

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 24.08.2020
CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.5608 of 2020
and Crl.MP.Nos.3164 & 3165 of 2020

1.M.Chandrasekar
2.Rajendran

...Petitioners/Accused 1 & 2

Vs.

R.Rajamani

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in C.C.No.142 of 2020 pending on the file of the Hon'ble Judicial Magistrate No.I, Namakkal and quash the same as against the petitioners.

For Petitioners : Mr.R.Vivekananthan
For Respondent : No Appearance

O R D E R

This petition has been filed to quash the proceedings in C.C.No.142 of 2020 pending on the file of the Hon'ble Judicial Magistrate No.I, Namakkal having been taken cognizance for the offences under Section 420 of IPC, as against the petitioners.

2. The learned counsel for the petitioners would submit that the petitioners are arrayed as A1 and A2 on the complaint lodged by the respondent herein for the offences under Section 420 of IPC. During the year 2013, the respondent had approached the petitioners to supply animal feeds on credit system. Accordingly, the respondent purchased animal feeds to the tune of Rs.3,59,68,318/- But as assured by the respondent, he did not repay the amount. Therefore, the petitioners lodged complaint before the Inspector of Police, District Crime Branch, Namakkal and the same was registered in Cr.No.12 of 2018 for the offences punishable under Sections 420 and 506(i) of IPC as against the respondent. In fact, he was arrested and remanded to judicial custody. Thereafter, after releasing on bail, the respondent admitted his liability and issued two cheques towards legally enforceable liability. Both the cheques were presented for collection and were returned dishonoured for the reason that "payment stopped by the drawer". After issuance of statutory notice, proceeded for the offences punishable under Section 138 of Negotiable Instruments Act as against the respondent in STC.Nos.170 & 171 of 2019 on the file of the Judicial Magistrate-I, Namakkal.

2.1 He further submitted that after receipt of summon in the said proceedings, the respondent lodged complaint alleging that the respondent issued cheques as security to continue the business operation between the petitioners and the respondent.

Therefore, both the cheques were not issued for any legally enforceable debt and both cheques were misused by the petitioners. On receipt of the same, the Inspector of Police, District Crime Branch, Namakkal registered case in Crime No.7 of 2019 for the offences under Section 23, 409, 415 and 420 of IPC. After due enquiry, the said complaint was referred as mistake of fact and final report was also submitted before the Judicial Magistrate-I, Namakkal. On receipt of the referred charge sheet notice, the respondent initially filed protest petition and the same was withdrawn with liberty to file private complaint. The learned Magistrate without considering the above facts and circumstances mechanically has taken cognizance for the offences under Section 420 of IPC as against the petitioners. Therefore, the present impugned complaint is nothing but counterblast to the proceedings initiated by the petitioners as against the respondent for the offence punishable under Section 138 of NI Act. He also relied upon the judgment of the Hon'ble Supreme Court of India in the case of M/s.Eicher Tractor Ltd. and Others Vs. Harihar Singh & Anr in CrI.A.No.1755 of 2008 dated 07.11.2008. Therefore, he sought for quashment of the proceedings.

3. Heard Mr.R.Vivekananthan, learned counsel for the petitioner. Though notice was served to the respondent, no one appeared on behalf of the respondent by person or through pleader.

4. There are totally two accused, in which the petitioners are arrayed as A1 and A2 in the complaint lodged by the respondent for the offence punishable under Section 420 of IPC. The respondent lodged private complaint alleging that the complainant is running proprietorship concern in the name and style of M/s.RSR Egg Centre along with poultry farms at Namakkal District. The petitioners are engaged in the business of selling animal feeds in cash and also on credit basis to customers. In the year 2013, the respondent approached the petitioners for supply of animal feeds and the same was agreed and animal feeds were supplied to the respondent. In the normal course of business transaction between the petitioners and the respondent, for the purpose of holding out security as against the feeds supplied by the petitioners, the respondent issued two cheques for security purpose. While being so, in the year 2017, the feeds supplied by the petitioners were not standard one and therefore vide communication dated 12.09.2017, the respondent issued stop payment in respect of the cheques issued to the petitioners. In order to take further action as against the petitioners, the respondent lodged complaint before the District Crime Branch, Namakkal and after the direction issued by the learned Judicial Magistrate-I, Namakkal under Section 156(3) of Cr.P.C., the case was registered in Cr.No.7 of 2019 for the offences under Sections 23, 409, 415 and 420 of IPC as against the petitioners. Unfortunately, the Inspector of Police, District Crime Branch, Namakkal referred the complaint as

mistake of fact and filed final report. Aggrieved by the same, the respondent filed private complaint and the same has been taken cognizance for the offence under Section 420 of IPC as against the petitioners.

5. On perusal of the records, the respondent admitted the fact that the respondent received animal feeds to the tune of Rs.3,59,68,318/-. Thereafter towards liability of purchase, the respondent issued cheques for the said sum. Thereafter, the respondent stopped payment and as such both the cheques were returned dishonoured. After issuance of statutory notice, the petitioners have initiated proceedings for the offences punishable under Section 138 of NI Act in STC.No.170 of 2019 and 171 of 2019. In fact, even before initiation of those proceedings, the petitioners lodged complaint as against the respondent before the District Crime Branch, Namakkal and the same was registered in Cr.No.12 of 2018 for the offences under Sections 420 and 506(i) of IPC, in which the respondent was also arrested and remanded to judicial custody. Only after released from the prison, the respondent issued cheques towards liability of purchase of animal feeds. On detailed enquiry, the Inspector of Police, District Crime Branch, Namakkal closed the complaint lodged by the respondent as mistake of fact. As against the closure report, the respondent initially filed protest petition and subsequently it was withdrawn with liberty to file private complaint. Thereafter, the present impugned complaint was lodged by the respondent and the same has been taken cognizance for the offences punishable under Section 420 of IPC. Therefore, the present impugned complaint is nothing but counter blast to the complaint lodged by the petitioners as against the respondent.

6. The learned counsel for the petitioners relied upon the judgment in the case of M/s.Eicher Tractor Ltd. and Others Vs. Harihar Singh & Anr in CrI.A.No.1755 of 2008 dated 07.11.2008, wherein the Hon'ble Supreme Court of India has held as follows:

6. In R.P. Kapur v. State of Punjab [AIR 1960 sc 866] this Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings:

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the

evidence adduced clearly or manifestly fails to prove the charge. (AIR para 6)

7. In dealing with the last case, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt, should not be an instrument of oppression or needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in *State of Haryana v. Bhajan Lal* [1992 Supp (1) SCC 335]. A note of caution was, however, added that the power should be exercised sparingly and that too in the rarest of the rare cases. The illustrative categories indicated by this Court are as follows: (SCC pp. 378-79, para 102) "(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 or the Act concerned (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 Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fides 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."

8. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage. It would not be proper for the High Court to analyse the case of the complainant in the

light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In proceedings instituted on complaint, exercise of the inherent powers to quash the 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 in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceedings.

The Hon'ble Supreme Court of India held that the subsequent complaint is nothing but counter blast to the proceedings initiated by the petitioners. In the case on hand, the private complaint lodged by the respondent is nothing but counter blast to the proceedings initiated by the petitioners herein. Therefore, the impugned complaint is manifestly attended with malafides 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.

7. Therefore, the continuance of the impugned proceedings will be nothing but abuse of process of law and as such the petitioners need not go for ordeal of the trial since the complaint itself cannot be sustained as against the petitioners. Accordingly, this Criminal Original Petition is

allowed, and the proceedings in C.C.No.142 of 2020 pending on the file of the learned Judicial Magistrate No.I, Namakkal is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

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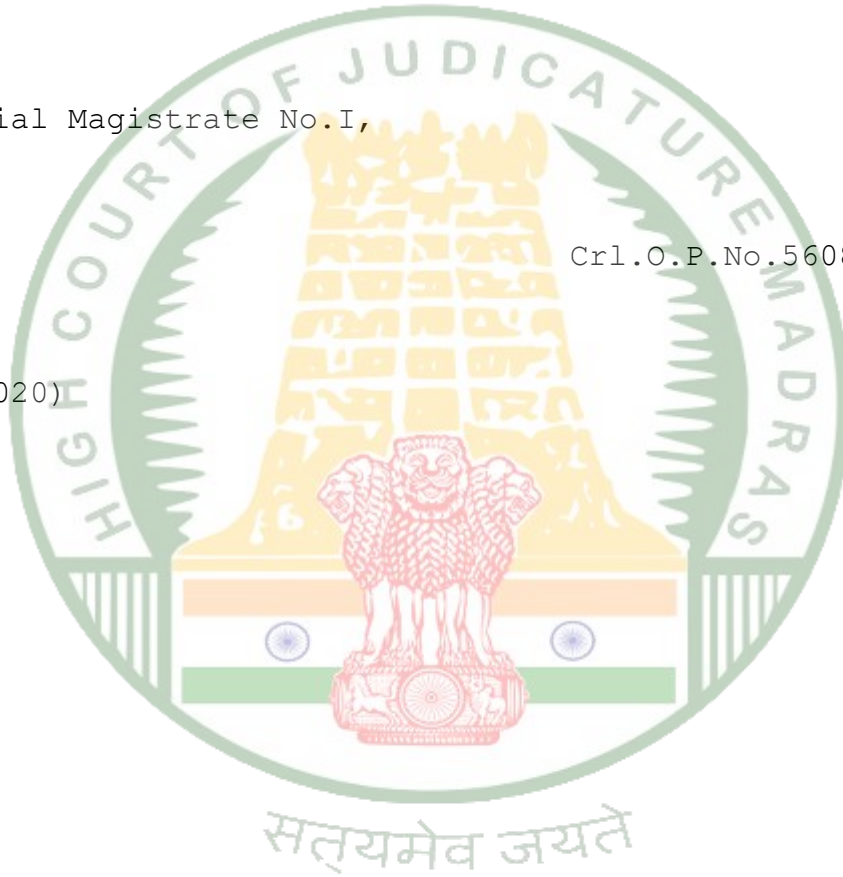
Sub Assistant Registrar

To

The Judicial Magistrate No.I,
Namakkal

Crl.O.P.No.5608 of 2020

VG-II (CO)
RV(23/9/2020)



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