dated 30.03.2016, wherein he has acknowledged the total loan amount of Rs.316 lakhs received from M/s. Hydro Electrical Systems Limited, Chennai. This document has not been disputed by the de-facto complainant nor by the learned Senior counsel appearing for the de-facto Complainant.

12.When the de-facto Complainant has acknowledged the liability of Rs.316 lakhs on 30.03.2016, there is no requirement for A3 and A4 to force the de-facto complainant to enter into a MOU on 09.03.2017. Even in the MOU, the total liability that is acknowledged is Rs.316 lakhs.

13.The de-facto complainant and A4 are not strangers and they are first cousins. There is no dispute with regard to this fact. In view of the total contradiction between the complaint and the statement given before the police regarding the incident and also of the fact that the de-facto complainant had acknowledged the liability of Rs.316 lakhs on 30.03.2016, this Court is of the considered view that a dispute which is purely civil in nature, has been give a criminal colour by projecting an imaginary incident.

14.It will be relevant to rely upon the judgment of the Hon'ble Supreme Court in R.P.Kapur .Vs. State of Punjab reported in [AIR 1960 SC 866] . The relevant portion of the judgment is extracted hereunder:

> "6.......................A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under s. 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and' contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained. Broadly stated that is the nature and scope of the inherent jurisdiction of the High Court under s. 561-A in the matter of quashing criminal proceedings, and that is the effect of the judicial decisions on the point (Vide: In Re: Shripad G. Chandavarkar (1), Jagat Ohandra Mozumdar v. Queen Empress (2), Dr. Shanker Singh v. The State of Punjab (3), Nripendra Bhusan Ray v. Govind Bandhu Majumdar(4)

and Ramanathan Chettiyar v. K. Sivarama Subrahmanya Ayyar ".

15. It will also be relevant to rely upon the judgment of the Hon'ble Supreme Court in State of Haryana .Vs. Bhajan Lal reported in [1992 SCC (Cri) 426]. The relevant portion is extracted hereunder:

> "102. (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
>
> (2) Where the allegations in the first information report and other materials, if any accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
>
> (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
>
> (4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
>
> (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
>
> (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

16.The judgments relied upon by the learned Senior counsel for the 2nd respondent are to the effect that this Court cannot go into the merits of the allegations or test the veracity of the allegations or embark upon an enquiry as to the reliability or genuineness of the allegations and conduct a roving enquiry. There is absolutely no controversy on the propositions rendered by the Hon'ble Supreme Court. This Court is not stepping into the territory of appreciation of evidence, and this Court is proceeding further to deal with these petitions only based upon the materials available on record.

17. In this case, the Final Report has been filed for an alleged offence under Section 347, 323 and 506 (ii) IPC. The available materials on record and the discussion and finding given herein above, makes it clear that the prosecution has failed to make out an offence against the petitioners. A careful reading of the above judgments of the Hon'ble Supreme Court makes it clear that even where there is an evidence, but it is manifestly and clearly inconsistent with the accusation made, this Court can exercise its jurisdiction under Section 482 of Cr.P.C and interfere with the proceedings. In view of the above discussion, it is clear that the allegations made in the complaint and the materials collected by the prosecution in the course of investigation, makes the very case of the prosecution absurd and inherently improbable on the basis of which no prudent man can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. This Court is also of the considered view that the proceedings itself has been instituted with an ulterior motive in order to avoid a Civil liability which runs to a whooping figure of Rs.316 lakhs. The 2nd respondent has clearly used the criminal proceedings to pre-empt the petitioners and stop them from initiating proceedings against him for recovery of money. The entire criminal proceedings is an abuse of process of Court, and the same requires interference by this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

In the result, the proceedings in C.C.No.887 of 2017, on the file of the learned Judicial Magistrate, Alandur is hereby quashed. Accordingly, all the Criminal Original Petitions are allowed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

KP
To

1.Judicial Magistrate Court,
Judicial Magistrate,
Alandur.

2.do The Chief Judicial Magistrate ,Kancheepuram.

3.The Inspector of Police,
S-8, Adambakkam Police Station,
St.Thomas Mount,
Chennai-88.

4.The Public Prosecutor, High Court ,Madras.

+3ccs to M/s.K.Sumathi , Advocate SR.No. 88754,88753,88752

+3ccs to Mr. Mr.M.Palanivel , Advocate SR.No.88651,88652,88653

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ASK(04/01/2019)