BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON: 22.03.2018
PRONOUNCED ON: 23.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CRL.O.P (MD) 3846 of 2013 and
M.P.Nos.1 of 2013 and 11450 of 2016

1. C.Subbiah @ Kadambur Jayaraj
2. S.Vijaya
3. B. Kannabhiram
4. K.Chandrasekhar
5. S.Pandyammal
6. S.Pandyaraj
7. M.Dharmaraj
8. K.Shanmugiah ... Petitioners

Vs.

1. The Superintendent of Police,
   Tuticorin District, Tuticorin.

2. The Inspector of Police,
   Kovilpatti Police Station,
   Tuticorin District,
   Tuticorin.

3. K.Lakshmipathi ... Respondents

Prayer : Criminal original petition filed under Section 482 of Criminal Procedure Code praying to call for the records pertaining to C.C.No.250 of 2012 on the file of the learned Judicial Magistrate, II, Kovilpatti and to quash the same.

For Petitioners : Mr.Veerakathiravan, Senior Counsel for Mr.Jaganathan
For Respondents : Mr.A.Robinson, Govt.Advocate (Crl.side) for R1 &R2
Mr.ARL.Sundaresan, Senior Counsel for A.L.Gandhimathi for R3

O R D E R

The petitioners herein are the accused 1 to 8 in C.C.No.250 of 2012 on the file of the learned Judicial Magistrate No.II, Kovilpatti. This criminal original petition has been filed by the petitioners seeking relief to call for the records pertaining to C.C.No.250 of 2012 on the file of the learned Judicial Magistrate II, Kovilpatti and to quash the same as erroneous.

2. On going through the records available with this application, it would disclose that a case has been registered against these petitioners herein in Crime No.205 of 2011 by the second respondent police for the offence punishable under Sections 120(b), 294(b), 406, 420, 506(ii) IPC, r/w 35 IPC and 25 (1-A) Indian Arms Act. Subsequent to the investigation, charge sheet has been filed for the offence under Sections 420 IPC, r/w 120(b) IPC and 294(b), 506(ii) IPC r/w 114 IPC.

3. After receiving the said charge sheet, the learned Judicial Magistrate No.II, Kovilpatti taken the same on file as CC.No.250 of 2012 in which the petitioners are all arrayed as accused No.1 to 8. In the charge sheet, it is alleged that the petitioners are all close relatives, in the year 2006, the third respondent who is the defacto complainant made a consultation with the first, third, fourth and sixth petitioners and planned to made a partnership in the real estate business. Meanwhile on 08.10.2007, the third respondent joined as a teacher in a Government school. Thereafter all the petitioners herein made a conspiracy to cheat the third respondent in the real estate business and purchased a land in Allampatti village a land to the extent of 7 acre and 61 cents comprised in Survey No.218/B, 219, 218/1, 221/1 for Rs.3,08,33,600/. The said land was purchased only for the real estate business. Considering the fact that the third respondent is in the Government job, the said land was purchased in the name of the petitioners for which the third respondent invested 85% of the total sale amount. The said amount was invested only based on the belief made on the petitioners. Further he gave consent for registering the sale deed in favour of the 1st, 3rd, 4th and 6th petitioners, thereby the petition mentioned land was purchased in the name of the above said persons. Subsequent to the purchase, the property was divided into plots and sold out to various persons between the period from 04.06.2009 to 17.09.2009. An amount of Rs.4,99,400/- was received by the petitioners as a sale amount. But the share of the third respondent has not been given to him as agreed. On 19.07.2010 the first and third petitioners executed an assurance deed to the third respondent in which it was mentioned as among 52 plots; the plots 67,68,69,70,71 in the Mahalaxshmi Nagar is allotted to the first and third petitioners and for the third respondent. But contrary to that assurance, on 19.07.2010 the above mentioned plots were given to one Dharmaraj through the General Power of Attorney which was executed by 1st, 3rd, 4th and 6th petitioners. The said execution of General Power of Attorney was suppressed in the assurance deed executed between the first, third petitioners and defacto complainant. Moreover the first, third, fourth and sixth

petitioners executed one more Power of Attorney in favour of the fifth petitioner and the same was registered as a Document No.817 of 2010. In the same way another two Power of Attorney was executed in favour of the seventh petitioner in which eighth petitioner herein stood as a witness and signed in the document. In the course of subsequent transaction, the fourth petitioner sold out the plot No.68 to 70 to one Senthil Kumari and Muniyappasamy. After completing the sale, share in the sale amount was not handed over to the third respondent. Further more the first, third, fourth and sixth petitioners made a permission to the defacto complainant for executing the sale deed in favour of one S.Geetha, A.Sethuraman and S.Vijaya Rani. But after the execution of sale deed those petitioners did not come forward for registering the same as per the law required. Further on the date of execution on 28.07.2010, the first petitioner herein in front of the Sub Registrar Office abused the third respondent and threatened him by showing the revolver, whereby the investment made by the third respondent to the tune of Rs.1,01,47,800/- was cheated by the petitioners by way of not giving share to the third respondent.

4. Now against the said allegations, the petitioners have come forward with this criminal original petition for the relief as already stated supra.

5. In order to substantiate the claim made in the criminal original petition, the learned Senior Counsel Mr.Veerakathiravan appearing for the petitioners made a submission that the petitioners and the third respondent have run a business of real estate under the terms of contract, thereby if any dispute has arisen with regard to the contract, it should be settled only by way of filing the suit in a Civil Court and not by way of filing a criminal complaint. Further he added that with regard to the claim made by the third respondent, a civil suit is pending on the file of the District Judge, Tuticorin, in O.S.No.6 of 2012. Further more he added that a cause of action for this case have been arosed on 30.01.2004 since only at that time the third respondent along with his brother-in-law entered an agreement of sale in respect of land which was alleged to be purchased by the petitioners in their name, thereby, the suit is pending with the Civil Court establishing the same. Instead of proving the case in civil court the second respondent filed a charge sheet for the same occurence in the form of criminal case is nothing but abuse of process of law.

6. On the other hand Mr.A.Robinson, learned Govt. Advocate (Crl.side), appearing for the respondents 1 and 2 and learned senior counsel Mr.ARL.Sundaresan appearing for the third respondent made a submission that in the memorandum of settlement executed between the third respondent with the first and the third petitioners, the particulars of the entire business was mentioned

and the same was admitted by the first and the third petitioners. After making assurance, refusal to sign in the sale deed is nothing but attempt to cheat. Only based on the assurance given by the petitioners, the amount of Rs.1,01,47,800/- have been invested by the third respondent. More over the petitioners are all close relatives. Even assuming that the petitioners are not having any intention to cheat the third respondent, there is no necessity to execute a power of attorney in favour of A2, A5 and A7 who are the relatives of other petitioners. Moreover, after inducing to execute the sale deed in favour of S.Geetha, Sethuraman and S.Vijayarani, the 1st, 3rd, 4th and 6th petitioners have refused to sign in the Sub Registrar Office, whereby the basic ingredients of dishonest intention are clearly narrated in the complaint lodged by the third respondent accordingly prima facie case has been made out against these petitioners.

7. In this regard, the learned counsel appearing for the petitioners relied upon the judgment of ***Murari Lal Gupta Vs Gopi Singh*** reported in ***(2005) 13 SCC 669*** in which our Hon'ble Apex Court has held as follows:-

> ***"Merely because an agreement to sell was entered into which agreement the petitioner failed to honour, it cannot be said that the petitioner has cheated the respondent. No case for prosecution under Section 420 or Section 406 IPC is made out even prima facie".***

8. Further he relied upon the judgment of ***Inder Mohan Goswami and another Vs State of Uttaranchal and others*** reported in ***2007 (5) CTC 614*** in which our Hon'ble Apex Court has held as follows:-

> ***"The veracity of the facts alleged by the appellants and the respondents can only be ascertained on the basis of evidence and documents by a Civil Court of competent jurisdiction. The dispute in question is purely of civil nature and respondent No.3 has already instituted a Civil suit in the Court of Civil Judge. In the facts and circumstances of this case, initiating criminal proceedings by the respondents against the appellants is clearly an abuse of the process of the Court".***

9. Further more he relied the judgment of ***Ravi Srinivasa Vs TVS Finance and Services Ltd.,*** reported in ***(2008) 2 MLJ (Crl)1301*** in which our Hon'ble Apex Court has held as follows:-

> ***"The existence of an fraudulent or dishonest intention of making initial promise or existence thereof from the very inception is a condition precedent for an offence under Section 420 IPC. When there is a failure to keep promise subsequently, such a culpable intention***

right at the beginning, cannot be presumed."

10. So as per the judgment relied on by the learned counsel appearing for the petitioners, it is true if the act committed by the petitioners is in civil nature, the criminal proceedings is not at all warranted; further it amounts to abuse of process of law. On the other hand making initial compromise is a condition precedent for the offence under Section 420 IPC. In this case the alleged settlement of memorandum was executed on 19.07.2010. Subsequently only in the year 2012, subsequent to the registration of the case alleged in this criminal original petition a suit has been filed by the third respondent.

11. It is true if really the petitioners are not having any intention to cheat the third respondent, there is no necessity for inducing to execute a sale deed and after execution refusing to sign in the document. Moreover as per the deed of power of attorney executed in favour of the second, sixth and seventh petitioners some of the plots are handed over to the sixth and the seventh petitioners which is against the settlement of memorandum which shows that the petitioners acted against the memorandum of settlement with the intention to defraud the third respondent.

12. Even assuming the offence under section 420 is not attracted the offence under section 294(b) and 506(ii) IPC have to be tried only by way of trial. Further, the amount which was invested by the third respondent may be belonged to some other persons. In this occasion it is necessary to see the judgment reported ***in 2006 (4) CTC 60*** *in the case of* ***Indian Oil Corporation Vs NEPC India Ltd., and others*** wherein our Hon'ble Apex Court has held as follows:-

> ***"(i) a complaint can be quashed where the allegations made in 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 the case alleged against the accused.***
>
> ***For this purpose, the Complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.***
>
> ***(ii) a complaint may also be quashed where it is a clear abuse of the process of the Court, as when the criminal proceeding is found to have been initiated with mala fides / malice for wreaking vengeance or to cause***

harm or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) the complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint merely on the ground that few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) a given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not".

13. Now applying the principles to the case in our hand, the submission made by the learned counsel for the petitioners that the alleged occurrence is only a breach of contract and it may be a test defence and it may lead to acquittal, but that can be established only during the time of trial as per the judgment stated supra. At this stage, this Court is only concerned with the question as to whether the averments in the complaint spell out the ingredients of the criminal offence or not. As already discussed above, refusal to sign in the sale deed and abusing the third respondent had created a prima facie case. Further, it should be noted that the huge amount which was invested by the third respondent is only because of the reasons that the petitioners are their relatives, no prudent man can invest such amount without any belief and faith on the petitioners. So those aspects create a factual foundation for the commission of offence as alleged by the third respondent. Therefore, as per the

discussions stated supra, this Court is not inclined to allow this criminal original petition. However, since the case is pending from the year 2010, it would be appropriate to give some direction to the learned Judicial Magistrate No.II, Kovilpatti to dispose of this case within a period of six months from the date of receipt of a copy of this order.

14. Accordingly this criminal original petition stands dismissed. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate Court II,
   Kovilpatti.

2. The Superintendent of Police,
   Tuticorin District, Tuticorin.

3. The Inspector of Police,
   Kovilpatti Police Station,
   Tuticorin District,
   Tuticorin.

4. The Additional Public Prosecutor,
   Madurai Bench of Madras High Court,
   Madurai.

+ 1 CC TO Mr.A.L.GANDHIMATHI, ADVOCATE IN SR No. 62930
+ 1 CC TO M/s.VEEA ASSOCIATES, IN SR No. 63933

DPQ
TE/RSK/SAR-1 : 09/05/2018 : 7P/7C

order in
CRL.O.P (MD) 3846 of 2013
M.P.Nos.1 of 2013 and 11450 of 2016
23.04.2018