

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.O.P.No.3428 of 2013
and
Crl.MP.Nos.1 & 2 of 2013

1.Dharmachand Jain

2.Shanthi Devi ... Petitioners /
3rd and 4th Accused.

Versus

1.State represented by
Inspector of Police,
Central Crime Branch,
Team I, Egmore, Chennai-600 008.
(Ref. Cr.No.206 of 2010,
dated 27.04.2010) 1st Respondent /
Complainant

2.Vijayalakshmi ... 2nd Respondent
(impleaded as per the order
of this Court dated 19.06.2010 in
Crl.MP.No.3 to 5/13 in
Crl.OP.No.3428/13)

PRAYER: Criminal Original Petition is filed under Section 482
of the Code of Criminal Procedure, to call for the records
and quash the proceedings in C.C.No.3220 of 2012 pending on
the file of the III Metropolitan Magistrate, George Town,
Chennai.

For Petitioners: Mr.N.Monakaran for
M/S.P.Krishnan

For Respondents: Mr.C.Iyyapparaj, APP for R1
: No Appearance for R2

ORDER

This Criminal Original Petition is filed by the petitioner
to call for the records and quash the proceedings in
C.C.No.3220 of 2012 pending on the file of the III
Metropolitan Magistrate, George Town, Chennai.

2.The learned counsel for the petitioner has submitted
that one Vijayalakshmi, the defacto complainant, along with
her husband, P.G.K.Menon and sons, Ramesh, Satheesh and Suresh
had owned lands ad measuring an extent of 55 cents and 14568
sq.ft., comprised in various survey numbers, situated at
Sholinganallur, Kancheepuram District. The son of the defacto

complainant namely Ramesh had intended to establish a hostel in the name and style of " P.G.K. Mansion" and availed a loan of Rs.4,50,000/- from Gouthamchand Jain (A-1), the first petitioner's brother, by depositing the tittle deeds of the aforesaid properties. Thereafter, on 27.04.1995, the said Vijayalakshmi and her three sons had executed Power of Attorney Deeds in favour of Gouthamchand Jain (A-1), pertaining to the aforesaid properties, which were registered as Document Nos.501-505 of 1995, on the file of the District Registrar, Chennai -North. And subsequently, on 12.06.1996, the aforesaid loan amount of Rs.4,50,000/- was repaid to the A1 along with interest, however the original title deeds were not returned. Subsequently, after demise of the petitioner, Ramesh father namely P.G.K.Menon, the said Gouthamchand Jain (A-1) executed three sale deedds, pertaining to the aforesaid properties in favour of his wife Manjula(A-2) registered as Document Nos.1258, 1259 and 1262 of 2000, on the file of the Sub Registrar, Neelankarai. Similarly on the same day, the said Gouthamchand Jain (A-1) had executed another three sale deeds registered as Document Nos.1260, 1261 and 1263 of 2000, on the file of the Sub Registrar, Neelankarai, infavour of the second petitioner, (A-4). Thereafter, the said Manjula (A-2) had appointed one Sekar (A-5) and Senthilkumar (A_6) are her Power of Attorney Agents, pertaining to the properties purchased by her as aforesaid, after receiving money from the wives of the said A-5 and A-6. On 11.08.2004, sold an extent of 2100 sq.ft, on various persons on the file of the Sub Registrar, sowcarpet. Further, when the defacto complainant demanded return of the title deeds, the Accused 5 and 6 along with the other accused had threatened her. Based on the said allegations, the defacto complainant filed a complaint before the Law Enforcing Agency, the first respondent registered a case under Sections 406, 420 and 506 (ii) r/w 34, IPC. Challenging the same, the present petition is filed.

3. Mr. M.Manokaran, learned counsel appearing for the petitioner would submit that it is purely a civil transaction and the power of attorney deed was executed in favour of the A1 and based upon the strength of the said deed, the son of A1 had executed a three sale deed in favour of A2 and had executed another three sale deeds in favour of A4. It is open to the defacto complainant to pursue the civil suit filed by him for declaration in O.S.No.33/2013 on the file of the Principal District Munsif Court. A1 also filed a civil suit in C.S.No.1035 of 2009 on the file of this Court. for recovery of money and the same is pending. Therefore, the learned counsel would contend that the allegations contained complaint do not disclose any offence and the dispute is purely civil in nature, the same is liable to be quashed.

4. In support of his contention, the learned counsel appearing for the petitioner would rely upon the judgment reported in 2011(13) Supreme court Cases 412 [Thermax Limited And Others Vs. K.M.Johny and others] in paragraph Nos.23, 35, 37 are as extracted below:

"23. It is clear that in view of inordinate delay and laches on the part of the complainant and of the fact that the complaint does not disclose any ingredients of Section 420 IPC and also of the fact that at the most it is the dispute of civil nature, this Court quashed the orders of the Magistrate and the High Court.

35. Dr. A.M. Singhvi, learned senior counsel for the appellant/accused contended that not only material facts were suppressed from the Magistrate but the previous three complaints to various police authorities and their closure reports were kept away from the Magistrate so as to mislead the Court. It is seen from the materials placed that three complaints containing similar allegations have been investigated previously and all were closed as the alleged claim was found to be of civil nature. In those circumstances, it did not lie for Respondent No.1-the complainant to approach the Magistrate with the same subject Complaint. Inasmuch as the dispute arose out of a contract and a constituted remedy is only before a Civil Court, the Magistrate ought to have appreciated that Respondent No.1 was attempting to use the machinery of the criminal courts for private gains and for exerting unjust, undue and unwarranted pressure on the appellants in order to fulfill his illegal demands and extract undeserving monetary gains from them.

36.

37. It is settled law that the essential ingredients for an offence under Section 420, which we have already extracted, is that there has to be dishonest intention to deceive another person. We have already quoted the relevant allegations in the complaint and perusal of the same clearly shows that no such dishonest intention can be seen or even inferred inasmuch as the entire dispute pertains to contractual obligations between the parties. Since the very ingredients of Section 420 are not attracted, the prosecution initiated is wholly untenable. Even if we admit that allegations in the complaint do make out a dispute, still it ought to be considered that the same is merely a breach of contract and the same cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction. Inasmuch as there are number of documents to show that appellant-Company had

acted in terms of the agreement and in a bona fide manner, it cannot be said that the act of the appellant-Company amounts to a breach of contract."

5. The learned Additional Public Prosecutor appearing for first respondent would submit that admittedly the defacto complainant son borrowed a loan from A1 and thereafter the said loan amount was settled and however after settlement of the loan A1 obtained power of attorney from legal heirs who in turn executed a three sale deed in favour of A2 and had executed another three sale deeds in favour of A4 and thereby, committed the offences and hence, he prayed to dismiss the petition.

6. On a perusal of the entire record and the allegations made against the petitioners/accused, it appears there was a loan transaction in between the accused and defacto complainant and towards the loan, A1 obtained a power of attorney thereafter executed sale deed in favour of his wife and other persons. The said allegation shows that there is prima facie case against the petitioner. Further the issues raised in this petition is triable issue, which has to be decided only before the trial Court. Therefore, there is prima facie case against the petitioners to proceed against them.

7. I am not inclined to grant any relief to the petitioner however considering the limited request now sought for to dispense with the appearance of the petitioners before the trial Court. Accordingly, the appearance of the petitioner before the Trial Court is dispensed with. However, this order will not stand on the way of the Trial Court to insist for the appearance of the petitioner for receiving copies under Section 207 of Cr.P.C., framing of charges, questioning under Section 313 of Cr.P.C. and judgment and as and when the Trial Court feels it necessary.

8. With the above lines, this petition is disposed of. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

jrs

To

1. The Inspector of Police,
Central Crime Branch,
Team I, Egmore, Chennai-600 008.

2. The Public Prosecutor, Madras High Court, Madras.
+1cc to Mr. P. Krishnan, Advocate SR.No. 2485

<https://hcservices.ecourts.gov.in/hcservices/>

A.SK(17/02/2020)

CrI.O.P.No.3428 of 2013
and
CrI.MP.Nos.1 & 2 of 2013