IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED DATE: 28.08.2018

PRONOUNCED DATE: 14.03.2019

CORAM

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

CRL.OP.No.24034 of 2013
and
M.P.No.1 of 2013

1.Sivasankaran
2.Meera
3.Elango ... Petitioners/Accused

Vs.

1. State by Inspector of Police,
K.6, T.P. Chathiram Police Station
Crime Branch, Chennai - 10,
Egmore, Chennai.

2. Mr.Annadurai @ Ellappan ... Respondent/A-1 to 3

(Impleaded the 2nd respondent as per order of this court dated 18.07.2014)

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in C.C.No.2563 of 2012 on the file of the 5th Metropolitan Magistrate, Chennai and quash the same.

For Petitioners : M/s. K.P. Anantha Krishna

For Respondent : Mr.T. Shanmugarajeswaran for R1
Government Advocate (Crl.Side)

Mr.A.V. Arun for R2

O R D E R

This petition has been filed by the accused Nos.1 to 3 to quash the proceedings against them in C.C.No.2563 of 2012 on the file of the V Metropolitan Magistrate, Egmore, Chennai.

2. The second respondent herein had filed a private complaint before the V Metropolitan Magistrate, Egmore, Chennai stating that the petitioners herein had cheated him and hence they had committed the offences punishable under Section 420 IPC r/w. 34 IPC and also requested the learned Metropolitan Magistrate to forward the said complaint under Section 156 (3) of Cr.P.C., to the first respondent herein to register an FIR and investigate the matter. The learned V Metropolitan Magistrate, Egmore, Chennai had forwarded the said complaint to the first respondent herein under Section 156 (3) Cr.P.C., to register an FIR and investigate the matter and file a report. Accordingly, the first respondent had registered a case in Cr.No.658 of 2011 under Sections 420, 477-A, 201 and 506 (2) IPC r/w.34 IPC and investigated the matter and filed a charge sheet stating that the second respondent herein owns a mechanical shop and that the petitioners herein approached him for becoming a partners in order to procure an order from a Company viz., M/s.Slash Support Software Company towards transporting its employees. Further, it is stated that the second respondent had advanced a sum of Rs.9.8 lakhs towards purchase of 5 Tavera cars and 15 Ambassador cars to the partnership firm under the name and style of M/s.Lakshmi Travels and subsequently the petitioners herein have not given any account and destroyed the accounts without giving his share of profit of Rs.45 lakhs and 10 cars and hence they are liable to be punished under the aforesaid sections.

3. Learned counsel for the petitioners has submitted that the prosecution has not produced any documentary evidence to show the existence of partnership between the second respondent and the petitioners herein. He further submitted that the second respondent gave a sum of Rs.9.8 lakhs only as loan by receiving RC Book of 2 Tavera cars as security. He further submitted that if really the second respondent also became a partner in the said travels, he would not have received a sum of Rs.30,000/- p.m., towards maintenance of the said vehicles. He further submitted that there is no material to show that the accounts have been maintained in the computer and the same have been destroyed by the petitioners. He further submitted that if there is any evidence for maintaining the account, then only the question of falsification of accounts would arise. He further submitted that except bald and vague allegations, no material has been produced by the prosecution with regard to the alleged criminal intimidation. He further submitted that the second respondent had lodged a false complaint with a malafide intention to coerce the petitioners to make exorbitant payment

as claimed by him. He further submitted that the previous complaint was closed by the Central Crime Branch, Chennai and suppressing the said fact, the second respondent had lodged a second false complaint and therefore, he prayed to quash the proceedings against the petitioners herein.

4. Per contra, the learned counsel for the second respondent has submitted that the second respondent is running an automobile work shop and the first petitioner is the customer of the second respondent and he used to repair his cars at the work shop of the second respondent and that the second petitioner is the wife of the first petitioner and both of them are tourist cars operators in the name and style of Lakshmi Travels. He further submitted that M/s.Slash Support Software Company at T.Nagar, Chennai-600 017, offered their staff transport contract to the second respondent and as per the contract, the second respondent has to provide about 20 cars on rental basis for the staff transportation from March, 2006 and one of the conditions was that the second respondent must have atleast 20 cars in his name or in his concern name. He further submitted that at that time, the second respondent was unable to mobilise funds for purchasing 20 cars in his name and hence he discussed the details of the contract with the petitioner No.1 because he was a close friend to him. He further submitted that the petitioners 1 and 2 conspired to grab the said contract from the second respondent with a malafide intention and offered to assist the second respondent in getting the contract so that the petitioners 1 and 2 and the second respondent will get profit from the contract. He further submitted that the second respondent trusted the accused Nos.1 and 2 in good faith, formed oral partnership agreement and invested a sum of Rs.9,80,000/- and the petitioners 1 and 2 invested a sum of Rs.14,88,920/- towards their shares and it was further agreed that a sum of Rs.30,000/-to be paid to the second respondent towards mechanical maintenance of the said cars. He further submitted that after deducting the expenditures, the profit has to be shared on 50:50 basis but the first petitioner purchased the cars in the name of the second petitioner and fraudulently moved with the M/s.Slash Support Software Company and entered into a contract for the staff transportation and in the said fraud, the third accused also joined and destroyed the accounts which were maintained in the computer. He further submitted that since the petitioners have defrauded the second respondent, he lodged a complaint before the Central Crime Branch, Chennai on 16.08.2010 and the said complaint was closed directing the parties to approach the civil court. He further submitted that merely because the Inspector of Police has closed the said complaint, there is no bar for lodging a second complaint. He further submitted that based on the complaint, the first respondent has registered a case and investigated the matter and

filed a charge sheet. He further submitted that the investigation would clearly revealed that the petitioners herein have defrauded the second respondent. He further submitted that this court while exercising the powers under Section 482 Cr.P.C., The chargesheet in its entirety shall have to be examined on the basis of the allegation made in the chargesheet and at this stage, this court has no authority or jurisdiction to go into the matter of examine its correctness and hence he prayed to dismiss the petition. In support of the said contentions, he relied upon the decision in Medchl Chemicals & Pharma (P) Ltd., Vs. Biological E. Ltd., and Others (2000) 3 SCC 269.

5. The learned Government Advocate (Crl.Side), who is appearing for the first respondent has adopted the arguments advanced by the learned counsel for the second respondent. Further, he submitted that already trial has commenced and two witnesses were examined and at this stage, it would not be proper for this court to quash the charge sheet and therefore, he prayed to dismiss the petition.

6. It is an admitted fact that the petitioners 1 and 2 are husband and wife and they are running a travels in the name and style of Lakshmi Travels. It is also an admitted fact that the second respondent herein is running an automobile work shop. The case of the second respondent is that the first petitioner used to repair his cars at the workshop of the second respondent and he became a close friend for him. His further case is that the M/s.Slash Support, Software Company at T.Nagar, Chennai-600017, offered their staff transport contract to him and as per the contract, he has to provide about 20 cars on rental basis and one of the conditions was that he should purchase atleast 20 cars in his name or in his concern's name. His further case is that he was unable to mobilise funds for purchasing 20 cars and hence he discussed the details of the contract with the first petitioner because he is a close friend for him. His further case is that the petitioners 1 and 2 conspired together to grab the said contract and with a malafide intention they offered to assist him in getting the contract so that they will get profit from the contract business. His further case is that he entered an oral partnership agreement with the petitioners 1 and 2 and in pursuance of the said agreement, he invested a sum of Rs.9,80,000/- and the petitioners 1 and 2 invested a sum of Rs.14,88,920/- towards their share and further it was agreed that a sum of Rs.30,000/- to be paid to him towards mechanical maintenance of the 20 cars which have to be purchased. His further case is that after deducting all the expenses, the profit has to be shared on 50:50 basis but the first petitioner purchased the cars in the name of the second petitioner and fraudulently moved with the M/s.Slash Support Software Company

and entered into the contract for the staff transportation. His further case is that subsequently the petitioners 1 and 2 did not give any share and thereby cheated him and the third petitioner had destroyed the accounts which were maintained in the computer.

7. The petitioners denied the allegation that there is an oral partnership between the petitioners 1 and 2 and the second respondent. According to them, they had received a sum of Rs.9.8 lakhs from the second respondent only as a loan and for that, RC books of 2 Tavera cars were handed over to the respondent as security.

8. At this juncture, it would be relevant to refer to the decision in Suryalakshmi Cotton Mills Ltd Vs. Rajvir Industries Ltd., & Others (2007) 13 SCC 678; (CDJ 2016 SC 835), wherein the Hon'ble Supreme Court has made the following observations explaining the parameters of jurisdiction of the High court in exercising its jurisdiction under Section 482 of Cr.P.C.,

> "17.. The parameters of jurisdiction of the High Court in exercising its jurisdiction under Section 482 of the Code of Criminal Procedure is now well settled. Although it is of wide amplitude, a great deal of caution is also required in its exercise. What is required is application of well known legal principles involved in the matter.
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> 22. Ordinarily, a defence of an accused although appears to be plausible should not be taken into consideration for exercise of the said jurisdiction. Yet again, the High Court at that stage would not ordinarily enter into a disputed question of fact. It, however, does not mean that documents of unimpeachable character should not be taken into consideration at any cost for the purpose of finding out as to whether continuance of the criminal proceedings would amount to an abuse of the process of Court or that the complaint petition is filed for causing mere harassment to the accused. While we are not oblivious of the fact that although a large number of disputes should ordinarily be determined only by the civil courts, but criminal cases are filed only for achieving the ultimate goal namely to force the accused to pay the amount due to the complainant immediately. The Courts on the one hand should not encourage such a practice; but, on the other, cannot also travel beyond its jurisdiction to interfere with the proceeding which is otherwise genuine. The Courts cannot also lose sight of the

fact that in certain matters, both civil proceedings and criminal proceedings would be maintainable."

9. From the aforesaid decision, it is clear that ordinarily a defence of an accused although appears to be plausible should not be taken into consideration for exercise of the jurisdiction under Section 482 of Cr.P.C., It is also clear that the High Court at the stage of exercising the jurisdiction under Section 482 Cr.P.C., would not ordinarily entered into a disputed questions of fact. In this case, as already pointed out that the respondent has stated that in pursuance of the oral partnership entered between him and the petitioners 1 and 2, he has paid a sum of Rs.9,80,000/- as his share. But the petitioners 1 and 2 contended that the said amount was paid by the second respondent only as a loan. So, in view of the aforesaid decision of the Hon'ble Supreme Court, this court while exercising the power under Section 482 of Cr.P.C., cannot enter into the disputed question of fact.

10. The second respondent and his wife viz., Tmt.Ananthalakshmi have clearly stated in their statements recorded u/s.161(3) Cr.P.C., about the oral partnership entered into between the second respondent and the petitioners 1 and 2 herein and in pursuance of the said partnership, 20 cars were purchased and the said cars were utilised for transporting the employees of M/s.Slash Support. One Mr.Mogan A.Mathew gave a statement stating that he worked as a Vice President in the M/s.Slash Support Software Company and the second respondent and the petitioners 1 and 2 have entered into a partnership and conducted a Travels for transporting the staff of the said Company. Mr.S.Balamurugan, Mr.G.Perumal, Mr.Mageswaran and Mr.Thiagarajan will speak about that they have worked in the partnership firm which was run by the second respondent and the petitioners 1 and 2 and they also will speak about the frauds committed by the petitioners. So, it appears that there are materials to proceed against the petitioners.

11. The learned counsel for the petitioners relying upon the decision of the Hon'ble Supreme Court in Sathish Mehra Vs. State of NCT Delhi and Another (2013) Cri.L.J. 411 contended that the power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherit in a High Court on the broad principle that in case the allegation made in the FIR or the criminal complaint, as may be, prima facie do not disclose a triable offence.

12. In the aforesaid decision in paragraph No.15 the Hon'ble Supreme Court has observed as follows:

> "15. The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or the criminal complaint, as may be, prima facie do not disclose a triable offence there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often than not gets protracted. A prosecution which is bound to become lame or a sham ought to interdicted in the interest of justice as continuance thereof will amount to an abuse of the process of the law. This is the core basis on which the power to interfere with a pending criminal proceeding has been recognized to be inherent in every High Court. The power, though available, being extra ordinary in nature has to be exercised sparingly and only if the attending facts and circumstances satisfies the narrow test indicated above, namely, that even accepting all the allegations levelled by the prosecution, no offence is disclosed. However, if so warranted, such power would be available for exercise not only at the threshold of a criminal proceeding but also at a relatively advanced stage thereof, namely, after framing of the charge against the accused. Infact the power to quash a proceeding after framing of charge would appear to be somewhat wider as, at that stage, the materials revealed by the investigation carried out usually comes on record and such materials can be looked into, not for the purpose of determining the guilt or innocence of the accused but for the purpose of drawing satisfaction that such materials, even if accepted in its entirety, do not, in any manner, disclose the commission of the offence alleged against the accused."

13. In the aforesaid paragraph, though it is stated that the power to interdict a proceeding either at a threshold or at an intermediate stage is inherent in a High Court, in the same para in the later portion, the Hon'ble Supreme Court has clarified that when this court can exercise the inherent powers. It states that such power would be available for exercise not only at the threshold of a criminal proceeding but also at a relatively advance stage thereof, namely, after framing of the charge against the accused. But in this case, before the trial court, admittedly two witnesses were examined on the side of the prosecution and 17 documents were marked as exhibits and the matter became a part heard. At this stage, the aforesaid decision will not apply.

14. Learned counsel for the petitioners further relying upon the decision of the Hon'ble Supreme Court in Thesima Begam and another Vs. State of Tamilnadu and Others CDJ 2018 SC 507 contended that the Madurai Bench of this court has dismissed the petition filed under Section 482 Cr.P.C., for quashing the charge sheet on the ground that the trial has began, but, the Hon'ble Supreme Court has allowed the appeal and quashed the charge sheet. In that case also, it is not specifically stated that whether any of the witnesses examined before the trial court. Further, the Hon'ble Supreme Court taking into consideration of the fact that the defacto complainant herself has stated before the Investigation Officer that she had implicated the appellants therein out of anger and as far as they are concerned, they had no role in the family dispute and they were not a party in making any demand of dowry, had allowed the appeal and quashed the proceedings against the appellants therein.

15. In "Common Cause, A Registered Society through its Director Vs. Union of India and others, AIR 1997 SC 1539", the Hon'ble Supreme Court has held that in cases of trials of warrant cases by Magistrates, if the cases are instituted upon police reports, the trials shall be treated to have commenced when charges are framed under Section 240 of Code of Criminal Procedure, 1973, in warrant cases instituted otherwise than on police report, such trials shall be treated to have commenced when charges are framed against the concerned accused under Section 246 of Cr.P.C., 1973.

16. So, once charges are framed it shall be construed that the trial commenced. In view of the decision in Sathish Mehra Vs. State of NCT Delhi and Another (cited supra), the High court can exercise the inherent powers even after framing of the charge against the accused. In other words, the High Court can exercise the inherent powers even after commencement of trial, but that does not mean that this court can interdict the proceeding even after examination of some of the witnesses and the matter became a part-heard. In this case, two witnesses were examined before the trial court on the side of the prosecution and 17 exhibits were marked. Further, the petitioners herein have elaborately cross examined the PW1 before the trial court.

17. At this juncture, it would be relevant to refer to the decision in Amar Chand Agarwala vs. Shanti Bose and another 1973 SC 799 wherein a three Judges Bench of the Hon'ble Supreme Court in paragraph No.17 has observed as follows:

> "17. In our opinion, the High Court was not justified, in the particular circumstances of this case, in quashing the charge, as well as the entire

proceedings that had taken place before the Magistrate. it is not as if the accused had moved the High Court at the earliest stage when the Presidency Magistrate issued summons to them. Nor had they approached the High Court when charges were framed against them. The accused had 'been summoned, after a judicial enquiry by the Chief Presidency Magistrate on December 26, 1967, under sections 120B/409 and 409 IPC. Before the Magistrate, the evidence. oral and documentary, was adduced by the complainant in the presence of the accused. On a consideration of such materials,the Presidency Magistrate framed charges against all the four accused as early as September 7, 1968. If the case of the accused was that the allegations in the complaint do not constitute the offence complained of or that the complaint has to be quashed for any ground available in law. they should have approached the High Court, at any rate. immediately after the charges were framed. The records disclose that it was the fourth accused, who moved the High Court to quash the proceeding on March 17, 1969, earlier than the other accused. Even by that date, several prosecution witnesses,had been examined and they had also been cross-examined by the accused. Several items of documentary evidence had already been let in during the trial. Only two prosecution witnesses and a court witness remained to be examined. The proper course at that stage to be adopted by the High Court was to allow the proceedings to go on and to come to its logical conclusion, one way or the other,. and decline to interfere with those proceedings."

18. In this case, the charge sheet was filed in the year 2012 and the case was also taken on file by the V Metropolitan Magistrate, Egmore, Chennai-600008, in the year 2012 itself and on receipt of summons, the petitioners appeared before the trial court but they have not filed a petition to quash the charge sheet immediately. On their appearance, charges have been framed against them and even thereafter, immediately they have not filed a petition to quash the proceedings against them. The second respondent was examined as PW1-in-chief on 02.04.2013 and only thereafter, the petitioners herein have filed the present petition to quash the proceedings. During pendency of this petition, PW1 was cross examined elaborately and PW2 was examined-in-Chief and she was not cross examined by the petitioners herein. 17 documents were marked as exhibits on the side of the prosecution. At this stage, in view of the aforesaid decision of the Hon'ble Supreme Court, this court

should allow the proceedings to go on and to come to its logical conclusion, one way or the other.

19. The learned counsel for the petitioners referring to the evidence of the PW1 and PW2 and Exs.P1 to P16 contended that there is no prima facie case to proceed further against the petitioners. This court while dealing with the petition under Section 482 Cr.P.C., cannot appreciate the evidence on merits. Only the trial court can appreciate the evidence on merits. This court in exercising of inherent jurisdiction cannot assume the jurisdiction either of the trial court or appellate court and appreciate the evidence.

20. Learned counsel for the petitioners relying on the decision in Noble Mohandass Vs. State 1989 Cri.L.J. 669 and Prakash Bachraj Jain Vs. Mani Textile Traders, CDJ 2008 MHC 2752, contended that the alleged threat was not a real one and that was the kind of words currently and frequently used by people when they are angry and therefore, the offence under Section 506 (ii) IPC is not made out on the face of the allegation contended in the FIR. He further relying on the decision in Md.Ibrahim and Others Vs. State of Bihar and another 2010 (cri.L.J) 2223 contended that the condition precedent for offences under Section 467 is forgery, but, in this case, it is not alleged in the FIR that the petitioners herein have committed any forgery and therefore, the offence under Section 467 IPC would not attract. He further relying upon the decisions in

1. Paramjeet Batra Vs. State of Uttarkand and others (2013) 11 SCC 673

2. Smt. Ira Juneja and another Vs. State and another (2004) Cri.L.J. 3664

3. M/s. Thermax Ltd., and Others Vs.K.M.Johny and Others (2012)cri.L.J. 438

4. A.Joseph Selvaraj Vs. State of Gujarat and Others CDJ 2011 SCC 616 and

5. Ajay Mitra Vs. State of MP and others 2003 (Cri.L.J.) 1249

contended that mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown at the beginning of the transaction, but in this case, there is no allegation in the FIR that the petitioners herein had acted with dishonest intention from the beginning and therefore, the Section 420 IPC also would not attract.

21. As already pointed out that the second respondent and his wife gave statements under Section 161 (3) Cr.P.C., stating that there was an oral partnership between the petitioners 1 and 2 and the second respondent and in pursuance of the said partnership, the second respondent has paid a sum of Rs.9,80,000/- towards his share and contract was entered with the M/s.Slash Support Software Company, but the petitioners contended that the said amount of Rs.9,80,000/- was paid by the second respondent only as a loan and the said disputed question of facts cannot be decided in this petition. Further one witness Mogan A. Mathew who was working as Vice-President in M/s.Slash Support Software Company, gave a statement under Section 161(3) Cr.P.C., that there was a partnership between the petitioners 1 and 2 and the second respondent with regard to staff transportation. Further, already two witnesses were examined before the trial court as PWs1 and 2 and 17 documents were marked as Exhibits and PW1 was elaborately cross-examined by the petitioners and under the said circumstances, this court is of the view that at this stage, it would not be proper to express any view as to whether the charges under Section 506(II), 420 and 467 IPC would attract or not. Since already the matter is part heard, the petitioners can put forth their case before the trial court itself. As already pointed out, the statements of the witness Mogan A. Mathew and other witnessess show that a prima facie case is made out against the petitioners to proceed further and it would not be proper for this court to quash the proceedings at this stage. This court should allow the trial court to complete the trial and dispose of the case in accordance with law.

22. In the result, the Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed. Considering the fact that the above case is pending from the year 2012, the learned V Metropolitan Magistrate Egmore, Chennai, is directed to complete the trial as early as possible, preferably, within a period of six months from the date of receipt of a copy of this order and dispose of the case in C.C.No.2563 of 2012, in accordance with law uninfluenced by the observations made by this court in this order.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gv

To

1. State by Inspector of Police,
   K.6, T.P. Chathiram Police Station
   Crime Branch, Chennai - 10,
   Egmore, Chennai.

2. The V Metropolitan Magistrate,
   Chennai

3. The Chief Judicial Magistrate,
   Egmore, Chennai - 8.

4. The Public Prosecutor,
   High Court,
   Madras.

+1 cc to Mr.A.V.Arun, Advocate, S.R.No.24160

CRL.OP.No.24034 of 2013
and
M.P.No.1 of 2013

KS(CO)
SSM(18/07/2019)