



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.07.2019

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1.O.P. (MD)No.11757 of 2014

and

M.P. (MD)No.1 of 2014

1.S.Rajagopal
2.Vasugi Rajagopal
3.K.Kothaiyammal
4.P.S.Rajaram
5.R.Jeyalakshmi
6.K.Elangovan
7.A.Rengalakshmi

...Petitioners/Accused Nos.1 to 7

Vs.

A.P.Chandramathi

...Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records relating to the impugned private complaint in C.C.No.66 of 2014, on the file of the learned Judicial Magistrate Court No.I, Madurai, quash the same.

For Petitioners : Mr.Veera Kathiravan, Senior Counsel
for C.Jeganathan

For Respondent : Mr.T.Lajapathi Roy

O R D E R

This Criminal Original Petition has been taken out to quash the private complaint in C.C.No.66 of 2014, on the file of the learned Judicial Magistrate No.I, Maduari.

2.The respondent herein namely., A.P.Chandramathi is the complainant. Her case is that she was introduced to the first accused/Rajagopal, the first petitioner herein by her husband in the year 2003. The first accused wanted to establish certain institutions in Tamilnadu and that he therefore wanted to purchase lands. Since Sathasivam, the husband of the complainant herein was a government servant, he could not be the Power Agent for the



first accused. Therefore, Chandramathi was appointed as the Power Agent. The grievance of Chandramathi is that even though she had discharged her role as a Power Agent and procured a number of lands for the first accused, the first accused did not pay her 30% commission, which was originally promised to her. She therefore lodged a criminal case before the District Crime Branch, Madurai. The same was registered as Crime No.118 of 2013. But then, according to the complainant, the police did not do proper investigation but closed the case as mistake of fact. Hence the impugned private complaint came to be filed. The learned Judicial Magistrate No.I, Madurai, took cognizance of the offences under Sections 406, 420 and 506(ii) of I.P.C. against the accused herein and summons were issued. In order to quash the same, this Criminal Original Petition has been filed.

3. Even according to the complainant, arrangement was primarily between her and the first accused/Rajagopal but the entire family of the first accused/Rajagopal has been roped in. The first accused is Rajagopal while the second accused is his wife. The third accused is mother of the first accused. The fourth accused is brother of the first accused. The fifth accused is the daughter-in-law of the third accused. The sixth accused is the son of the third accused. The seventh accused is mother-in-law of the first accused.

4. Heard the learned Senior Counsel appearing for the petitioner and the learned counsel appearing for the respondent.

5. The learned counsel appearing for the complainant submitted that there are *prima facie* ingredients set out in the impugned complaint and that therefore, this is not a fit case for being quashed. He also submitted that the power under Section 482 of Cr.P.C. will have to be sparingly exercised and only in exceptional situation and that the case on hand is not one such.

6. The learned Senior Counsel appearing for the petitioners/accused pointed out that it is true that the defacto complainant/Chandramathi was appointed as the Power Agent to purchase lands. But she committed a lot of fraudulent acts while concluding the sale transactions. In fact there were cases of impersonation. Therefore, criminal cases came to be lodged against Chandramathi. Crime No.2 of 2013, on the file of T.Kallupatti Police Station, was registered for the offence under Section 406, 420, 419, 468 and 471 of I.P.C. In the said case Chandramathi figures as A3 while her husband figures as A2. Yet another criminal case in Crime No.1 of 2013 was filed on the very same Police Station against the very same set of accused. The petitioners herein were constrained to lodge such complaints because of the malpractices and impersonation said to have committed by Chandramathi. It is also noted that cheques issued by Sathasivam, the husband of Chandramathi were dishonoured and



that gave rise to filing of S.T.C.No.142 of 2013, on the file of the learned Judicial Magistrate, Fast Track Court, Theni by a third party.

7.It is also seen that from the materials on record, the complainant herein has been figured as an accused in Crime No.87 of 2013, on the file of T.Kallupatti Police Station. I therefore see considerable force in the submission of the petitioners' Senior counsel that the impugned private complaint has been given as a counter blast and to wreak vengeance on the petitioners herein.

8.This Court in order to satisfy its conscience wanted to see whether the essential ingredients under Section 406 and 420 of I.P.C. are present in this case. Section 406 of I.P.C. will be attracted only if there is any entrustment and there has been a criminal breach of trust. Section 420 of I.P.C. will be attracted if there is dishonest intention from the very inception and a false assurance is held out and as a result there has been a wrongful loss or wrongful gain. In this case, the complainant was only appointed as a Power Agent. It is the grievance of the petitioners herein that the complainant did not discharge her obligation as a Power Agent in a faithful manner. If according to the complainant, the commission amount payable to her has not been paid, it is a pure civil issue. It is always open to the complainant to file a civil suit for recovery of commission amount from her principals. Non-payment of the commission amount will not furnish a cause of action for prosecuting the principals. In any event, it is evident from the complaint that the accused did not have any dishonest intention to cheat the complainant. On the other hand, the materials on record *prima facie* indicate that it is the complainant, who had played fraud. Therefore, the parameters C and G set out in the decision of the Honourable Supreme Court reported in **[AIR 92 SCC 604 (State of Harayana and Ors Vs. Ch.Bhajan Lal and Ors)]** are applicable. The Honourable Supreme Court in the said case held that a criminal proceedings can be quashed:-

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.'



9.I am of the view that both the parameters set out above are applicable in this case. Hence, the impugned prosecution stands quashed and this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petition is closed.

WEB COPY

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To:

The Judicial Magistrate No.I,
Madurai.

+1 CC to M/s.VEERA ASSOCIATES, Advocate SR-76353.

+1 CC to Mr.T.LAJAPATHI ROY, Advocate SR-76441.

Cr1.O.P. (MD)No.11757 of 2014
18.07.2019

CS(08.08.2019) 4P 4C