IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.10809 of 2014 and
M.P.No.1 of 2014

1. K.Venkatakrishnan @ Janakiraman Reddiar
2. J.Sridharan
3. M.Rajasekar ...Petitioners

1.Sub Inspector of Police,
CB-CID,
Orleanpet, Puducherry-605 005

2.Balasundaram Reddiar ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records relating to the investigation in F.I.R.No.03 of 2014 dated 05.03.2014 on the file of the Respondent and submitted to the Court of the Chief Judicial Magistrate, Puducherry and to quash the same.

For Petitioners : Mr.T.P.Manoharan
Senior Counsel
for Mr.K.P.Jotheeswaran

For Respondents : Mr.V.Balamurugane,
Additional Public Prosecutor
(Pondy)
for R1
: Mr.J.Suresh for R2

ORDER

This petition has been filed to quash the FIR registered in Crime No.3 of 2014 on the file of the first respondent for the offences under Sections 420, 421, 423, 120(b), 463, 464 r/w 34 I.P.C. as against the petitioners.

2. It is seen that the petitioners are arrayed as A1 to A3. On the complaint lodged by the second respondent, the first respondent registered a case in Crime No.3 of 2014 for the offence under Sections 420, 421, 423, 120(b), 463, 464 I.P.C. r/w 34 I.P.C., wherein he had alleged that the portion of the land bearing Cad No.501pt. and R.S. No.81/21 measuring 00.02.40

HAC (4 Khuzhis 8 Veesams) originally owned by the grandfather of the first petitioner. Thereafter, in the said property eastern half of the property was donated to the first petitioner's father by the registered notarial donation deed dated 08.05.1948 and the western half was donated to his grand son. They are in possession of their respective portions and they became absolute owners. Their names were also mutated in the revenue records. On death of the father of the first petitioner on 01.04.1989, the first petitioner is being only legal heir, inherited the said portion of the said property. Thereafter under a registered settlement deed dated 14.01.2011, the first petitioner settled the portion of the property in favour of his son namely the second petitioner herein. Therefore, they are in continuous possession and enjoyment of the land till today.

3. While being so, the second respondent referring to a deed of exchange dated 21.12.1917 claimed that two persons including his grandfather enjoyed two portions of the land in Cad No.501 comprised in Cad Nos.2124 and 2125 in Abhishegapakkam Village admeasuring 0.05.40 HAC and 0.04.00 HAC in total 0.09.40 HAC. On the death of his grandfather his son enjoyed the said portion. Thereafter the second respondent is being one of the legal heir enjoyed the said portion by virtue of release deed executed by his brothers and sisters. Therefore, he claimed two portions of the land. It is also seen that the second respondent is also claiming the same property possessed by the petitioners.

4. In this regard, the second respondent filed a suit in O.S.No.112 of 2011 for permanent injunction as against the petitioners. The Principal District Munsif Court, Puducherry also dismissed the interim injunction petition in I.A.No.184 of 2011 by an order dated 20.12.2011. Aggrieved by the same, the second respondent filed Civil Miscellaneous Appeal in CMA.No.4 of 2012 on the file of the Additional Sub Court, Puducherry and the same was also dismissed by order dated 17.04.2013. Again, it was challenged by the second respondent in CRP.No.3516 of 2013 before this Court and it is pending. The main suit in O.S.No.112 of 2011 is also pending.

5. It is also seen that thereafter the second respondent lodged the impugned complaint and the same has been registered as stated above. The main allegation is that without any right or title over the property, the first petitioner executed settlement deed in favour of the second petitioner and the third petitioner is witness to the said document. Admittedly, for the very same property already the second respondent instituted suit as against the petitioners and after dismissal of his injunction petition, the present complaint has been lodged. In this regard, the learned Senior Counsel appearing for the petitioner

has relied upon the judgment of the Hon'ble Supreme Court of India in the case of Paramjeet Batra Vs. State of Uttarakhand and Others reported in (2013) 11 SCC 673, wherein it is held as follows:

> "13. As we have already noted, here the dispute is essentially about the profit of the hotel business and its ownership. The pending civil suit will take care of all those issues. The allegation that forged and fabricated documents are used by the appellant can also be dealt with in the said suit. Respondent 2's attempt to file similar complaint against the appellant having failed, he has filed the present complaint. The appellant has been acquitted in another case filed by respondent 2 against him alleging offence under Section 406 of the IPC. Possession of the shop in question has also been handed over by the appellant to respondent 2. In such a situation, in our opinion, continuation of the pending criminal proceedings would be abuse of the process of law. The High Court was wrong in holding otherwise.
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> 14. In the circumstances, the impugned order dated 29/9/2011 passed by the Uttarakhand High Court is set aside. The entire proceedings of Criminal Case No. 723/2005 (charge-sheet No. 32/2005), and the order of cognizance dated 22/3/2005 passed thereon by the Judicial Magistrate, Khatima, District Udham Singh Nagar against the appellant, respondents 3 and 4 and against accused Rajpal for the offences punishable under Sections 406, 420, 467, 468, 471, 447, 448 read with Section 34 of the IPC are quashed and set aside. This order will however have no effect on the pending civil suit between the parties. Needless to say that the court, seized of the said suit, shall decide it independently and in accordance with law."

6. He has also relied upon the judgment in the case of Vinod Natesan Vs. State of Kerala and Others reported in (2019) 2 SCC 401, wherein it is held as follows:

> "10. Having heard the appellant as party in person and the learned advocates appearing on behalf of the original accused as well as the State of Kerala and considering the judgment [Tomy Mathew v. State of Kerala, 2016 SCC OnLine Ker 33330] and order passed by the High Court, we are of the opinion that the learned High Court has not committed any error in quashing the criminal proceedings initiated by the complainant. Even considering the allegations and averments made in the FIR and the case on behalf of the appellant, it cannot be said

that the ingredients of Sections 406 and 420 are at all satisfied. The dispute between the parties at the most can be said to be the civil dispute and it is tried to be converted into a criminal dispute. Therefore, we are also of the opinion that continuing the criminal proceedings against the accused will be an abuse of process of law and, therefore, the High Court has rightly quashed the criminal proceedings. Merely because the original accused might not have paid the amount due and payable under the agreement or might not have paid the amount in lieu of one month's notice before terminating the agreement by itself cannot be said to be a cheating and/or having committed offence under Sections 406 and 420 IPC as alleged. We are in complete agreement with the view taken by the High Court.

11. Insofar as the submissions made on behalf of the appellant-party in person that initially the learned Judge dismissed the application and, thereafter when the judgment was dictated and pronounced, the learned Judge has allowed the application and, therefore, the impugned judgment [Tomy Mathew v. State of Kerala, 2016 SCC OnLine Ker 33330] and order passed by High Court is required to be quashed and set aside is concerned, the aforesaid has no substance. What is produced as P-45 is the docket of the file, which does not bear the signature of the learned Judge. Therefore, it cannot be said that initially the learned Judge dismissed the petition and, thereafter, when the judgment was pronounced the order was changed and the application was allowed. Even otherwise, as observed hereinabove, we are more than satisfied that there was no criminality on part of the accused and a civil dispute is tried to be converted into a criminal dispute. Thus to continue the criminal proceedings against the accused would be an abuse of the process of law. Therefore, the High Court has rightly exercised the powers under Section 482 CrPC and has rightly quashed the criminal proceedings. In view of the aforesaid and for the reasons stated above, the present appeal fails and deserves to be dismissed and is accordingly dismissed."

7. In the above judgments, the Hon'ble Supreme Court of India has held the ingredients for the offence under Sections 406, 420 are not satisfied and the dispute between the parties are civil in nature and it is not right to convert into criminal dispute. In the case on hand admittedly the second respondent

instituted civil suit and after having been failed in the interlocutory application, he lodged the present impugned complaint. The first respondent mechanically registered the case for the offence under Sections 420, 421, 423, 120(b), 463, 464 r/w 34 I.P.C. without even looking into the allegations whether it constitutes any offence. It is also relevant to refer to the recent judgment of the Hon'ble Supreme Court of India in Crl.A.No.238 of 2019 dated 15.02.2019.

8. The second respondent has alleged in the complaint that the petitioners have committed offences under Sections 420, 421, 423, 120(b), 463, 464 r/w 34 I.P.C. of the Penal Code. It would thus be necessary to examine the ingredients of the above offences and whether the allegations made in the complaint, read on their face, attract those offences under the penal code. Section 405 of the Penal Code reads as thus:

> "Section 405.- Criminal breach of trust:- Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits criminal breach of trust."

A careful reading of Section 405 shows that the ingredients of a criminal breach of trust are as follows:

i) A person should have been entrusted with property, or entrusted with dominion over property;

ii) That person should dishonestly misappropriate or convert to their own use that property, or dishonestly use or dispose of that property or willfully suffer any other person to do so; and

iii) That such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.

Entrustment is an essential ingredient of the offence. A person who dishonestly misappropriates property entrusted to them contrary to the terms of an obligation imposed is liable for a criminal breach of trust and is punished under Section 406 of the Penal Code.

9. Section 415 of the Penal Code reads as thus:

> "Section 415. Cheating:- Whoever, by deceiving any person, fraudulently or dishonestly induces the

person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to cheat."

The ingredients to constitute an offence of cheating are as follows:

i) there should be fraudulent or dishonest inducement of a person by deceiving him;

ii) (a) the person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or

(b) the person so induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived; and

iii) in cases covered by (ii) (b) above, the act or omission should be one which caused or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating.

10. Section 420 of the Penal Code reads thus:

"Section 420. Cheating and dishonestly inducing deliver of property:- Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable to being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

The ingredients to constitute an offence under Section 420 are as follows:

i) A person must commit the offence of cheating under Section 415; and

ii) The person cheated must be dishonestly induced to

(a) deliver property to any person; or

(b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.

Cheating is an essential ingredient for an act to constitute an offence under Section 420.

11.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. There is on the face of the complaint, no entrustment of the petitioners with any property.

12.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. No act on part of the petitioners has been alleged that discloses an intention to induce the delivery of any property to the petitioners by the second respondent. There is thus nothing on the face of the complaint to indicate that the petitioners dishonestly induced the 2nd 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.

13.It has to be seen that 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.

14.In the present case, 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 second 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 second respondent against the petitioners constitutes an abuse of process of court and is liable to be quashed.

15.Accordingly, this Criminal Original Petition is allowed and the proceedings in F.I.R.No.03 of 2014 dated 05.03.2014 on the file of the first respondent and submitted to the Court of the Chief Judicial Magistrate, Puducherry is quashed. Consequently, connected miscellaneous petition is closed.
lok

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Sub Inspector of Police,
   CB-CID,
   Orleanpet, Puducherry-605 005

2. The Chief Judicial Magistrate,
   Puducherry
3. The Additional Public Prosecutor,
   Puducherry.

+1cc to Mr.K.P.Jotheeswaran, Advocate, SR.No.41844
+1cc to the Public Prosecutor, Puducherry, Vide Sr.No.43042

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M.P.No.1 of 2014

Kak(28/08/2019)