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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.11.2019

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Cr1.O.P. (MD)No.13771 of 2018

and

Cr.M.P (MD)Nos.6191 and 6192 of 2018

1.Selvamary
2.Samuel

...Petitioners/Accused No.1 & 2

Vs.

S.Gnanasigamani Rajadurai @ Rajadurai ...Respondent/Complainant

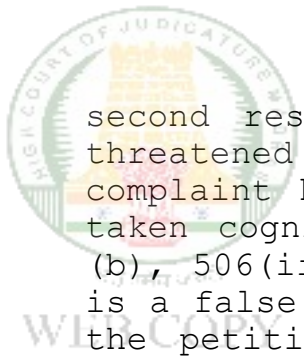
PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records and quash the private complaint in C.C.No.197 of 2018 on the file of the learned Judicial Magistrate No.I, Tirunelveli.

For Petitioners : Mr.G.Prabhu Rajadurai
For Respondent : Mr.Kannan

O R D E R

This petition has been filed to quash the private complaint in C.C.No.197 of 2018 on the file of the learned Judicial Magistrate No.I, Tirunelveli.

2. The learned counsel for the petitioners would submit that the the respondent lodged a private complaint alleging that the first petitioner is running Salt Enterprises as well as obtained dealership with the respondent. While that being so, in order to develop the business, the first petitioner insisted the respondent to invest Rs.50,00,000/- (Rupees Fifty lakhs only) for development of the said business. Believing the words of the first petitioner, the respondent paid a sum of Rs.41,54,800/-. The first accused assured that the said amount would be returned within a period of 18 months. On 24.03.2016, the first petitioner also handed over 14 cheques in order to repay the said amount. When the respondent inspected the company of the first petitioner it was found that there was no such company and there were no workers under the first accused. Hence, it reveals the fact that the first petitioner did not start any such business as informed by him. The second petitioner is the son of the first petitioner, who is also one of the partner of the first petitioner's company and that they jointly cheated the respondents. When the same was questioned by the



second respondent, they abused him by using filthy language and threatened him with dire consequences. Therefore, a private complaint has been lodged before the trial Court and the same was taken cognizance for the offences under Sections 420, 294(b), 120(b), 506(ii) of IPC. He further submitted that the entire complaint is a false and frivolous one and it was foisted due to vengeance to the petitioners in business competition. The first petitioner is having separate concerned namely, Selvam Salt Enterprises, Thoothukudi and a separate TIN number, sales tax and GST tax have been obtained. The first petitioner is also a income tax assessee for the past 15 years. While that being so, the first petitioner has availed cash facility from the Corporation Bank, Thoothukudi and the Company is still actively proceeded with the business. In fact the income tax returns would show the turnover of business. The first petitioner obtained business dealing from the second respondent, who is a saltpan owner. In the course of such business transaction, the respondent sent money to the first petitioner through RTGS on various dates. In view of the dispute between them, the present private complaint has been falsely foisted as against the first petitioner. Insofar as the second petitioner is concerned, he is the son of the first petitioner and he has no way connected with the entire transaction. The entire complaint filed with malafide intention and no offence has been levelled as against the petitioners. He further submitted that even assuming that the offence made out as per the allegations levelled by the respondent, the entire cause of action took place in Thoothukudi and as such the Judicial Magistrate No.I, Thoothukudi has no jurisdiction to take cognizance on the complaint lodged by the respondent. In fact all the parties are residing at Thoothukudi. The entire business transactions took place at Thoothukudi. When the accused are outside the jurisdiction of the trial Court, the trial Court ought to have conducted enquiry under Section 202 Cr.P.C. and only thereafter, the cognizance should be taken on file. In the case on hand, the learned Judicial Magistrate did not even conduct enquiry as contemplated under Section 202 Cr.P.C. and take cognizance. Therefore, he sought for quashment of the entire complaint.

3.The learned counsel for the respondent submitted that the respondent lodged the complaint alleging that the respondent is running saltpan company. While that being so, the first petitioner approached the respondent to invest a sum of Rs.50,00,000/- in the Sankar Salt Enterprises, which is running by the petitioners. Believing the words of the petitioners, the respondent through cheque has paid a sum of Rs.41,54,800/-. The petitioners also assured that the amount invested by the respondent would be repaid within a period of 18 months. Thereafter, the first respondent failed to repay the said amount. When the respondent verified with the petitioners' Company, to shock and surprise, there was no such company and no labourers were working and thereby, cheated the respondent by receiving the amount and thereafter failed to repay the respondent. When it was demanded by the respondent, she was



scolded by filthy language and was threatened with dire consequence. Therefore, the respondent lodged a complaint before the concerned police officials and as no action was taken as against the petitioners, the respondent was constrained to file a private complaint. The learned Judicial Magistrate has conducted enquiry under Section 202 of Cr.P.C. by examining the respondent as well as two other persons. On perusal of the material evidence it was found that prima facie case as against the petitioners was found to take cognizance for the offence under Sections 420, 294(b), 120(b), 506 (ii) of IPC and issued summons. The points raised by the petitioners cannot be considered under Section 482 Cr.P.C. Since all the same are question of facts. He further submitted that the learned Judicial Magistrate No.I, Thoothukudi is having jurisdiction and hence, cognizance was taken since the respondent is residing within a jurisdiction of Thoothukudi. The quash petition filed only to drag the proceedings and hence, it is liable to be dismissed.

4. Heard the learned counsel for the petitioners and the learned counsel appearing for the respondent and perused the materials available on record.

5. The petitioners are arrayed as A1 and A2. The respondent lodged the private complaint as against the petitioners before the learned Judicial Magistrate No.I, Thoothukudi. On receipt of the complaint, the learned Judicial Magistrate conducted enquiry under Section 202 of Cr.P.C. by examining the respondent and two other persons also and on perusal of the material evidence, cognizance has been taken for the offence under Sections 420, 294(b), 120(b), 506 (ii) of IPC as against the petitioners. The trial Court duly conducted enquiry under Section 202 of Cr.P.C. since the petitioners are residing at Thoothukudi as pointed out by the respondent. The points raised by the petitioner cannot be considered under Section 482 of Cr.P.C. since it involves question of fact and it has to be gone into by conducting full-fledged trial.

6. It is pertinent to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Crl.A.No.579 of 2019** dated **02.04.2019** in the case of **Devendra Prasad Singh Vs. State of Bihar & Anr.**, as follows:-

" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the



merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

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13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

7. Recently, the Hon'ble Supreme Court of India held in respect of the very same issue in **Crl.A.No.1572 of 2019 - Central Bureau of Investigation Vs. Arvind Khanna**, wherein, it has been held as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

The above judgment is squarely applicable to this case and as such, the points raised by the petitioners cannot be considered by this Court under Section 482 Cr.P.C.

8. Hence, the Criminal Original Petition is dismissed. However, the learned Judicial Magistrate No.I, Tirunelveli, is directed to proceed with the trial and complete the same within a period of three months from the date of receipt of a copy of this order.

9. At this juncture, the learned counsel for the petitioners submitted that the presence of the petitioners before the Trial Court may be dispensed with.



10. Accepting the said submission, the personal appearance of the petitioners is dispensed with and they shall be represented by a counsel after filing appropriate application. The petitioners shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Records)

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Sub Assistant Registrar(CS)

vsd

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-98468[F] dated 15/11/2019)

+1 CC to M/s.V. KANNAN, Advocate (SR-98521[F] dated 15/11/2019)

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