BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.04.2019
PRONOUNCED ON : 29 .07.2019
CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl OP(MD)No.4629 of 2016
and
CRL MP(MD)No.2315 of 2016

Pandy ... Petitioner/Accused No.1

Vs.

1.State represented by
the Sub Inspector of Police,
Vilampatty Police Station,
[Crime No.28 of 2016] ... 1st respondent/complainant

2.Seemaisamy ... 2nd Respondent / De facto Complainant

Prayer: Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records in Crime No.28 of 2016 on the file of the Judicial Magistrate, Nilakottai, Dindigul District and quash the same as against the petitioner.

For Petitioner : Mr.P.Sivasubramanian
Respondents : Mr.K.K.Ramakrishnan, Additional Public Prosecutor For -R1
: Mr.D.Selvaraj For – R2

ORDER

The petitioner is the accused No.1 in Crime No.28 of 2016, pending on the file of the Sub Inspector of Police, Vilampatty Police Station and this petition has been filed by the petitioner to quash the case in Crime No.28 of 2016, pending against him.

2. The case in Crime No.28 of 2016 was registered on 05.02.2016 by the Sub Inspector of Police, Vilampatti Police Station, as per the directions of the learned Judicial Magistrate, Nilakottai in CrMP No.15 of 2016 dated 02.02.2016, as against this petitioner and two others, for the commission of offence under Section 294(b), 506(ii), 406 and 306 r/w 511 IPC and under Section 4 of the Prevention of Exorbitant Interest Act at the instance of the second respondent.

3.According to the second respondent / complainant, he borrowed a sum of Rupees six lakh from the petitioner on 27.08.2009 for the purpose of constructing a house in his land at Anaipatti and at the time of lending money, the first accused had obtained signatures of the complainant in blank pro-notes and blank stamp papers as a security. Due to the loss in his business, he could not repay the dues. But, petitioner and accused No.2, the brother's son and brother of the petitioner have intimidated and insulted the complainant and insisted him to part with his wife's jewels and obtained from him around 20 sovereigns of jewels and pledged the same in the name of the petitioner for a sum of Rs.1,10,000/- and they have adjusted the same towards interest and principal amount. According to the complainant, though he paid around Rs.15,00,000/- towards the interest and principal, the accused have not closed the account and refused to return the blank signed documents obtained as security from the complainant.

4.In order to get the blank documents, the complainant approached the accused on 14.11.2015 and at that time the accused by creating some forged documents, demanded six more lakh rupees and also abused and instigated him to commit suicide and they also intimidated him. The complainant lodged a complaint before the respondent Police and the respondent police failed to take the complaint and therefore, he sent the complaint through registered post to the Superintendent of Police, Dindigul District, the Deputy Superintendent of Police, Nilkakottai and the Inspector of Police, Vilampatti. Even then, his complaint was not registered and therefore, he lodged a complaint before the Judicial Magistrate, Nilakottai in Cr.M.P No.15 of 2016 on 21.12.2015 and the learned Magistrate after satisfying with the *prima facie* materials available in the complaint forwarded the complaint to the first respondent Police for investigation, as per Section 156 (3) CrPC and accordingly, the case was registered by the respondent Police on 05.02.2016.

5.The primordial submission of the petitioner is that it is not the petitioner, who lent the money and it was the accused No.2, his brother's son, who lent a sum of Rs.2,50,000/- @ 1% per month on 18.09.2013 and since he has failed to repay the amount, after issuing legal notice to the complainant on 13.10.2015, a suit was filed for recovery of money in OS No.588 of 2015 on 30.11.2015. The complainant, who entered appearance in the suit through an Advocate has filed this complaint to only harass the petitioner and other accused. Moreover, there is no material for the alleged offence stated in the complaint and there was no attempt at all for committing suicide. However, the learned Magistrate has issued direction to register the case in a mechanical manner without any application of mind. He would further submit that the suit filed by the accused No.2, as against the complainant in OS.No.588 of 2015 was decreed in favour of the second accused on 22.12.2017 and therefore, the case in Crime No.28 of 2016 is liable to be quashed.

6.Per contra, the learned Additional Public Prosecutor appearing for the State would contend that the case is at the stage of investigation. Only on investigation, the truth or otherwise, will come out and the offences, on which the case has been registered are not relevant at this point of time and after completion of the investigation, the final report would be filed and hence, prayed for dismissal of the petition.

7.The learned Counsel for the second respondent / complainant would submit that the case is at the stage of investigation and it is not the right stage to quash the FIR without even conducting investigation and there are enough materials and witnesses to establish the commission of offence during the course of investigation.

8.This Court has paid it's best attention to the rival submissions and also perused the materials placed on record.

9.The case of the second respondent/complainant is that he borrowed a sum of Rs.6,00,000/- from the petitioner and repaid a sum of Rs.15,00,000/- with interest. But, despite the same, the accused refused to return blank signed documents obtained, as security at the time of borrowal and therefore, when he went to the petitioner's house on 14.11.2015 along with one Selvam belonging to Chokkupillaipatti and Mahendiran of Anaipatti, the petitioner and the other accused instigated to commit suicide, assaulted with filthy words and also intimidated. Though the accused instigated the complainant to commit suicide, if he is not capable of repaying the amount, the complainant has not made any attempt to commit suicide. However, the complaint was filed for the commission of offence punishable under Section 306 r/w 511 IPC and the learned Magistrate has also referred the same in a mechanical manner and the first respondent Police has also registered the same in a mechanical manner.

10.The complainant has made a specific averment that his wife's jewels have been forcibly taken by the petitioner and was mortgaged by the petitioner for some of Rs.1,10,000/-. Whether the petitioner is the money lender or the second accused is the money lender or they have obtained blank documents from the complainant at the time of lending money are of matter of investigation and therefore, the FIR cannot be quashed at the threshold.

11.The role of a Magistrate in referring the complaint under Section 156(3) CrPC is very limited, except to find out any *prima facie* case is made out or not.

12.The scope of enquiry under Section 202 CrPC has been dealt with by the Hon'ble Supreme Court, in ***Fiona Shrikhande Vs State of Maharashtra*** *and another*, reported in ***(2013) 14 Supreme Court Cases 44.***

> *11.We are, in this case, concerned only with the question as to whether, on a reading of the complaint, a prima facie case has been made out or not to issue process by the Magistrate. The law as regards issuance of process in criminal cases is well settled. At the complaint stage, the Magistrate is merely concerned with the allegations made out in the complaint and has only to prima facie satisfy whether there are sufficient grounds to proceed against the accused and it is not the province of the Magistrate to enquire into a detailed discussion on the merits or demerits of the case. The scope of enquiry under Section 202 is extremely limited in the sense that the Magistrate, at this stage, is expected to examine prima facie the truth or falsehood of the allegations made in the complaint. Magistrate is not expected to embark upon a detailed discussion of the merits or demerits of the case, but only consider the inherent probabilities apparent on the statement made in the complaint. In Nagawwa v. Veeranna Shivalingappa Konjalgi and Others (1976) 3 SCC 736, this Court held that once the Magistrate has exercised his discretion in forming an opinion that there is ground for proceeding, it is not for the Higher Courts to substitute its own discretion for that of the Magistrate. The Magistrate has to decide the question purely from the point of view of the complaint, without at all adverting to any defence that the accused may have.*

13.The Hon'ble Supreme Court in ***Ramdev Food Products Private Limited Vs State of Gujarat***, reported in ***(2015) 6 SCC 439*** has held as follows:

> "31. *For the reasons already discussed above, we approve the view taken in Sankalchand Valjibhai Patel (supra), Nurmahomed Rajmahomed (supra), Mahendrasinh Shanabhai Chauhan (supra) and Harsh Khurana (supra) and overrule the rule taken in Bikha Moti (supra) and Asha Das (supra).*
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> *32. We now come to the last question whether in the present case the Magistrate ought to have proceeded under Section 156(3) instead of Section 202. Our answer is in the negative. The Magistrate has given reasons, which have been upheld by the High Court. The case has been held to be primarily of civil nature. The accused is alleged to have forged partnership. Whether such forgery actually took*

place, whether it caused any loss to the complainant and whether there is the requisite mens rea are the questions which are yet to be determined. The Magistrate has not found clear material to proceed against the accused. Even a case for summoning has not yet been found. While a transaction giving rise to cause of action for a civil action may also involve a crime in which case resort to criminal proceedings may be justified, there is judicially acknowledged tendency in the commercial world to give colour of a criminal case to a purely commercial transaction. This Court has cautioned against such abuse.

33.In Indian Oil Corpn. vs. NEPC India Ltd.[13], it was observed :

"13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, [pic]leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636] this Court observed: (SCC p. 643, para 8) "It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction underSection 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

34.In Pepsi Foods Ltd. vs. Special Judicial Magistrate[14], it was observed :

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the

Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

35. In view of above, we find that the Magistrate and the High Court rightly held that in the present case report under Section 202 was the right course instead of direction underSection 156(3). The question is answered accordingly.

36. We may now also refer to other decisions cited at the bar and their relevance to the questions arising in the case.

37.In Smt. Nagawwa vs. Veeranna Shivalingappa Konjalgi & Ors.[15], referring to earlier Judgments on the scope of Section 202, it was observed :

"3.In Chandra Deo Singh v. Prokash Chandra Bose [AIR (1963) SC 1430 this Court had after fully considering the matter observed as follows:

"The courts have also pointed out in these cases that what the Magistrate has to see is whether there is evidence in support of the allegations of the complainant and not whether the evidence is sufficient to warrant a conviction. The learned Judges in some of these cases have been at pains to observe that an enquiry under Section 202 is not to be likened to a trial which can only take place after process is issued, and that there can be only one trial. No doubt, as stated in sub-section (1) of Section 202 itself, the object of the enquiry is to ascertain the truth or falsehood of the complaint, but the Magistrate making the enquiry has to do this only with reference to the intrinsic quality of the statements made before him at the enquiry which would naturally mean the complaint itself, the statement on oath made by the complainant and the statements

made before him by persons examined at the instance of the complainant."

Indicating the scope, ambit of Section 202 of the Code of Criminal Procedure this Court inVadilal Panchal v. Dattatraya Dulaji Ghadigaonker [AIR (1960) SC 1113] observed as follows:

"Section 202 says that the Magistrate may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against and direct an inquiry for the purpose of ascertaining the truth or falsehood of the complaint; in other words, the scope of an inquiry under the section is limited to finding out the truth or falsehood of the complaint in order to determine the question of the issue of process. The inquiry is for the purpose of ascertaining the truth or falsehood of the complaint; that is, for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process and commencement of proceedings against the person concerned. The section does not say that a regular trial for adjudging the guilt or otherwise of the person complained against should take place at that stage; for the person complained against can be legally called upon to answer the accusation made against him only when a process has issued and he is put on trial."

Same view has been taken in Mohinder Singh vs. Gulwant Singh[16], Manharibhai Muljibhai Kakadia & Anr. vs. Shaileshbhai Mohanbhai Patel & Ors.[17], Raghuraj Singh Rousha vs. Shivam Sunadaram Promoters Pvt. Ltd.[18],Chandra Deo Singh vs. Prokas Chandra Bose[19].

38.In Devrapalli Lakshminaryanan Reddy & Ors. vs. V. Narayana Reddy & Ors.[20], National Bank of Oman vs. Barakara Abdul Aziz & Anr.[21], Madhao & Anr. vs. State of Maharashtra & Anr.[22],Rameshbhai Pandurao Hedau vs. State of Gujarat[23], the scheme of Section 156(3) and 20 has been discussed. It was observed that power underSection 156(3)can be invoked by the Magistrate before taking cognizance and was in the nature of pre-emptory reminder or intimation to the police to exercise its plenary power of investigation beginning Section 156 and ending with report or chargesheet under Section 173. On the other hand, Section 202 applies at post cognizance stage and the direction for investigation was for the purpose of deciding whether there was sufficient ground to proceed.

14.In view of the decisions cited supra and also in the light of the discussion held above, this Court is not inclined to interfere with the FIR at this stage and this criminal original petition is dismissed. It is open to the investigating agency, to conduct the investigation in a fair and impartial manner, while doing so and the grounds raised by the petitioner in this petition shall also be taken into consideration. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

Dsk

To

1. The Judicial Magistrate,
   Nilakottai, Dindigul District

2. The Sub Inspector of Police,
   Vilampatty Police Station,

3. The Additional Public Prosecutor,
   Madurai Bench of Madras High Court,
   Madurai.

+1 CC to Mr.P.SIVASUBRAMANIAM, Advocate (SR-78295[F] dated 29/07/2019)

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