BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.03.2019
PRONOUNCED ON : 28.11.2019

CORAM:
THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

Crl.O.P.[MD]No.16154 of 2018
and Crl.M.P.[MD] Nos.7160 of 2018 & 1208 of 2019

Balu : Petitioner/Accused No.3

Vs.

1.The State, through
The Inspector of Police
District Crime Branch
Kanyakumari.
[Crime No.76/2015] : 1st Respondent/Complainant

2.N.Kumaran @ Nainar Kumar :2nd Respondent/Defacto Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in Crime No.76 of 2015 on the file of the first respondent and quash the same as illegal insofar as the petitioner is concerned.

For Petitioner : Mr.V.P.Rajan
For Respondents : Mr.A.P.G. Ohm Chairma Prabhu
Govt Advocate [Crl.Side] for R1
Mr.R.Anand for
Mr.G.Thalaimutharasu [R2]

O R D E R

The present petition is laid for quashing an FIR in Crime No.76 of 2015, registered on the file of the first respondent based on a complaint preferred by the second respondent (henceforth complainant). In the FIR, the petitioner is arrayed as the third accused person.

2.1 It is alleged in the FIR:

- That the Complainant had decided to buy a certain immovable property belonging to the second accused through the latter's Power of Attornery, the first accused. On 20.03.2015, a sale agreement was entered into between the Complainant on the one part and the first accused in his capacity as POA of the second accused on the other. The total sale consideration was fixed at Rs.8.75 crores, and under the agreement Rs.2 crores was paid as advance amount. The complainant was also given possession of the property to be purchased.

- The Complainant then came to know that the property which he proposed to purchase was provided as a collateral security with M/s.Indian Bank. Hence, the complainant approached the third accused, the petitioner herein, who then was working as Assistant Manager in M/s.Indian Bank, at its Regional Office, Tirunelveli. The petitioner had then represented to the complainant that if the latter had deposited Rs.5.0 crores in the loan account of the first accused, he would release the property from encumbrance.

- Be that as it may, the petitioner knowing fully well that possession of the suit property was with the complainant, had approached the Complainant, and insisted him to pay Rs.5.0 crores, lest he would bring the property to auction for realising the loan amount due to the Bank. In this circumstance, the Complainant had deposited the following amounts in the loan account of the first accused.

Dates of payment by the complainant	***Amount paid (Rs.)***
30.03.2015	25,00,000.00
20.04.2015	61,20,000.00
30.04.2015	14,00.000.00

In all, the complainant had paid Rs.3.75 crores, either to the first respondent or to the loan account of the first accused.

- It is in this circumstances on 30.10.2015, the complainant wrote to the petitioner to release the property. However, the petitioner went back on his promise. Hence, all the three accused persons had conspired to cheat the complainant, and had cheated him.

3. In this petition, it is alleged that the allegations in the FIR do not constitute any offence within the meaning of Sec.420 IPC, as the contents thereof hardly disclose even a *prima facie* commission of a cognizable offence as to warrant registration of an FIR. Further, there is no allegation that the petitioner had received the said amount in his personal capacity, and made false representation to the complainant and made him part with his money.

4.In his counter filed by the first respondent, the contents of the FIR were reiterated, and also has indicated that the statement of witnesses under Sec.161 Cr.PC. are obtained. The quashing of FIR is not available to the petitioner, and he might have to stand through the trial of the case, to come clean on the accusation made against him.

5. The second respondent, the defacto complainant herein did not file any counter, but produced a typed set of papers, containing the letter dated 03.10.2015, of the first accused addressed to the petitioner in the latter's capacity as the Manager of the Bank, and a reply by the petitioner in his capacity as a Branch Manager.

6. Heard all the parties involved in this litigation. The petitioner too has preferred two typed set of papers, most of which are statements of accounts of the first accused, and notices issued to him under SARFEASI Act by the Bank.

7. The learned counsel for the petitioner/3rd accused argued that it is not in dispute that the property which the Complainant proposed to purchase was outstanding on a mortgage with M/s.Indian Bank. The petitioner is only an employee of the Bank, and it is his responsibility to ensure that the loan amount is realised. Now, if FIR is turned to, it admits that the property in question was under a burden of securing a debt, and at least Rs.5.0 crores was necessary to be paid into the loan-account, for the Bank to release the property. And, it is also the case of the complainant that the money was only paid into the loan account, towards repayment of loan, in relation to which, the property in question was given as a security, and not to the personal account of the petitioner. How can repaying a loan into the loan account will Constitute cheating? Even if the allegation in the Complaint were to be taken on its face value, yet the point remains that Rs.5.0 crores as required too was not paid into the loan account. Where then is the question of releasing the property will arise, when the money itself was not paid as required. Therefore, if the allegation in the complaint is approached from every conceivable angle, it hardly satisfies the requirements of Sec.420 Cr.P.C. to constitute an offence.

8. The learned Government Advocate (Crl. Side) appearing for the first respondent, and the counsel for the second respondent would argue in unison that, quashing a FIR by exercising the power under Sec.482 Cr.P.C. is to be resorted to, only sparingly and in exceptional cases, and that the Court is duty bound to consider the FIR on its face value and cannot get into a meticulous analysis of the contents thereof at this stage to assess the truth or otherwise of it. It is only required to presume the truth of the allegations made in the FIR, and it is not expected to suspect it, argued the counsel. Reliance was placed on the authorities in ***Dineshbhai Chandubhai Patel v. State of Gujarat*** [(2018) 3 SCC 104] ; ***Som Mittal v. Govt. of Karnataka*** [(2008) 3 SCC 753]; ***Jehan Singh v. Delhi Administration*** [(1974) 4 SCC 522]; ***Tilly Gifford v. Michael Floyd Eshwar and Anr.*** [2017 (4) Crimes 374 (SC)] and ***K.Subba Rao & Ors. v. State of Telengana*** [III (2018) DMC 277 (SC)].

9.1 This Court generally does not invoke Sec.482 Cr.P.C. to quash an FIR, except in circumstances enumerated by the Hon'ble Supreme Court in ***State of Haryana Vs Bajan Lal*** [(1992) Supp (1) SCC 335]. The oft quoted, instructive guidelines of the Hon'ble Supreme Court read:

"*The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482 Cr.PC can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised :*

1) *Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*

2) *Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*

3) *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.*

4) *Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

5) *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

6) *Where there is an express legal bar engrafted in any of the provisions of the Code of the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

7) *Where a criminal proceeding is manifestly attended with malafide 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."*

9.2 If on the face of the FIR, the allegations made therein does not constitute an offence, or the material in support thereof does not indicate the commission of an offence, or if they taken as a whole, show that the allegations are so absurd that it is improbable to hold that an offence could have been committed, then this court surely can exercise its power under Sec.482 Cr.P.C. to quash a FIR. If the allegations in the present FIR is now spread on this plane, they fit in perfectly.

9.3 Here is a Complainant, who decides to purchase the property, knowing well that the property he had proposed to purchase was outstanding on a mortgage to M/s Indian Bank. And, to help himself in buying an encumbrance free property, he chooses to discuss it with the bank official, who according to him is the petitioner. As an official of the bank, the petitioner played his part to protect the bank's interest interest. After all, as an employee of his master, he is there to protect its interest and not to do charity. And, he is keen to see that the bank recovers its loan dues. The bank surely will be unconcerned, who repays the loan amount. There is no allegation in the FIR that the Complainant had paid amounts into the loan account, mistakenly, and that the bank refuses to return it either. After all, it is either a bilateral arrangement between the first accused and the Complainant, or his own unilateral option.

10. The only allegation made against the petitioner was that he informed the complainant that if Rs.5.0 Crores was into the loan account, he would release the property in question from encumbrance. That is absolutely in tune with his official duty. And, going by the FIR, there is no statement that the Complainant at least had paid Rs.5.0 crores into the loan account. How, can he reasonably expect an official of the bank to release the security that the property in question is? And, no where is there even an indication as to the total loan dues payable.

11. To sum up, the allegations in the FIR, taken on their face value, and believing in their *prima facie* truth, do not go to constitute an offence against the petitioner. There cannot be an atrocious set of facts than the one this Court has seen in the FIR in this case, and there cannot be a greater abuse of criminal law than the one attempted here. And, there cannot be a better case than the one here for this Court to invoke the power under Sec.482 Cr.P.C. The FIR involved in this case is liable to be quashed.

12. In the result, this Criminal Original Petition is allowed and the FIR in Crime No.76 of 2015 on the file of the first respondent is hereby quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (writs)

// True Copy //

Sub Assistant Registrar(CS)

CM/ds

To:

1. The Inspector of Police
   District Crime Branch
   Kanyakumari.
   [Crime No.76/2015]

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

+1 CC to Mr.V.P.RAJAN, Advocate (SR-103051[F] dated 02/12/2019)

order made in
Crl.O.P.[MD]No.16154 of 2018
and Crl.M.P.[MD] Nos.7160 of 2018 & 1208 of 2019
28.11.2019

MK (06.01.2020) 6P 4C