



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.02.2018

Delivered on : 28.02.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.O.P.(MD)No.3381 of 2013

and

M.P.(MD)No.1 of 2013

Dr.L.Subramanian

... Petitioner

Vs.

1.The Inspector of Police,
Central Police Station,
Tuticorin.
(Crime No.558 of 2011)

2.L.Baskaran

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to Crime No.558 of 2011 pending on the file of the first respondent police and quash the same.

For Petitioner : Mr.R.Shanmuga Sundaram
Senior Counsel
for Mr.S.Ravi

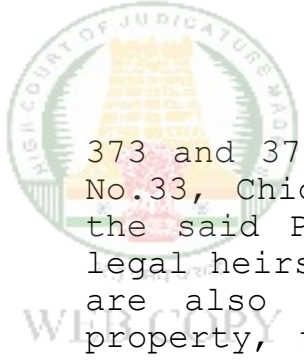
For R1 : Mr.A.Robinson
Government Advocate
(Criminal side)

For R2 : Mr.A.Thiruvadikumar

ORDER

The petitioner herein is the second accused in Crime No.558/2011 on the file of the first respondent police. Now, this Criminal Original Petition is filed under Section 482 Cr.P.C., to quash the said FIR as illegal.

2.The case of the prosecution is that the petitioner - Dr.L.Subramanian and the second respondent - L.Baskaran are the sons of one S.M.Lakshmanapillai [hereinafter referred to as 'Pillai']. Apart from the petitioner and the second respondent, the said Pillai was blessed with five other children, viz., Muthiah, Prema, Padma, Gomathi and Chandrasekaran. The said Pillai is having the properties, viz., Baskaran Marriage Hall, situated at Door Nos.372,



373 and 373-A of Victoria Extension Road, Tuticorin and a House at No.33, Chidambara Nagar II Street, Tuticorin. After the demise of the said Pillai, the title of the property devolved upon all the legal heirs, through which, the petitioner and the second respondent are also having one share. By way of partition in the suit property, the second respondent offered Rs.7,00,000/- each to the other legal heirs for the purpose of reliving their respective shares in favour of him. All the co-sharers have executed release deeds by receiving Rs.7,00,000/-, but, the petitioner having received the said amount through his brother Muthiah and thereafter, he had not executed a release deed as agreed and therefore, the second respondent filed a private complaint before the Judicial Magistrate Court No.II, Tuticorin and thereupon, as per the direction given by the said Magistrate, the first respondent herein registered a case in Crime No.558 of 2011 for the offences punishable under Sections 406 and 420 IPC, against which, this Criminal Original Petition has been filed by the petitioner to quash the said FIR.

3.The first and foremost contention raised by the learned Senior Counsel appearing for the petitioner is, previous to the registration of this case, a civil suit was filed by one Gomathi Kathiresan, who is also a daughter of the said Pillai, for the relief of partition with regard to the family properties of the said Pillai, in which, the petitioner herein and the second respondent are added as 5th and 4th defendants respectively. The learned Senior Counsel appearing for the petitioner further added as in the judgment rendered in the abovesaid suit, the payment of Rs.7,00,000/- was discussed. Furthermore, the learned Additional District Judge, Fast Track Court, Tuticorin, averred that in a letter written by the 1st defendant handing over of Rs.7,00,000/- to the 5th defendant is mentioned. Subsequently, in Paragraph No.24 of the judgment, the learned Additional District Judge came to the conclusion that the payment of Rs.7,00,000/- to the 5th defendant is not at all proved. Accordingly, the registration of the FIR based on the allegation that the second respondent paid Rs.7,00,000/- to the petitioner is nothing but a Himalayan lie and therefore, he prays to quash the FIR.

4.On the other hand, the learned Government Advocate (Criminal side) appearing for the first respondent and the learned counsel appearing for the second respondent made a submission that only in the investigation, the question of entrustment can be identified. They further submitted that the allegation in the complaint makes out the ingredients of offences under Sections 406 and 420 IPC, is enough for continuing the investigation. Further, they added that findings of fact in the civil suit cannot have any bearing so far as the criminal case is concerned and therefore, they prayed for dismissal of the Criminal Original Petition as unwarranted.



SCC (Cri.) 1091 : 2010 (8) SCC 775, has held as follows:

''18. Thus, in view of the above, the law on the issue stands crystallised to the effect that the findings of fact recorded by the civil court do not have any bearing so far as the criminal case is concerned and vice versa. Standard of proof is different in civil and criminal cases. In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by the court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject-matter and both the cases have to be decided on the basis of the evidence adduced therein. However, there may be cases where the provisions of Sections 41 to 43 of the Evidence Act, 1872, dealing with the relevance of previous judgments in subsequent cases may be taken into consideration.''

6. Applying the verdict of our Hon'ble Supreme Court with the case on hand, in the judgment rendered by the learned Additional District Judge, Tuticorin, he specifically mentioned only one letter was produced to prove the factum of payment of Rs.7,00,000/-. In this regard, the said observation is subject to appeal. The parties herein have not stated anything about if any challenge is made against the above judgment. Furthermore, without completing investigation, this Court cannot come to the conclusion that the allegation leveled in the complaint is false one.

7. It is true that for the offence of cheating has been made out, the following ingredients have to be proved:

(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.

8. In the same way, for constituting an offence under Section 406 IPC, proving the entrustment is the basic law.

9. In the above situation, in a complaint given by the second respondent, he made allegation as Rs.7,00,000/- was paid to the petitioner through another one accused in this case. If only the Investigation Officer initiated extensive and elaborate investigation through the witnesses, it can be seen whether the said



ingredients are proved or not. Despite of that, filing application before completion of investigation is unwarranted.

10. In Rajesh Bajaj Vs. State NCT of Delhi and others reported in 1999 SCC (Cri) 401, the Hon'ble Supreme Court has held as follows:

'9. It is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. Splitting up of the definition into different components of the offence to make a meticulous scrutiny, whether all the ingredients have been precisely spelled out in the complaint, is not the need at this stage.'

11. Now, according to the said observation, this is not a stage to find out whether the offences alleged in the FIR are true or not. Furthermore, 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 the absence of any mens rea and actus reus.

12. Moreover, in the process of identifying the truth is nothing but a great job and it should be done only by way of investigation and trial and before that, quashing the FIR for this type of offences is unwarranted. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Inspector of Police, Central Police Station, Tuticorin.

2. The Additional Public Prosecutor,

Madurai Bench of Madras High Court, Madurai.

+1CC to Mr.S.Ravi, Advocate, SR.No. 51797

+1CC to Mr.A.Thiruvadi Kumar, Advocate, SR.No. 51903

order in
Crl.O.P. (MD) No.3381 of 2013
28.02.2018