BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.11.2019

Pronounced on : 20.11.2019

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P (MD) No.18930 of 2018

and

Crl.M.P.(MD) Nos.8445 and 9615 of 2018

1.N.Govindaraj

2.G.Sulochana ... Petitioner/A1 and A2

Vs

1.The Inspector of Police,
Srivilliputhur Town Police Station,
Virudhunagar District
Crime No.452 of 2018

2.K.S.Santhoskumar ... Respondents

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to call for the records pertaining to the FIR in crime No.452 of 2018 on the file of the 1st respondent police and quash the same as illegal.

For Petitioner : Mr.S.Ananda Padmanaban for Mr.G.Padmanaban

For Respondent : Mr.K.Suyambulinga Bharathi, for R1
Mr.J.Jeyakumaran for R2

O R D E R

This petition has been filed to quash the proceedings FIR in crime No.452 of 2018 on the file of the 1st respondent police, for the offence under Sections 420, 494(b) and 506(1) of I.P.C.

2.The learned counsel appearing for the petitioners submitted that on the complaint lodged by the 2nd respondent, the 1st respondent conducted enquiry and closed the same. Therefore, the 2nd respondent filed a private complaint before the concerned Judicial Magistrate and the learned Judicial Magistrate directed the 1st respondent under Section 156(3) Cr.P.C., to investigate the same. On the instructions, the 1st respondent registered the above case with the allegation that the 2nd respondent is doing finance business and he himself introduced as a business friend to the petitioners. While being so, on the properties owned by the petitioners, they demanded money to the tune of Rs.15 lakhs to develop their crackers business and also executed an agreement for sale for the said property situated at Srivilliputhur on 10.10.2012. At the time of the executing the said sale agreement, they received a sum of Rs.10 lakhs and thereafter, the petitioners failed to execute any sale deed as agreed by them. Though the defacto complainant is ready and willing to pay the remaining amount of Rs.5 lakhs as agreed by them, suppressing the said agreement entered between the petitioners and the 2nd respondent, the petitioners mortgaged same properties as if the said properties have no encumbrances and borrowed loan. When it was questioned by the 2nd respondent, the petitioners along with other accused persons abused the 2nd respondent with filthy language and also threatened him with dire consequences.

3.He further submitted that the entire allegations are civil in nature and there is no prima facie to constitute any of the offences as alleged by the 2nd respondent. When the 2nd respondent failed to file a suit for specific performance within a time, he instituted the present frivolous criminal proceedings as against the petitioners. He further submitted that on the next date of agreement viz., 11.10.2012 itself, the 2nd petitioner executed the general power of attorney in favour of one Kumarasamy, S/o.Muthuvel and one Muthiah and K.Thangaraj stood as witnesses to the said documents. The amount received by the petitioners was duly returned to the 2nd respondent on 21.08.2013 through the cheque and also produced statement of bank account. In fact, the 2nd respondent caused legal notice dated 07.01.2016, calling upon the petitioners to execute the sale deed on the strength of the sale agreement dated 10.10.2012, for which, properly, the petitioners replied denying all the facts and also stated that the petitioners never entered into any agreement for sale. Since the worth of the property of the land is more than 1 Crore, the petitioners never agreed to sell the property for the sale consideration of Rs.15 lakhs. He further submitted that the power of attorney deed also executed only at the instance of the 2nd respondent in favour of one Kumarasamy, who is none other than the 2nd respondent's servant. In support of his contention, he relied upon the following judgments of the Hon'ble Supreme Court of India:

(i) ***(2009) 3 Supreme Court Cases 78 - V.Y.Jose Vs. State of Gujarat;***

(ii)***2018(4) Crimes 324 (SC) - Himachal Pradesh Cricket Association & Anr. V. State of Himachal Pradesh & Ors;***

(iii)2017 CRI.L.J. 744 - Prem Kumar V. State of Rajasthan.

Thus, he prayed for quashment of the criminal proceedings as against the petitioner.

4.Per contra, the learned counsel appearing for the 2nd respondent filed counter and submitted that the petitioners and others are the partners of M/s.Tamil Nadu Crackers Shop and Tamil Nadu Agencies. The 2nd respondent is running a fire works in the name and style of Santhosh Fire Industries. The petitioners and others used to purchase crackers in wholesale and sold out to various places in all over Tamil Nadu. In order to extend the business at Sivakasi area, the 2nd respondent searched for some properties and at this juncture, the petitioners voluntarily approached the 2nd respondent and expressed their willingness to sell their properties. Therefore, the 2nd respondent agreed to purchase the same for a total sale consideration of Rs.15 lakhs and a sum of Rs.10 lakhs was paid as an advance on 10.10.2012 and executed the sale agreement and the same was attested by the notary public. The time for execution of sale was fixed at three months and after completion of period of three months, though the 2nd respondent was ready and willing to pay the balance amount to register the sale deed, it was prolonged by the petitioners. However, after executing the sale agreement, the petitioners mortgaged the said property and obtained loan for a sum of Rs.20 lakhs from Karur Vysya Bank, Sivakasi Branch without the knowledge of the 2nd respondent. In fact, the said loan account becomes non performing asset and it was declared by the Karur Vysya Bank and also auctioned the said properties. Therefore, the intention of the petitioners is very clear that only to cheat the 2nd respondent, they created encumbrances over the property and on the other hand they keep on seeking time to execute the sale deed.

5.He further submitted that in fact, the petitioners filed insolvency petition in I.P.No.5 of 2018, in which, they have shown the 2nd respondent as one of the creditor and the liability shown as Rs.69 lakhs. The amount, which was paid through the cheque by the petitioners is nothing but payment towards the purchase of crackers. The said amount is no way connected with the present sale agreement.

6.He further submitted that the petitioners filed anticipatory bail petition before this Court and while granting anticipatory bail, this Court imposed condition to deposit a sum of Rs.10 lakhs. The said condition was never complied with by the petitioners and in fact, they also filed modification petition and the same was also dismissed by this Court. Therefore, there are specific allegations to constitute the offence under Sections 420, 494(b) and 506(1) of I.P.C. as against the petitioners and prayed for dismissal of the quash petition.

7.The learned Government Advocate (criminal side) appearing for the 1st respondent would submit that on the complaint lodged by the 2nd respondent, the 1st respondent registered the case in crime No.452 of 2018 for the offences under Sections 420, 494(b) and 506 (1) of I.P.C. as there are specific averments to attract those offences as against the accused persons and hence, the FIR cannot be quashed at this stage and prayed for dismissal of this petition.

8.Heard the learned counsel appearing for the petitioners, the learned counsel appearing for the 2nd respondent as well as the learned Government Advocate (criminal side) appearing for the 1st respondent and perused the materials available on records.

9.The 2nd respondent lodged a complaint as against the petitioners and others alleging that the petitioners approached the 2nd respondent to sell their property for a total sale consideration of Rs.15 lakhs. The 2nd respondent agreed to purchase their property and paid a sum of Rs.10 lakhs as advance and also entered into a sale agreement dated 10.10.2012. Thereafter, the petitioners failed to execute the sale deed and suppressing the said fact executed mortgage deed with Karur Vysya Bank and borrowed a sum of Rs.20 lakhs as loan. The 2nd respondent also caused legal notice and came to understand that the petitioners created so many encumbrances over the property and cheated the 2nd respondent.

10.On perusal of the records would reveal that the 2nd respondent paid a sum of Rs.10 lakhs to the petitioners and entered into a sale agreement dated 10.10.2012. On the next date, viz., on 11.10.2012, the 2nd petitioner along with other persons executed power of attorney in favour of one Kumarasamy S/o.Muthuvel. Thereafter, some properties were mortgaged with the Karur Vysya Bank and borrowed a sum of Rs.20 lakhs by the petitioners. After came to the knowledge about this fact, the 2nd respondent caused legal notice to the 2nd petitioner and also other persons, who entered into agreement with the 2nd respondent on 07.01.2016, calling upon them to execute the sale deed in his favour, though the 2nd petitioner and others created encumbrances over the property. Upon receipt of the same, the petitioners also replied by their reply notice dated 14.01.2016 and admitted all the facts and stated that immediately after the borrowal of the loan and the mortgage of the very same property, a sum of Rs.10 lakhs was returned to the 2nd respondent. Whereas, the 2nd respondent denied the said fact that the said amount was paid by the petitioners towards the purchase of crackers. Admittedly, the petitioners as well as the 2nd respondent had business transactions in respect of the crackers business. There is also no quarrel about the sale agreement, power of attorney and the mortgage by the petitioners. Therefore, there is prima facie to register the complaint and as such, the learned Judicial Magistrate rightly directed the 1st respondent under Section 156(3) Cr.P.C., to register the same.

11.The learned counsel appearing for the petitioners relied upon the judgment reported in ***2017 CRI.L.J. 744 - Prem Kumar V. State of Rajasthan***, wherein, the Hon'ble Supreme Court of India held that after receiving the amount as an advance to execute the sale deed and thereafter it was sold out to other person would not constitute any offence, since no suit for specific performance was filed for a period of more than 10 years. The relevant portion is extracted as follows:

> “5.Aggrieved by the order of the High Court, this appeal has been preferred. On 26th April, 2013, while issuing notice, this Court stayed further proceedings. No one appears for the complainant in spite of service of notice. Learned counsel for the appellant submitted that even if all the allegations in the complaint are taken as correct, complaint has been filed in the year, 2012 while the agreement to sell in question was executed in favour of the complainant on 16th March 1989. the second sale took place in the year 1999. No suit for specific performance was filed for a period of more than 10 years. In these circumstances, the complaint was an abuse of court's process to enforce civil rights which was become illegally enforceable.
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> 6.From the above undisputed facts, it is apparent that the impugned complaint is clear abuse of court's process. It is not the case of the complainant that any proceedings were taken for the enforcement of the agreement to sell for a period of more than 10 years. In these circumstances, the criminal proceedings initiated by the complainant and clear abuse of the process of court.”

12.However, in the case on hand, the sale agreement was executed on 10.10.2012 and thereafter, there were business transactions between the petitioners and the 2nd respondent. The 2nd respondent after causing notice, initiated suit for specific performance along with condone delay petition and it is pending for consideration. Therefore, the said decision is not helpful to the case of the petitioner herein.

13.It is further seen that the petitioners approached this Court for anticipatory bail and this Court while granting anticipatory bail imposed condition that the petitioners shall deposit a sum of Rs.10 lakhs and the said condition was not complied with and they also approached this Court for modification and the same has also been dismissed by this Court. Therefore, this Court is of the view that the petitioner did not approach this Court with clean hands.

14.It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.255 of 2019*** dated ***12.02.2019*** in the case of ***Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors.,*** as follows:-

"4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.

5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.

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9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of *the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."*

15.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 Invstigation Vs. Arvind Khanna, dated*** 17.10.2019 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 judgments are 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.

16.Considering the above said judgments, this Court is of the view that there are specific allegation as against the petitioner, which have to be investigated. Further the FIR is not an encyclopedia and it need not contain all facts and hence, it cannot be quashed at the threshold. This Court finds that the FIR discloses prima facie commission of cognizable offence and as such this Court cannot interfere with the investigation. The investigating machinery has to step in to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code.

17.In view of the above discussions, this criminal original petition is dismissed. Consequently, connected miscellaneous petitions are also dismissed. The 1st st respondent is directed to complete the investigation and file the final report, within a period of three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

Arul

To

1. Inspector of Police,
Srivilliputhur Town Police Station,
Virudhunagar District.

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

+1CC TO MR.J.JEYAKUMARAN, Advocate Sr. No. 100207

Order made in
CRL.O.P (MD) No.18930 of 2018
20.11.2019

KG(CO)
TR(10.12.2019)8P 4C