

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.02.2020

Pronounced on: 13.05.2020

Coram:

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

CRL.O.P.No.8872 of 2019

and

CRL.MP.Nos.8250 and 4741 of 2019

Mohomed Saleem ..Petitioner/Accused
Vs.

R.Senthil Kumar ..Respondent/complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code to call for the records pursuant to the proceedings in CC.No.5752 of 2018 on the file of the II Metropolitan Magistrate, Egmore and quash the same.

For Petitioner : Mr.G.Mutharasu

For Respondent : Mr.A.Bala Singha Ramanujam

ORDER

Criminal Original Petition has been filed by the accused under Section 482 of Cr.P.C., to quash the proceedings against him in C.C.No.5752 of 2018 on the file of the II Metropolitan Magistrate, Egmore, Chennai.

2. The respondent herein has filed a private complaint stating that the petitioner herein has created a false document (Rental agreement dated 24.07.2019) by forging his signature and filed RCOP.No.688 of 2017 on the file of the XIV Small Causes Court, Chennai praying to restore the electricity connection to the tenanted portion. Based on the said complaint the learned II Metropolitan Magistrate, Egmore, Chennai has taken the case on file in C.C.No.5752 of 2018 for the offences punishable under Sections 420, 465, 468 and 471 of IPC and issued summons to the petitioner/accused. After receipt of the summons, the accused has filed the present petition to quash the proceedings against him.

3. Heard Mr.G.Mutharasu, the learned counsel for the petitioner and Mr.Balasingh Ramanujam, the learned counsel for

the respondent.

4. The learned counsel for the petitioner/accused has submitted that the petitioner was a tenant under the respondent in respect of a property measuring 100 sq.ft at No.26/1, Wuthucattan street, Periamet, Chennai - 600003 in pursuance of a rental agreement dated 01.02.2017. He further submitted that in the said portion, the petitioner was running a Tailoring shop in the name and style of "SALEEM TAILORS". He further submitted that the petitioner has paid Rs.2,00,000/- as advance and Rs.6,000/- as rent per month. He further submitted that the respondent has suddenly raised the rent from Rs.6000/- to Rs.8000/- and that the petitioner has not agreed for the same and hence, the respondent has disconnected the electricity connection. Therefore, the petitioner has filed RCOP.No.688 of 2017 on the file of the XIV Small Causes Court, Chennai for restoration of the electricity connection. He further submitted that the respondent also has filed RCOP.No.725 of 2017 on the file of the XV Small Causes Court, Chennai for eviction. He further submitted that both the parties compromised the matter and that the respondent has paid a sum of Rs.50000/- and after receipt of the said amount, the petitioner has vacated the premises and the same has been recorded in RCOP.No.725 of 2017.

5. The learned counsel for the petitioner has further submitted that after entering compromise and taking possession of the premises, the respondent with a malafide intention has filed a private complaint as if the petitioner has created a forged rental agreement. He further submitted that since the respondent has voluntarily entered into a compromise with the petitioner and paid a sum of Rs.50000/- and has taken possession, it has to be presumed that he has admitted the genuineness of the rental agreement. He further submitted that after availing the benefit, the respondent cannot challenge the said rental agreement. He further submitted that the respondent is estopped from denying the genuineness of the said rental agreement and therefore he prayed to quash the proceedings against the petitioner in C.C.No.5752 of 2018 on the file of the II Metropolitan Magistrate, Egmore, Chennai.

6. Per contra, the learned counsel for the respondent/complainant has submitted that the respondent has leased out a portion of his property to the petitioner in the month of January 2016 for running a tailor shop temporarily only for six months for a monthly rent of Rs.6000/- without receiving any advance. He further submitted that the petitioner has paid rent only upto November 2016 and thereafter, he did not pay rent and also electricity charges and hence the Electricity Department has disconnected the supply. He further submitted that the petitioner has filed RCOP.No.688 of 2017 on

the file of the XIV Small Causes Court, for restoration of electricity connection. In the said RCOP, the petitioner has filed a rental agreement dated 01.02.2017 stating that the said agreement has been executed by the respondent. In the said agreement it is also stated that the respondent has received a sum of Rs.2,00,000/- as advance. The respondent has not executed the said document and that the petitioner has fabricated the said document by forging the signature of the respondent.

7. The learned counsel for the respondent has further submitted that the respondent has filed a petition in MP.No.509 of 2017 in RCOP.No.688 of 2017 to send the said agreement to forensic lab to find out the genuinity of the signature found in the said document. But the petitioner has withdrawn the RCOP.No.688 of 2017 and consequently MP.No.509 of 2017 was dismissed. He further submitted that the respondent has filed RCOP. No.725 of 2017 on the file of the XV Small Causes Court, Chennai for eviction and got order in his favour and filed EP.No.644 of 2017 and at that point of time, the petitioner came for settlement and after receiving a sum of Rs.50000/- from the respondent, handed over vacant possession. He further submitted that since possession has been handed over, a compromise memo was filed in RCOP.No.725 of 2017 and in pursuance of the same, RCOP.No.725 of 2017 has been disposed of.

8. The learned counsel for the respondent has further submitted that since the petitioner has created a false document (rental agreement) by forging the signature of the respondent, the respondent has filed a complaint before the police, but no action has been taken on the said complaint. He further submitted that the respondent has filed Crl.OP.No.25370 of 2017 to direct the police to register an FIR. This court has disposed of the said Crl.OP directing the police to register FIR, but the police has issued only CSR and hence the respondent again approached this court by filing Crl.OP.No.11096 of 2018. This court has directed the respondent to file a private complaint and hence, the respondent has filed a private complaint. He further submitted that the learned II Metropolitan Magistrate, Egmore after considering the allegations made in the complaint and materials produced along with the complaint, has taken the case on file in C.C.No.5752 of 2018 and issued summons to the petitioner.

9. The learned counsel for the respondent has further submitted that after appearance of the petitioner in C.C.No.5752 of 2018, the respondent has filed Crl.MP.No.2141 of 2018 to send the alleged rental agreement to the forensic lab for comparing the signatures found in the said document with the admitted signature

of the respondent and getting handwriting expert's opinion. The learned Metropolitan Magistrate has allowed the said petition by the order dated 15.03.2019. He further submitted that instead of challenging the said order, the petitioner has filed the present petition to quash the proceedings in main C.C and the same is not maintainable. He further submitted that merely because the RCOP proceedings were disposed of as parties have compromised the matter, the offence committed by the petitioner will not be wiped out. He further submitted that the alleged rental agreement has been written on a stamp paper said to have been purchased from the Treasury of Villupuram District. He further submitted that the respondent has got information under the right to information Act in which the District Treasury Officer, Villupuram has stated that the said stamp paper was not sold by any of the sub-treasuries at Villupuram District and hence it is clear that the petitioner has fabricated the said rental agreement. He further submitted that the petitioner has committed grave offences and therefore, he prayed to dismiss this petition.

10. The learned counsel for the respondent in support of his contentions relied upon the following decisions:

1) Rajesh Bajaj Vs. State NCT of Delhi and Others (1999) 3 SCC 259.

2) M/s. Medohl Chemicals & Pharma Pvt Ltd. Vs. Biological E. Ltd, AIR 2000 (SC) 1869:2000 (2) Crimes 11.

11. It is an admitted fact that the petitioner herein was a tenant under the respondent in respect of a small portion of the property at D.No.26/11, Wuthucattan street, Periamet, Chennai. It is also an admitted fact that electricity connection for the said tenanted portion was disconnected and to restore the electricity connection, the petitioner herein has filed RCOP.No.688 of 2017 on the file of XIV Small Causes Court, Chennai in which the petitioner herein has produced a rental agreement dated 01.02.2017 said to have been entered between himself and the respondent herein. It is also an admitted fact that the respondent herein also filed an eviction petition in RCOP.No.725 of 2017 on the file of the XV Small Causes Court, Chennai.

12. Though the respondent herein has filed a petition in MP.No.509 of 2017 in RCOP.No.688 of 2017 to obtain handwriting expert's opinion with regard to the genuineness of the said rental agreement, subsequently both the parties settled the matter. In pursuance of the said settlement, the respondent has paid a sum of Rs.50000/- and that the petitioner, after receiving the said amount, has handed over the possession of the

tenanted premises to the respondent. They also filed a compromise memo in RCOP.No.688 of 2017. Accordingly, the said RCOP was disposed of on 11.04.2018. RCOP.No.688 of 2017 was dismissed as withdrawn. Consequently connected RCOP No.725 of 2017 also was disposed of. Only thereafter, the respondent herein has lodged a complaint before the police and filed CrIOPs before this court to direct the police to register an FIR and finally filed a private complaint before II Metropolitan Magistrate, Egmore, Chennai alleging that the petitioner herein has committed offences punishable under Sections 420, 465, 468 and 471 of IPC.

13. If really that the respondent felt that the petitioner has forged his signature and fabricated a false rental agreement and used the same for getting orders in his favour before the Rent Controller, he ought not to have agreed to compromise the matter. He ought not to have agreed to withdraw RCOP.No.688 of 2017. He should have insisted the Rent Controller to dispose of the RCOP No.688 of 2017 and MP.No.509 of 2017 on merits. If the respondent herein had not agreed to dispose of RCOP.NO.688 of 2017 as matter has been compromised and pursued MP.No.509 of 2017, the petitioner would have contested the said petition.

14. On the contrary, the respondent has voluntarily entered into a compromise with the petitioner herein and also paid a sum of Rs.50,000/- and took delivery of possession of the tenanted premises. So, it has to be presumed that the respondent has given up the idea of disputing the genuineness of the said rental agreement. He has decided to bury the hatchet and accordingly he paid Rs.50,000/- and took possession. After availing the benefit of the said compromise, the respondent cannot go back and re-agitate the matter before another forum. Compromise includes all issues. The respondent cannot take a portion of the compromise which is in his favour and dispute another portion which is adverse to him.

15. In *Rajesh Bajaj Vs. State NCT of Delhi and Others* (cited supra), the Hon'ble Supreme Court has held that the crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not.

16. In *M/s. Medohl Chemicals & Pharma Pvt Ltd., Vs. Biological E. Ltd* (cited supra), also the Hon'ble Supreme Court has held that both criminal law and civil law remedy can be pursued in diverse situation. They are not mutually exclusive but clearly co-extensive.

17. But in the present case, the facts are totally

different. In this case, the question involved is after availing the benefit of the compromise, and made one party to withdraw his case, whether another party can go against the compromise and seek remedy before another forum. In this case, the respondent has voluntarily paid a sum of Rs.50,000/- and took possession and therefore he is estopped from raising any dispute with regard to the alleged rental agreement. Hence the aforesaid decisions will not apply to the facts of this case.

18. As already pointed out that once the parties decided to bury the hatchet and settled the issues, it is not fair on the part of the one of the parties to file a criminal complaint in respect of the same issue. If the respondent has not agreed for compromise in RCOP, certainly he is entitled to file criminal case. But in this case the respondent has voluntarily entered compromise and paid Rs.50000/- and took possession. Under the said circumstances, this court is of the view that the continuance of the criminal proceedings against the petitioner is a clear abuse of process of the court and therefore the same is liable to be quashed.

19. In the result, this criminal original petition is allowed. The proceedings against the petitioner in C.C.No.5752 of 2018 on the file of the II Metropolitan Magistrate, Egmore, Chennai are quashed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gv

To

1.The II Metropolitan Magistrate,
Egmore,
Chennai.

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CRL.O.P.No.8872 of 2019
and

CRL.MP.Nos.8250 and 4741 of 2019

RGN (CO)
RN (04/06/2020)