



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.10.2019

Pronounced on : 01.11.2019

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P (MD) No.18351 of 2018

and

Crl.M.P. (MD) No.8192 of 2018

SP.Valliappan

... Petitioner / Sole Accused

Vs

1.The State rep by the Inspector of Police
Medical College Police Station,
Thanjavur District,
Crime No.397 of 2018

2.The Inspector of Police,
District Crime Branch,
Thanjavur District,
Thanjavur. ... Respondents / Complainant

3.Mr.Sethukarasai ... Respondent/Defacto Complainant

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to call for the records pertaining to crime No.397 of 2018 on the file of the 1st respondent police and quash the same.

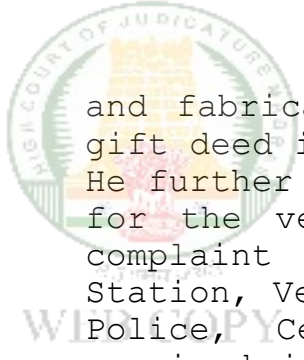
For Petitioner : Mr.Veera. Kathiravan, senior counsel
for Mr.C.Jeganathan for M/s.Veera
Associates

For Respondents : Mr.K.Suyambulinga Bharathi, G.A.
(Crl. Side) for RR1 and 2
Mr.A.R.L.Sundaresan, senior counsel
for Mr.A.Arun Prasad, for R3

O R D E R

This petition has been filed to quash the criminal proceedings in crime No.397 of 2018 for the offences under Sections 464, 468 and 471 of I.P.C. on the file of the 1st respondent police.

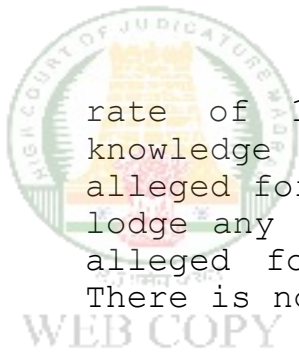
2.The learned senior counsel appearing for the petitioner submitted that on the complaint lodged by the 3rd respondent alleging that the petitioner forged the signature of the defacto complainant



and fabricated a document dated 19.09.2013 as if she executed a gift deed in favour of the petitioner for a sum of Rs.3,48,83,791/-. He further submitted that the 3rd respondent suppressed the fact that for the very same set of allegations, her son already lodged a complaint on 15.07.2014 before the Central Crime Branch Police Station, Vepery, Chennai and on the said complaint, the Inspector of Police, Central Crime Branch Police Station, Vepery, Chennai enquired in detail and closed the same as Mistake of Fact by the closure report dated 08.10.2014. Thereafter, her son also filed direction petition in Crl.O.P.No.1760 of 2016 before the Principal Bench of this Court to register a complaint and this Court issued direction thereby directed her son to lodge a fresh complaint with all relevant documents to the Deputy Commissioner of Police, Central Crime Branch, Vepery, Chennai. However, for the reason best known to him, he did not lodge any complaint as directed by this Court. After a period of 4 years from the date of the first complaint, again, the 3rd respondent lodged the present complaint for the very same set of allegations and on receipt of the same, the first respondent mechanically registered the case for the offence under Sections 464, 468, 471 of I.P.C. as against the petitioner.

3.The learned senior counsel further submitted that after lodging the complaint by the son of the third respondent herein, the petitioner filed anticipatory bail petition before the Principal Bench of this Court in Crl.O.P. No.15149 of 2014 and the same was closed after recording the statement of the learned Public Prosecutor that the complaint lodged by the son of the third respondent herein was closed temporarily for the reason that relevant records were not produced by the defacto complainant. The petitioner never disputed the fact that the 3rd respondent paid a sum of Rs.3,48,83,791/- to the petitioner through the demand draft, RTGS and pay order. In fact, the petitioner categorically mentioned about the mode of payment in his anticipatory bail petition and also mentioned about the payment that the defacto complainant had paid Rs.3,48,83,000/- for executing the deed in favour of the defacto complainant in respect of the property situated at Dr.Radhakrishnan Road, Chennai. He further categorically stated in his petition that the defacto complainant also executed one deed as gift for the said payment. In fact, the son of the third respondent also filed intervening petition in the anticipatory bail petition in Crl.O.P.15149 of 2014, in which, he also stated about the execution of gift deed and alleged that his mother's signature was forged and fabricated false documents.

4.The learned senior counsel would further submit that the third respondent also filed a suit in C.S.No.757 of 2014 before the Principal Bench of this court for the relief of specific performance to execute the registered release deed/relinquishment deed in favour of the third respondent releasing/relinquishing the petitioner's 50% share in the suit properties with the alternative relief of returning the sum of Rs.3,48,83,791/- together with interest at the

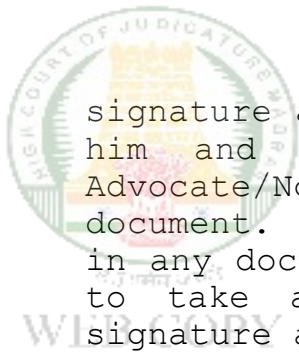


rate of 18% p.a. Therefore, the third respondent had fully knowledge about the execution of disputed document and about the alleged forging of her signature. But, the third respondent did not lodge any complaint till 2018 and after four years from the date of alleged forged document, the present complaint has been lodged. There is no explanation for the delay in lodgment of the complaint.

5.He further submitted that in the suit filed by the third respondent in C.S.No.757 of 2014, the petitioner filed a written statement and stated that third respondent had given an undertaking dated 19.09.2013 on a stamp paper duly signed by her and attested by a Notary Public confirming that she has gifted a sum of Rs.3,48,83,791/- to the petitioner herein. Therefore, she had full knowledge about the document and even then she did not prefer any complaint. After having been filed the civil suit and also closure of the first complaint lodged by her son, after a period of 4 years, the present complaint has been lodged with the false and frivolous allegation. He also submitted that the first complaint has been lodged before the Central Crime Branch, Chennai and the present complaint has been lodged before the second respondent herein at Thanjavur that too suppressing the earlier complaint and civil suit for the very same set of allegations. Therefore, he prayed for quashment of the First Information Report.

6.Per contra, the learned senior counsel appearing for the third respondent vehemently contended that the first complaint was not at all lodged by the petitioner. The complaint was lodged by her son that too with different set of allegations. Though it was closed by the Central Crime Branch, Vepery, Chennai only for the reason that documents were not furnished to deal with the complaint and the matter was already referred before Mediation, where no amicable settlement was reached between the parties. Thereafter, the son of the third respondent approached the Principal Bench of this Court, where he was directed to lodge a fresh complaint before the Deputy Commissioner of Police, Central Crime Branch, Vepery, Chennai. For the reasons best known to him, he did not lodge any complaint. Whereas, now, the present complaint has been lodged by the 3rd respondent and she has nothing to say about the complaint lodged by her son. The allegations in the present complaint are completely different from the civil suit filed by the 3rd respondent herein.

7.The learned senior counsel further submitted that the crux of the complaint is that the petitioner received a sum of Rs.3,48,83,791/- to sell his undivided share in respect of the property situated in Door No.106, 107/1, 107/2, Venkatachala Mudali Street & Door No.25/2, Dr.Radhakrishnan Salai, Mylapore, Chennai - 4. Thereafter, he failed to execute the sale deed in favour of the 3rd respondent and as such, she initiated so many proceedings and finally, contempt was also initiated as against the petitioner. While being so to her shock and surprise, the petitioner forged her



signature as if she executed a gift deed for the amount received by him and fabricated the deed and also got attested by one Advocate/Notary Public as if the third respondent signed in the said document. She never executed such a document and she did not sign in any document in front of a Notary Public. Therefore, she wanted to take appropriate action for the allegation of forging her signature and fabrication of false documents.

8.The learned senior counsel further submitted that insofar as the civil suit is concerned, it is completely with a different set of fact and the prayer itself is for specific performance with alternative prayer if returning the money, which was received by him. In the present complaint, there are very categorical allegations to attract the offences under Sections 464, 468 and 471 of I.P.C and the FIR cannot be quashed on its threshold. The investigation has to be gone into its depth and as such, he vehemently contended that the quash petition is liable to be dismissed. He also relied on the following judgments:

(i) **Indian Oil Corpn. Vs. NEPC India Ltd.** reported in (2006) 6 Supreme Court Cases 736,

(ii) **Sangeetaben Mahendrabhai Patel V. State of Gujarat** reported in (2012) 7 Supreme Court Cases 621,

(iii) **Sau. Kamal Shivaji Pokarnekhar Vs. The State of Maharashtra and Others** reported in 2019 SCC OnLine SC 182,

(iv) **Chilakamarthi Venkageswarlu V. State of A.P.** reported in 2019 SCC OnLine SC 948 and

(v) **Dr.Lakshman Vs. The State of Karnataka - Crl.A.Nos.1573-1575 of 2019 dated 17.10.2019 - Hon'ble Supreme Court.**

9.The learned Government Advocate (criminal side) appearing for the respondents 1 and 2/State would submit that on the complaint lodged by the 3rd respondent before the Superintendent of Police at Tanjore District and forwarded the same to the 1st respondent, FIR has been registered in crime No.397 of 2018 for the offences under Sections 464, 468 and 471 of I.P.C. as against the petitioner herein. According to the 3rd respondent/defacto complainant, her signature was forged by the petitioner and fabricated a gift deed as if she executed a gift deed for a sum of Rs.3,48,83,791/- and there are allegations to attract the offences under Sections 464, 468 and 471 of I.P.C. The FIR has to be investigated into depth and therefore, it cannot be quashed at its threshold and hence, he prayed for dismissal of this petition.

10.Heard the respective learned senior counsels appearing for the petitioner as well as the third respondent and the learned Government Advocate (criminal side) appearing for the respondents 1 and 2 and also perused the materials available on records.



11.The petitioner is a sole accused. On the complaint lodged by the third respondent, a case in crime No.397 of 2018 has been registered by the 1st respondent police for the offence under Sections 464, 468 and 471 I.P.C. The crux of the complaint is that the petitioner received a sum of Rs.3,48,83,791/- from the 3rd respondent to execute a sale deed in favour of the 3rd respondent in respect of his share in the properties situated at Door No.106, 107/1, 107/2, Venkatachala Mudali Street & Door No.25/2, Dr.Radhakrishnan Salai, Mylapore, Chennai - 4. However, he failed to execute the sale deed as promised by him. Payments also were made through demand drafts, RTGS and Pay order by the 3rd respondent herein. The 3rd respondent also initiated so many proceedings as against the petitioner to execute the sale deed in her favour.

12.While being so, she came to understand that the petitioner circulated a xerox copy of a gift deed as if the 3rd respondent executed the same stating that the amount received by the petitioner is a gift. She further alleged that her signature was forged by the petitioner and he fabricated the gift deed as if she executed the same in front of a Notary Public. Initially, the complaint has been lodged before the Superintendent of Police, Thanjavur District and the same was forwarded to the 1st respondent, who registered the same.

13.The learned senior counsel appearing for the petitioner raised a ground that the 3rd respondent had full knowledge about the execution of the alleged gift deed even in the year 2014 itself. Her own son lodged a complaint for the very same set of allegation in the year 2014 before the Central Crime Branch Police Station, Chennai and the same was enquired and closed as Mistake of Fact. In fact, he also filed direction petition before this Court and this Court, directed her son to lodge a fresh complaint before the Deputy Commissioner of Police, Central Crime Branch. However, he failed to lodge any complaint and after a period of 4 years, the present complaint has been lodged that too before the Superintendent of Police, Thanjavur District, suppressing the first complaint and also suppressing the fact that she filed a suit as against the petitioner for the very same set of allegations.

14.Admittedly, the son of the 3rd respondent lodged a complaint before the Central Crime Branch, Veppery, Chennai and the said complaint was enquired and closed for want of document. It is recorded by this Court in Crl.O.P.(MD) No.15149 of 2014, vide order dated 24.11.2014 as follows:

"2.It is represented by the learned Government Advocate (Crl. Side) that the petition enquiry has been conducted and has been temporarily closed as the relevant records were not produced by the defacto complainant. The submission of the learned Public



3. In the event of police re-opening the complaint, summons under Section 160 Cr.P.C. should be given to the petitioner herein for appearance and at that juncture, the petitioner is given liberty to approach this Court for appropriate relief."

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15. On the direction issued by this Court in Crl.O.P.No.1760 of 2016 dated 11.12.2016, the son of the 3rd respondent did not lodge any complaint. The suit in C.S.No.757 of 2014 has been filed by the 3rd respondent and two others as against the petitioner for specific performance with an alternative prayer of returning the money received by the petitioner herein. Whereas, the present FIR has been registered for the allegation of forgery and fabrication of document. There are averments to register a case for the offences under Sections 464, 468 and 471 I.P.C. The 3rd respondent did not lodge any complaint except the present complaint. The civil suit filed by the 3rd respondent is not an impediment to proceed with the criminal case, since, it is completely with a different allegations of forgery and fabrication of false documents.

16. In this regard, the learned senior counsel appearing for the third respondent relied on the decision of the Hon'ble Supreme Court in Dr.Lakshman Vs. The State of Karnataka and others etc. - Crl. A.Nos.1573 - 1575 of 2019 dated 17.10.2019, wherein, the Hon'ble Apex Court has held as follows:

"9. Mere filing of the suits for recovery of the money and complaint filed under Section 138 of the N.I.Act by itself is no ground to quash the proceedings in the complaints filed by the appellant herein. When cheating and criminal conspiracy are alleged against the accused, for advancing a huge sum of Rs.9 crores, it is a matter which is to be tried, but at the same time the High Court has entered into the disputed area, at the stage of considering the petitions filed under Section 482, Cr.P.C. It is fairly well settled that power under Section 482 Cr.P.C. is to be exercised sparingly when the case is not made out for the offences alleged on the reading of the complaint itself or in cases where such complaint is filed by way of abuse of the process. Whether any Schedules were appended to the agreement or not, a finding is required to be recorded after full fledged trial. Further, as the contract is for the purpose of procuring the land, as such the same is of civil nature, as held by the High Court, is also no ground for quashing. Though the contract is of civil nature, if there is an element of cheating and fraud it is always open for a party in a contract, to



prosecute the other side for the offences alleged. Equally, mere filing of a suit or complaint filed under Section 138 of the N.I.Act, 1881 by itself is no ground to quash the proceedings. While considering the petition under Section 482 of Cr.P.C., we are of the view that the high Court also committed an error that there is a novation of the contract in view of the subsequent agreement entered into on 08.11.2012. Whether there is novation of contract or not and the effect of such entering into the contract is a matter which is required to be considered only after trial but not at the stage of considering the application under Section 482, Cr.P.C."

17. In the above said decision, the Hon'ble Supreme Court has held that mere filing of suit, the complaint cannot be quashed and when cheating and criminal conspiracy are alleged against the accused, it is a matter which is to be tried. In the case on hand, the civil suit filed by the 3rd respondent for specific performance on the money received by the petitioner to execute his share over the property with alternative prayer of returning of the said amount. Whereas, the allegations in the FIR are completely different one. The signature of the 3rd respondent allegedly forged by the petitioner and he also fabricated false document as if the 3rd respondent executed a gift deed for the amount received by him. Therefore, the pendency of the civil suit is no way connected with the present FIR.

18. 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 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."

19. 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, 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.

20. 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.

21. In view of the above discussions, this criminal original petition is dismissed. Consequently, connected miscellaneous petition is also dismissed. The 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(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

Arul

To

1. The Inspector of Police
Medical College Police Station,
Thanjavur District,
Crime No.397 of 2018

2. The Inspector of Police,
District Crime Branch,
Thanjavur District, Thanjavur.



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

+1CC TO MR.A.ARUN PRASAD, Advocate Sr. No.95722

+2CC TO MR.VEERA ASSO., Advocate Sr. No. 95062 & 95507

Order made in
CRL.O.P (MD) No.18351 of 2018
and
Crl.M.P. (MD) No.8192 of 2018
01.11.2019

NA (CO)

TR(14.11.2019)10P 7C