

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.6545 of 2018
and Crl.MP.No.3349 of 2018

1. Abey Josephaged
 2. Meera
- ... Petitioners/Accused

Vs.

1. The Station House Officer,
Grand Bazaar Police Station,
Jawaharlal Nehru Street,
Puducherry. ... Respondent/Complainant
2. Julien Anselme Marie Antonie Lebrunie
... Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in Crime No.282 of 2017 on the file of the Station House Officer, Grand Bazaar Police Station, Puducherry and quash the same insofar as the first and second petitioners herein.

For Petitioners:Mr.N.R.Elango, Senior Counsel
For Mr.AMI.V.Kataria
For Respondents
For R1 :Mr.Balamurugane
Additional Public Prosecutor (Pondy)

For R2 : Mr.Prakash Adiapadam

O R D E R

This petition has been filed to quash the FIR in Crime No.282 of 2017, on the file of the first respondent registered for the offences under Sections 147, 148, 448, 294(b), 506(ii), 468, 471, 420 of IPC r/w 149 of IPC.

2. The learned Senior Counsel appearing for the petitioners submitted that the petitioners are arraigned as A5 and A6 in Crime No.282 of 2017. He submitted that one Joseph Raj was allotted the disputed property through a registered partition deed among his brothers on 12.11.1914. In turn, he sold out the said property in favour of one Koulanthini on 04.09.2002 and

registered as document No.3435 of 2002. Thereafter, the said Koulanthini and the petitioners entered into registered sale agreement dated 20.01.2003 to purchase the said property. On 11.04.2003, the petitioners purchased the said property for valid sale consideration of R.20,04,450/- and registered as Document No.2165 of 2003. In this regard, one Alexander Joseph, who shown as A7 in the present FIR, lodged a complaint on 19.07.2003, against the petitioners' vendor and others. He also filed a suit in O.S.No.508 of 2003 before the Principal District Munsif, Puducherry against the petitioners and obtained an order of status-quo in respect of disputed property.

2.1. While being so, the defacto complainant/second respondent herein trespassed into the disputed property with goondas, as such the petitioners lodged a complaint on 11.03.2007. The petitioners also filed a suit in O.S.No.374 of 2007 on the file of the learned Principal District Munsif, Puducherry, as against the second respondent and his brother, in respect of the very same disputed property and also obtained interim injunction. In fact, the complaint lodged by the petitioners referred under Section 145 of Cr.P.C., to the Executive Magistrate and after conducting enquiry the Executive Magistrate directed the parties to approach civil Court and also ordered to maintain status-quo in respect of the disputed property. Thereafter, by the judgment and decree dated 13.08.2007, the suit filed by the petitioner in O.S.No.374 of 2007, allowed and granted permanent injunction as against the second respondent.

2.2. The learned Senior Counsel appearing for the petitioners further submitted that on the complaint lodged by one Alexander Joseph the charge sheet laid in C.C.No.43 of 2019 on the file of the learned Chief Judicial Magistrate, Puducherry, in which the petitioners have been shown as witnesses, since they were bonafied purchaser and no materials were found as against the petitioners to add them as accused. Thereafter, on the complaint lodged by the second respondent/defacto complainant, the District Registrar passed an order dated 05.10.2015, thereby cancelled the document registered in favour of the petitioners and as against which the petitioners preferred a writ petition before this Court in W.P.No.33680 of 2015 and obtained an interim order of stay and the writ petition is still pending before this Court.

2.3. The learned Senior Counsel appearing for the petitioners further submitted that suppressing the above facts and circumstances, the second respondent filed a direction petition in CrI.O.P.No.20028 of 2016 and obtained police protection by an order dated 19.09.2016. Thereafter, the

petitioners filed a petition in Crl.M.P.No.12131 of 2016 in Crl.O.P.No.20028 of 2016 and by an order dated 18.11.2016, the said police protection order was recalled by this Court.

2.4. Thereafter, the said Alexander Joseph filed a petition under Section 319 of Cr.P.C. to add the petitioners as accused in C.C.No.43 of 2009, pending before the learned Chief Judicial Magistrate, Puducherry. In the said application the Investigation Officer, CBCID, Puducherry filed counter and categorically stated that the petitioners are bonafied purchasers, as such no material found as against them to add them as accused. Therefore, by an order dated 03.07.2017, the learned Chief Judicial Magistrate, Puducherry dismissed the said application filed under Section 319 of Cr.P.C. As against the same, the said Alexander Joseph filed a revision petition in Crl.R.C.No.1031 of 2017 before this Court and the same was also dismissed by an order dated 06.11.2017. After these long years i.e., from 2003, after the period of 14 years, the second respondent lodged a false complaint as against the petitioners and the same has been registered in Crime No.282 of 2017, which is impugned in this petition. Further he submitted that the entire transaction completely civil in nature and even from the FIR, there is no offence made out as against the petitioners, since they are bonafied purchasers, according to the Investigating Officer, CBCID, Puducherry. Therefore, he prayed for quashment of FIR.

3. The learned counsel appearing for the second respondent filed counter and submitted that FIR has been registered as against seven persons, in which the petitioners are arraigned as A5 and A6. The second respondent/defacto complainant has two ancestral properties, one is bearing old No.3/New No.5, Faracis Martin Street, Puducherry and another one is bearing Old No.10/New No.12, Faracis Martin Street, Puducherry. One Joseph Raj claimed title over the properties by way of forged partition deed dated 12.11.1914, by which he executed forged sale deed vide document No.3435 of 2002 in favour of one S.Koulanthini, who in turn executed a sale deed vide document No.2165 of 2003 in favour of the petitioners. Therefore the petitioners have purchased the said property knowing fully well aware that their vendor S.Koulanthini does not have title over the property.

3.1. The learned counsel appearing for the second respondent further submitted that the petitioners have filed a suit in O.S.No.374 of 2007 before the learned Principal District Munsif, Puducherry as against the second respondent and his bother. In the said suit no notice was served on the second respondent and subsequently an exparte decree granted by the learned Principal District Munsif, Puducherry and hence it does not bind on the second respondent. The second respondent had preferred a

complaint before the District Registrar, Government of Puducherry for holding enquiry under Section 75(4) of Registration Act, 1908 and after conducting enquiry the Registrar passed an order dated 05.10.2015, thereby cancelled the sale deed executed in favour of the said S.Koulanthini and also subsequent sale deed executed in favour of the petitioners herein, as against which the petitioners filed a writ petition before this Court and the same is pending.

3.2. He further submitted that there are specific allegations as against the petitioners to attract the offence under Sections 147, 148, 448, 294(b), 506(ii), 468, 471, 420 of IPC r/w 149 of IPC. Further, it is in the FIR stage and though civil suits are pending, there is no impediment to the second respondent/defacto complainant to initiate the criminal proceedings as against the petitioners. Therefore, he sought for dismissal of the quash petition.

4. The learned Additional Public Prosecutor appearing for the first respondent filed counter and submitted that the defacto complainant is the owner of the properties and he is also in possession of the valid ancestral documents since 1874. Due to his official occupation, the defacto complainant could not able to visit his properties and using this opportunity, the accused persons created forged notarial sale deed and claimed that one Joseph Raj is the owner of the said property by way of partition deed dated 12.11.1914, through which the said Joseph Raj executed sale deed in favour of one S.Koulanthini, who in turn sold out the property to the petitioners herein. He further submitted that on 21.12.2017, when the second respondent/defacto complainant went to his properties and started cleaning work, the accused persons tried to trespass into his land, abused him with filthy language and assaulted him and also threatened with dire consequences. Hence, he prayed for dismissal of the quash petition.

5. Heard Mr.N.R.Elango, learned Senior Counsel appearing for the petitioners, Mr.V.Balamurugane, learned Additional Public Prosecutor (Pondy) appearing for the first respondent and Mr.Prakash Adiapadam, learned counsel appearing for the second respondent.

6. The petitioners are arraigned as A5 and A6 in Crime No.282 of 2017, registered for the offences under Sections 147, 148, 448, 294(b), 506(ii), 468, 471, 420 of IPC r/w 149 of IPC, on the file of the first respondent. The second respondent lodged a complaint as against the petitioners and others and the same was registered on 28.12.2017. The crux of the complaint is that the second respondent is the French citizen and he has two ancestral properties and the same were inherited after demise of

his father. In his absence, the accused 2,3 and 4 created three forged notarial sale deed in the name of the first accused to grab his property. Thereafter, the second respondent came to understand that one Joseph Raj executed forged sale deed in favour of one Alexander Joseph and he claimed tiled over the said property based on the partition deed dated 12.11.1914. The said Joseph Raj also executed another forged sale deed in favour of one Koulanthini. In fact the second respondent/defacto complainant is in possession and enjoyment of the said property till date.

7. He further alleged that the some of the accused persons attempted to trespassed into the property as such he lodged the present complaint. In fact, the second respondent made allegations as against seven persons, in which there is no allegation as against the petitioners herein, even on the complaint lodged by him. Whereas, the petitioners claimed right over the disputed property based on the sale deed dated 11.04.2003 purchased from one Koulanthini for the valid sale consideration of Rs.20,04,450/- and registered as document No.2165 of 2003. It is also seen from the complaint lodged by one Alexander Joseph as against the petitioners' vendors and others, the petitioners are shown as witnesses. Though the said Alexander Joseph filed a petition to add the petitioners as accused in the said proceedings i.e., C.C.No.43 of 2009, it was dismissed.

8. Admittedly, the first transaction for the disputed property happened on 04.09.2002, by way of registered sale deed in favour of one Koulanthini. Thereafter, the petitioners purchased the property on 11.04.2003. Admittedly, the present complaint has been lodged after the period of 14 years from the said transaction. When the defacto complainant is in possession of the property, he lodged a complaint only after 14 years and there is absolutely no explanation for the delay in lodgement of the complaint. Further it is curious to note that the petitioners filed a suit as against the second respondent in O.S.No.374 of 2007 and the same was decreed in their favour. Even then suppressed the above facts and circumstances, the second respondent lodged the present complaint that too after the period of 14 years.

9. It is also seen that the complaint itself lodged with regard to the disputed property as such it is a civil in nature and it cannot be given criminal colour. When the civil disputes are pending between the parties, the first respondent ought not to have been registered a case as against the petitioners. Further the present case fall under the category where the cognizance of the offence registered by the first respondent atleast after having gone through the complaint, it discloses

only civil dispute. Therefore, the petitioners cannot be allowed to go through the rigmarole of criminal proceedings for long number of years, even when the civil suit already filed by the defacto complainant and also by the petitioners and those are still in force. Further the case on hand fully civil in nature and the criminal complaint has been filed to apply the process on the case in order to settle the civil dispute. Further the offence as against the petitioners would not attract the penal provisions as registered by the first respondent and as such the FIR cannot be sustained as against the petitioners.

10. In this regard, the Hon'ble Supreme Court of India held in the recent judgement in Crl.A.No.238 of 2018 dated 15.02.2019 in the case of Prof R.K.Vijayasathary & Anr Vs. Sudha Seetharam & Anr as follows:-

"16. A court exercising its inherent jurisdiction must examine if on their face, the averments made in the complaint constitute the ingredients necessary for the offence. The relevant extract of the complaint filed by the first respondent is extracted below:

"The accused person's son Mr. Rajiv Vijayasathary Rathnam started to transfer all his monies to different accounts and also transferred some monies belonging to him in the US to his parents accounts in Bangalore, India and he also pleaded his wife i.e. Complainant's daughter that he also wanted to divert some funds unto Complainant's account in Bangalore..That Rajiv Vijayasathary Rathnam diverted some of his monies to Accused No. 1 and 2 and the Complainant.. It is further pertinent to mention that the accident occurred on 05.02.2010 and money was transferred on 17.02.2010, the transfer was due to the insecurity at the behest of Mr. Rajiv Vijayasathary Rathnam, the money was not sought or required by the complainant.

The Complainant daughter Ms. Savitha Seetharam convinced the Complainant to accept transfer of monies which was for the benefit of the Accused person's son Mr. Rajiv Vijayasathary Rathnam and to hold it in trust for him and accordingly the son of the accused transferred monies on 17th February 2010 to the Complainant

account Rs. 20,00,000/- (Rupees Twenty Lakhs only) ... It is pertinent to mention that the accused person's son Mr. Rajiv Vijayasarathy Ratnam insisted the Complainant and her husband to pay the said monies by way of cash to the accused person's including the interest...Mr. Rajiv Vijayasarathy Ratnam sought for the return of the aforesaid monies i.e. of Rs. 20,00,000/-" .

"...The said monies were paid in cash as per the dicta of the accused person's son Mr. Rajiv Vijayasarathy Ratnam has filed a false and frivolous suit..." (Emphasis supplied)

17. The condition necessary for an act to constitute an offence under Section 405 of the Penal Code is that the accused was entrusted with some property or has dominion over property. The first respondent has stated that the disputed sum was transferred by the son of the appellants of his own volition to her. The complaint clearly states that the amount was transferred for the benefit of the son of the appellants and that the first respondent was to hold the amount 'in trust' for him. The complaint alleges that the money was transferred to the appellants 'as per the dicta' of the son of the appellants. There is on the face of the complaint, no entrustment of the appellants with any property.

18. The condition necessary for an act to constitute an offence under Section 415 of the Penal Code is that there was dishonest inducement by the accused. The first respondent admitted that the disputed sum was transferred by the son of the appellants to her bank account on 17 February 2010. She alleges that she transferred the money belonging to the son of the appellants at his behest. No act on part of the appellants has been alleged that discloses an intention to induce the

delivery of any property to the appellants by the first respondent. There is thus nothing on the face of the complaint to indicate that the appellants dishonestly induced the first respondent to deliver any property to them. Cheating is an essential ingredient to an offence under Section 420 of the Penal Code. The ingredient necessary to constitute the offence of cheating is not made out from the face of the complaint and consequently, no offence under Section 420 is made out.

19. In *Binod Kumar v State of Bihar*⁷ certain amounts were due and payable to a contract worker. When the amount due was not paid due to a termination of the contract, the worker filed a criminal case against the appellant for criminal breach of trust. The appellants' petition under Section 482 of the Code of Criminal Procedure for quashing was dismissed by the High Court. A two judge Bench of this Court examined the ingredients of the offence and whether the complaint on its face disclosed the commission of any offence. This Court quashed the criminal proceedings holding thus:

"14. At this stage, we are only concerned with the question whether the averments in the complaint taken at their face value make out the ingredients of criminal offence or not.

18. In the present case, looking at the allegations in the complaint on the face of it, we find that no allegations are made attracting the ingredients of Section 405 IPC. Likewise, there are no allegations as to cheating or the dishonest intention of the appellants in retaining the money in order to have wrongful gain to themselves or causing wrongful loss to the complainant. Excepting the bald allegations that the appellants did not make payment to the

second respondent 7 (2014) 10 SCC 663 and that the appellants utilised the amounts either by themselves or for some other work, there is no iota of allegation as to the dishonest intention in misappropriating the property...

19. Even if all the allegations in the complaint taken at the face value are true, in our view, the basic essential ingredients of dishonest misappropriation and cheating are missing. Criminal proceedings are not a shortcut for other remedies. Since no case of criminal breach of trust or dishonest intention of inducement is made out and the essential ingredients of Sections 405/420 IPC are missing, the prosecution of the appellants under Sections 406/120-B IPC, is liable to be quashed."

20. The suit for recovery of money was instituted by the son of the appellants against the first respondent in 2013. The complaint alleging offences under the Penal Code was filed by the first respondent belatedly in 2016. It is clear from the face of the complaint, that no amount was entrusted by the first respondent to either of the appellants and there was no dishonest inducement of the first respondent by the appellants to deliver any property. As stated by the first respondent in the complaint, the money belonged to the son of the appellants. It was transferred by the appellants' son to her on his own volition. The money was alleged to have been returned to the appellants on the instructions of their son. A plain reading of the complaint thus shows that the ingredients necessary for constituting offences under Sections 405, 415 and 420 of the Penal Code are not made out.

21. The respondents have relied on the decision of this Court in *Rajesh Bajaj v State of NCT of Delhi*⁸. In that case, the Delhi High Court had quashed an FIR

alleging an offence under Section 420 of the Penal Code on the ground that the 8 (1999) 3 SCC 259 complaint did not disclose the commission of any offence. Allowing the complainant's appeal, this Court held thus:

"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. If factual foundation for the offence has been laid in the complaint the court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details..." The decision does not advance the submission of the first respondent. As we have noted above, the complaint in the present case is bereft of the basic facts necessary to constitute the offences alleged under Sections 405, 406, 415 and 420 of the Penal Code."

22. Learned Senior Counsel for the appellant contended that the actions of the first respondent constitute an abuse of process of the court. It is contended that the present dispute is of a civil nature and the first respondent has attempted to cloak it with a criminal flavor to harass the aged appellants. It is also contended that there is an undue delay in filing the complaint from which the present appeal arises, and this demonstrates the mala fide intention of the first respondent in filing the complaint against the appellants. Learned Senior Counsel for the appellants relied on the decision of this Court in *State of Karnataka v L Muniswamy*⁹. In that case,

the prosecution alleged that eight of the accused had 9 (1977) 2 SCC 699 conspired to kill the complainant. The Karnataka High Court quashed the proceedings on the ground that no sufficient ground was made out against the accused. A three judge Bench of this Court dismissed the appeal by the State with the following observations:

"7...In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice."

23. The jurisdiction under Section 482 of the Code of Criminal Procedure has to be exercised with care. In the exercise of its jurisdiction, a High Court can examine whether a matter which is essentially of a civil nature has been given a cloak of a criminal offence. Where the ingredients required to constitute a criminal offence are not made out from a bare reading of the complaint, the continuation of the criminal proceeding will constitute an abuse of the process of the court.

24. In the present case, the son of the appellants has instituted a civil suit for the recovery of money against the first respondent. The suit is pending. The first respondent has filed the complaint

against the appellants six years after the date of the alleged transaction and nearly three years from the filing of the suit. The averments in the complaint, read on its face, do not disclose the ingredients necessary to constitute offences under the Penal Code. An attempt has been made by the first respondent to cloak a civil dispute with a criminal nature despite the absence of the ingredients necessary to constitute a criminal offence. The complaint filed by the first respondent against the appellants constitutes an abuse of process of court and is liable to be quashed. "

The above judgment squarely applies to the case on hand and the allegations in the complaint did not make out the ingredients of the offences registered by the first respondent as against the petitioners. In the aforesaid legal position, the complaint is nothing but clear abuse of process of law. For the above said reasons and the law applicable to the present case, the impugned FIR in Crime No.282 of 2017 is liable to be quashed as against the petitioners.

11. Accordingly, this Criminal Original Petition stands allowed and the FIR in Crime No.282 of 2017 on the file of the first respondent is hereby quashed insofar as the petitioners are concerned. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

rts

To

1. The Station House Officer,
Grand Bazaar Police Station,
Jawaharlal Nehru Street,
Puducherry.

WEB COPY

2. The Public Prosecutor,
High Court of Madras,
Chennai.

+1cc to the Public Prosecutor Sr.38988
+2cc to Mr.Prakash Adiapadam, Advocate Sr.39322
+1cc to MrA.MI.V.Kataria, Advocate Sr.39024

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and CrI.MP.No.3349 of 2018

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