IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.10.2018

PRONOUNCED ON : 06.03.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

Crl.OP.Nos.26172 and 29715 of 2013
and
M.P.No.1 of 2013

Crl.OP.No.26172 of 2013

S.V.Naik ... Petitioner/5th Accused

Vs.

1. State : Rep by
Inspector of Police,
CCB, Coimbatore,
(Crime No.13/2005)

.. 1st Respondent/Complainant

2. Mohammed Ashraf ... 2nd Respondent/De-facto Complainant

Crl.OP.No.29715 of 2013

G.Mohammad Ashraf Ali ...1st Petitioner

Vs.

1. The State of Tamilnadu
Rep.by its Inspector of Police,
City Crime Branch,
Coimbatore City.

.. 1st Respondent/Complainant

2. M.Arumugham
3. S.Gurusamy
4. Sampathkumar
5. Kudbudin
6. S.V.Naik

... Respondents 2 to 6/
Accused 1 to 5

PRAYER in Crl.OP.No.26172 of 2013 :

Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records and to quash the proceedings pending in C.C.No.783 of 2005 on the file of the learned Judicial Magistrate No.VI, Coimbatore.

PRAYER in Crl.OP.No.29715 of 2013 :

Criminal Original Petition filed under Section 482 of Cr.P.C, praying to direct the learned Judicial Magistrate VI, Coimbatore to dispose the case in C.C.No.783 of 2005 pending on the file of the learned Judicial Magistrate VI, Coimbatore , within the time stipulated by this Hon'ble Court.

Crl.OP.No.26172 of 2013

For Petitioner : Mr.V.Gopinath,
Senior Counsel for
Mr.L.Mahendran

For Respondents : Mr.T.Shunmugarajeshwaran
Government Advocate (Crl.Side)
for R1
Mr.V.L.Akshai Sajin Kumar
for Mrs.M.Srividhya for R2

Crl.OP.No.29715 of 2013

For Petitioner : Mr.V.L.Akshai Sajin Kumar
for Mrs.M.Srividhya

For Respondents : Mr.T.Shunmugarajeshwaran
Government Advocate (Crl.Side)
for R1

: Mr.V.Gopinath,
Senior Counsel for
Mr.L.Mahendran for R6

COMMON ORDER

Crl.OP.No.26172 of 2013 has been filed by the accused No.5 to quash the proceedings against him in C.C.No.783 of 2005 on the file of the Judicial Magistrate No. VI, Coimbatore.

Crl.OP.No.29715 of 2015 has been filed by the defacto complainant to direct the Judicial Magistrate No. VI, Coimbatore, to dispose of the case in C.C.No.783 of 2005 within the time stipulated by this Court.

2. The second respondent/defacto complainant had lodged a complaint before the first respondent alleging that the accused No.1 had committed criminal breach of trust, along with other accused persons and sold the hypothecated stocks of the Company worth about Rs.70,00,000/- for a meagre amount of Rs.6,25,000/- and for the same, A1 to A3 have prepared an agreement dated 26.04.2002 forging the signature of the defacto complainant and his wife Tmt.Shamsath Begum and adjusted the sale proceedings with the loan arrears. It was further alleged that the balance of Rs.22,51,000/- was demanded by the bank from the defacto complainant and only thereafter, he came to know about the forgery and lodged a written complaint to the Head Office, Indian Bank, Chennai. In turn, the document was sent to the Tamilnadu Forensic Science Laboratory, Chennai and the expert had opined that the signatures are forged one. It is further alleged that the petitioner knowing the said document was forged, used the same as genuine by filing Original Application before Debts Recovery Tribunal, Coimbatore and hence the defacto complainant lodged a complaint before the first respondent. Based on the said complaint, the first respondent had registered a case in Crime No.13 of 2005 on 25.03.2005 and after investigation, filed a charge charge sheet against five accused persons by arraying the petitioner herein as accused Nos.5. In the chargesheet, it is stated that the petitioner has committed an offence punishable under Section 471 r/w 468 IPC.

3. The petitioner herein was working as Assistant General Manager at Regional Office, Indian Bank, Coimbatore from 28.05.2003. He filed a discharge petition in Crl.M.P.No.3841 of 2006 before the Judicial Magistrate No.VI, Coimbatore. The learned Magistrate has dismissed the said petition by her Order dated 26.04.2010. Aggrieved by the same, the petitioner herein has filed a Criminal Revision in CRP.No.57 of 2010 on the file of the III Additional District and Sessions Judge, Coimbatore. The learned III Additional District and Sessions Judge, Coimbatore has partly allowed the said Revision and discharged the petitioner from the offence under Section 468 IPC, however, she dismissed the Revision petition in respect of the offence under Section 471 IPC. Hence, the petitioner has filed Crl.OP.No.26172 of 2013 to quash the proceedings against him in respect of the offence under Section 471 IPC also.

4. The second respondent/defacto complainant has filed Crl.OP.No.29175 of 2013 to direct the learned Judicial Magistrate No.VI, Coimbatore to dispose of the case in C.C.No.783 of 2005 within the time stipulated by this Court.

5. Heard Mr.V.Gopinath, Senior Counsel for Mr.L.Mahendran, Mr.T.Shunmugarajeshwaran, Government Advocate (Crl.Side) for R1 and Mr.V.L.Akshai Sajin Kumar for

Mrs.M.Srividhya for R2 in Crl.OP.No.26172 of 2013 and Mr.V.L.Akshai Sajin Kumar for Mrs.M.Srividhya, Mr.T.Shunmugarajeshwaran, Government Advocate (Crl.Side) for R1 and Mr.V.Gopinath, Senior Counsel for Mr.L.Mahendran for R6 in Crl.OP.No.29715 of 2013.

6. Mr.V.Gopinath, the learned Senior Counsel assisted by Mr.L.Mahendran for the petitioner in Crl.OP.No.26172 of 2013 has submitted that the petitioner took charge as Assistant General Manager of Regional Office, Indian Bank, Coimbatore only on 28.05.2003, much later than the impugned agreement dated 26.04.2002. He further submitted that the loan transaction is much prior to the petitioner assuming charge as Assistant General Manager of Regional Office and hence he had no knowledge about the forged document. He further submitted that the courts below erred by holding that the petitioner had knowledge about the forged document and filing of the same before DRT would squarely attract Section 471 IPC. He further submitted that the petitioner had already retired from his service in the year 2009, while holding the post of Deputy General Manager. He further submitted that the petitioner had filed the DRT Application in the normal course of his official duty with a bonafide intention to recover the public money and hence no personal motive could be attributed to the petitioner. He further submitted that the entire loan transaction and agreement relates to Stock Exchange Branch, Indian Bank, whereas the petitioner was Assistant General Manager, Regional Office, Coimbatore and he had no knowledge about the happenings in the branch. He further submitted that the ingredients of offence under Section 471 IPC is not made out against the petitioner. He further submitted that there is no material to show that the petitioner has fraudulently or dishonestly used the agreement as genuine which he knew or reason to believe that it was a forged document and therefore, he prayed to quash the proceedings against the petitioner in the aforesaid criminal case.

7. Per Contra, the learned Government Advocate (Crl.Side) who is appearing for the first respondent in Crl.No.26172 of 2013 has submitted that this second respondent is a resident of Coimbatore and he was one of the Directors of the Company viz., M/s.Coimbatore Spencer Sanitary Hardware (P) Ltd from 25.02.2002 to 01.03.2002. He further submitted that the said company used to obtain bank loan from the Indian Bank, Stock Exchange Branch, Coimbatore for running their business. In the course of such transaction, the said company was in arrears of loan amount payable to the said bank. He further submitted that on 13.04.2002, the accused No.1 who was Senior Manager of the Indian Bank Branch situated in the Stock Exchange Building, Trichy Road, Coimbatore City committed Criminal breach of trust along with other accused persons and sold the hypothecated

stocks of the aforesaid company worth about Rs.70,00,000/- for a meagre amount of Rs.6,25,000/- to the accused No.4. He further submitted that on or before 26.04.2002, A1 to A3 committed criminal conspiracy to do certain acts of offences of forgery in Coimbatore City and in pursuance of the said conspiracy, an agreement was prepared by putting the signatures of the defacto complainant and his wife Tmt.Shamsath Begum and used the same as genuine. He further submitted that in the said agreement, it has been stated that as if the defacto complainant and his wife agreed to discharge and liquidate the amounts due to the Indian Bank payable by the said company to the tune of Rs.65,75,000/- after adjusting the the sum of Rs.6,25,000/- by selling the stocks of the said company and thereafter a notice was issued to the defacto complainant to pay the sum of Rs.22,51,000/-. He further submitted that the defacto complainant had sent a complaint to the Head Office of the Indian Bank in Chennai stating that the signatures of himself and his wife were forged and based on the said complaint, the Indian Bank has sent the said agreement to the Tamilnadu Forensic Science Laboratory, Chennai, for getting hand writing expert's opinion. He further submitted that the hand writing expert gave an opinion stating that the signatures found in the said agreement were forged. He further submitted that the petitioner herein after knowing the fact that the said agreement is a forged one, has produced the same in O.A.No.365 of 2004 on the file of the Debts Recovery Tribunal, Coimbatore and claimed the amount from the second respondent/defacto complainant and hence he has committed the offence under Section 464 IPC. He further submitted that the discharge petition filed by the petitioner has been dismissed by the learned Judicial Magistrate No.VI, Coimbatore. However, the III Additional District and Sessions Judge, Coimbatore, has partly allowed the Criminal Revision which was filed by the petitioner herein and discharged the petitioner in respect of the offence under Section 468 IPC but dismissed the said Revision Petition in respect of the offence under Section 471 IPC. He further submitted that there is a primafacie case to proceed against the petitioner herein and therefore, he prayed to dismiss the petition.

8. The learned counsel for the second respondent/defacto complainant has adopted the arguments advanced by the learned Government (Crl.Side) and further he has submitted that the petitioner after filing Application before the Debts Recovery Tribunal, based on the forged document, for recovery of the amount from the defacto complainant and his wife, he cannot take a plea that he had acted without mens rea. He further submitted that if any order is passed in the said Application directing the defacto complainant and his wife to pay the amount to the Bank that would cause wrongful loss to the defacto complainant and his wife and hence the Revisional court has rightly

dismissed the Revision Petition in respect of the offence under Section 471 IPC and therefore he prayed to dismiss the Crl.OP.No.26172 of 2013 and direct the petitioner/5th accused to contest the case before the Trial Court. He further submitted that this court while disposing of Crl.RC.Nos.1230 and 1231 of 2008 on 15.04.2010 has directed the trial court to dispose of the case in C.C.No.783 of 2005 within a period of six months, but the accused persons dragging the matter by filing petitions one after the other. He further submitted that in Crl.OP.No.2684 of 2010 also, this Court on 04.02.2011 directed the trial court to dispose of CMP.No.3691 of 2010 within four weeks and dispose of the main case as expeditiously as possible. He further submitted that the case in C.C.No.783 of 2005 is pending for the past 14 years and hence he requests to direct the Judicial Magistrate No.VI, Coimbatore to dispose of the said case within the time which may be fixed by this Court.

9. It is not in dispute that M/s.Coimbatore Spencer Sanitary Hardware (Pvt) Ltd used to obtain loans from the Indian Bank, Stock Exchange Branch, Coimbatore for running their business. It is also not in dispute that in the course of such transaction, the said M/s.Coimbatore Spencer Sanitary Hardware (Pvt) Limited was in arrears of certain loan amount payable to the said bank. It is also not in dispute that the second respondent/defacto complainant was one of the directors of the said Company.

10. It is the case of the prosecution that the accused Nos.1 to 3 criminally conspired and in pursuance of the said conspiracy, they had created a false agreement said to have been executed by the defacto complainant and his wife on 26.04.2002 and thereby, they have agreed to sell the stocks of the said company and adjust the same for Rs.6,25,000/- and thereafter the bank has sent a notice to the defacto complainant to pay a sum of Rs.22,51,000/-.

11. Its further case is that only after receipt of the said notice, the defacto complainant came to know that the signatures of himself and his wife were forged and created the said agreement and hence he sent a complaint to the Head Office of the Indian Bank in Chennai and based on the said complaint, the bank has sent the said agreement to the Tamil Nadu Forensic Laboratory, Chennai for getting hand writing expert's opinion. Its further case is that the hand writing expert gave an opinion stating that the signatures found in the said agreement are not that of the defacto complainant and his wife and hence, the said agreement is a forged one. Its further case is that the fifth petitioner, while he was working as an Assistant General Manager of the Indian Bank at Regional Office, Coimbatore, after knowing fully well that the said agreement is a forged one, he filed

O.A.No.365 of 2004 on the file of the Debts Recovery Tribunal, Coimbatore and based on the said agreement he claimed the amount from the defacto complainant.

12. According to the petitioner, he joined as Assistant General Manager of Indian Bank at Regional Office only on 01.05.2003 and he was not aware of the hand writing expert's opinion. His further case is that a note was prepared by the Legal Department of the Indian Bank recommending for filing an application before the DRT for recovery of the amount, based on the agreement dated 26.04.2002 and in the said note, nothing has been stated about the opinion issued by the hand writing expert and relying on the said note, he filed the petition in O.A.No.365 of 2004 on the file of the Debts Recovery Tribunal, Coimbatore to recover the amount due to the Nationalized Bank without any dishonest intention.

13. It is seen from the typed set of papers filed by the petitioner, a note was prepared by the Legal Department of the Indian Bank, Circle Office, Coimbatore on 19.10.2004, wherein it is stated that an application for recovery of the debts may be filed, based on the agreement dated 26.04.2002 and the same was approved by the Office of the General Manager. So, it appears that based on the said note, the petitioner has filed an application in O.A.No.365 of 2004 on the file of the Debts Recovery Tribunal, Coimbatore on 30.10.2004. The charge against the petitioner is that he has committed an offence punishable under Section 471 read with 468 IPC. Though, the learned Judicial Magistrate No.VI, Coimbatore has dismissed the discharge petition filed by the petitioner, the learned III Additional District and Sessions Judge, Coimbatore has partly allowed the criminal revision petition which was filed by the petitioner and discharged the petitioner from the offence under Section 468 IPC . However, she dismissed the Criminal Revision in respect of the Offence under Section 471 IPC. Section 471 IPC reads as follows:

> " 471. Using as genuine a forged [document or electronic record] .- whoever fraudulently or dishonestly uses as genuine any [document or electronic record] which he knows or has reason to believe to be a forged [document or electronic record], shall be punished in the same manner as if he had forged such [document or electronic record]. ”

14. In this case, according to the petitioner, he had no knowledge about the opinion given by the hand writing expert, because, he was working only as an Assistant General Manager at Regional Office, Coimbatore. The loan transaction took place in

the Stock Exchangee Branch, Coimbatore. Therefore, he may not have knowledge about the hand writing expert's opinion. Further, he acted as per the note submitted by the Legal Department of the Indian Bank.

15. The term 'Dishonestly' is defined under Section 24 of IPC which reads thus:-

“24. 'Dishonestly' :- Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing 'dishonestly'.

The term 'Fraudulently' is defined under Section 25 of IPC which reads thus:-

“25. 'Fraudulently':- A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

16. In this case, it cannot be said that the petitioner has acted with an intention to get any wrongful gain for himself. He has filed an application before the Debts Recovery Tribunal only for recovery of amount due to the Nationalized bank. If the said amount is recovered, the petitioner is in no way going to get any benefit. He has just discharged his duty. Further it was contended on behalf of the petitioner, that the other directors of the M/s.Coimbatore Spencer Sanitar, Hardware (Pvt) Ltd., also signed in the said agreement and in recovery proceedings the said agreement has to be relied against them. Under the said circumstances, this Court is of the view that the petitioner cannot be prosecuted for the offence under Section 471 IPC also. The continuance of the proceedings against the petitioner is an abuse of the process of the Court. Hence, this Court is inclined to allow the Criminal Original petition No.26172 of 2013.

17. Considering the fact that the case in C.C.No.783 of 2005 is pending for about 14 years, and also the fact that already this court issued directions in Crl.RC.Nos.1230 and 1231 of 2008 on 15.04.2010, and in Crl.O.P.No.2624 of 2010 on 04.02.2011, this Court is inclined to allow the Criminal Original Petition No.29715 of 2013 also.

18. In the result, the criminal original petition Nos.26172 and 29715 are allowed. The proceedings in C.C.No.783 of 2005 on the file of the Judicial Magistrate No.VI are quashed against the petitioner in Crl.OP.No.26172 of 2013/5th accused alone. The

learned Judicial Magistrate No.VI is directed to expedite the Trial against other accused persons and dispose of the same within six months from the date of receipt of a copy of this Order. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vv

To

1. The Judicial Magistrate VI,
   Coimbatore

2. The Inspector of Police,
   CCB, Coimbatore,

3. The Public Prosecutor,
   High Court, Madras.

+1cc to Mr.L.Mahendran, Advocate, S.R.No.21857
+1cc to Mrs.M.Srividhya, Advocate, S.R.No.21202

Crl.OP.Nos.26172 & 29715/2013
and
M.P.No.1 of 2013

RSI(CO)
CS/13/06/2019