IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2020

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.Nos.15242 and 15243 of 2014

1.N.Mohan
2.N.Balasubramaniyan ... Petitioners in Crl.O.P.15242/2014

1.A.P.Venkateshwaran @ Siddheswaran
2.B.Kameswaran ... Petitioners in Crl.O.P.15243/2014

Vs.

1. The State represented by
   The Inspector of Police,
   B-13, Pothanur Police Station,
   Coimbatore.

2. P.Ravichandran
   (R2 impleaded as per order
   of thisCourt dated
   15.07.2014 in M.P.No.3 of 2014)
   ... Respondents in Crl.O.P.15242/2014

State represented by
The Inspector of Police,
B 13, Poththannur Police Station,
Coimbatore.
(Ref. Cr. No.917/2012 dated 02.11.2012)
...Respondent in Crl.O.P.15243/2014



Prayer in Crl.O.P.No.15242 of 2014:

Petition filed under Section 482 of Cr.P.C., seeking to call for the records and quash the proceedings as against the petitioners pending in C.C.No.123/2014 on the file of the Judicial Magistrate No.7, Coimbatore for offences under Sections 447, 363 and 384 IPC.

Prayer in Crl.O.P.No.15243 of 2014:

Petition filed under Section 482 of Cr.P.C., seeking to call for the records and quash the proceedings in C.C.No.123/2014 pending on the file of the Judicial Magistrate VII, Coimbatore for offences under Sections 447, 363 and 384 IPC.

For Petitioners : Mr.D.Rajagopal
in both Crl.O.Ps.

For Respondents : Mr.C.Iyyapparaj for R1
Additional Public Prosecutor
in both Crl.O.Ps.

Mr.Sai Krishnan for R2
for M/s.Sai Bharath & Ilan
in Crl.O.P.15242/2014

COMMON ORDER

These petitions have been filed seeking to call for the records and to quash the proceedings in C.C.No.123 of 2014 pending on the file of the learned Judicial Magistrate No.7, Coimbatore for the offences under Sections 447, 363 and 384 I.P.C.

2.The petitioners in Crl.O.P.No.15242 of 2014 are the accused 1 and 2 and the petitioners in Crl.O.P.No.15243 of 2014 are the accused 3 and 4 in the case in C.C.No.123 of 2014 pending on the file of the learned Judicial Magistrate No.7, Coimbatore. Challenging the same, the petitioners have filed these petitions. The second respondent in Crl.O.P.No.15242 of 2014 is the defacto complainant.

3.The petitioners are alleged to have abducted the defacto complainant and his wife from their residence and coerced them to put their signature in the general power of attorney. Based on the complaint given by the defacto complainant, a case in Cr.No.917 of 2012 was registered. After investigation, the law enforcing agency filed final report on 31.03.2013 before the learned Judicial Magistrate No.7, Coimbatore. The learned Judicial Magistrate No.7, Coimbatore, did not accept the final report and the same was returned on 19.06.2013 raising certain queries. Thereafter, the law enforcing agency re-submitted the final report on 27.03.2014 and the learned Judicial Magistrate No.7, Coimbatore, took cognizance of the offence and issued summons to the accused. Hence, these petitions.

4.Mr.D.Rajagopal, learned counsel appearing for the petitioners would submit that the defacto complainant acted as facilitator for purchasing a property in Pattanam Village in Coimbatore in favour of A1 or in favour of the persons named by A1. Accordingly, A1 gave some amount to the defacto complainant for giving it as advance to the prospective owners of the land. Thereafter, A1 gave the balance money to one Easwaran and executed the sale deed, however, A1 was not able to give the balance money to other prospective land owners and execute the sale deed within the stipulated time.

5.The learned counsel appearing for the petitioners would further submit that thereafter, the land owners refused to accept the amount given by A1. Hence, A1 and his friends requested the defacto complainant to get back the advance amount from the prospective land owners. He would further submit that the defacto complainant and his wife executed general power of attorney in favour of A1 with regard to the properties owned by the defacto complainant and his wife and thereafter they cancelled the general power of attorney.

6.The learned counsel appearing for the petitioners would further submit that the general power of attorney was executed by the defacto complainant and his wife on 07.07.2008 before the Sub Registrar, Singanallur Sub Registrar Office, Coimbatore. The concerned Sub Registrar was examined as L.W.19 and he, in his statement has stated about the letter he received from the Inspector of Police, Pothanur, regarding the objections raised by the defacto complainant. L.W.19 has further stated that he has forwarded the said letter to one Mrs.Ratna who was the Registrar during the relevant point of time and received report from her and submitted the same to the Police Station.

7.The learned counsel appearing for the petitioners would further submit that in the said report, it is stated that after obtaining no objection from the defacto complainant only the general power of attorney was executed. However, after a lapse of nearly four years, the defacto complainant has lodged the complaint, which is un-sustainable one.



8.The learned counsel appearing for the petitioners would further submit that during the course of business transaction A1 and his friends went to the house of the defacto complainant and would further submit that it will not amount to trespassing into the defacto complainant's property. Hence, the necessary ingredients required for the alleged offences are not established and forcing the petitioners to face the trial is un-sustainable one.

9.The learned counsel appearing for the petitioners would further submit that for the very same issue, the defacto complainant and his wife have preferred a suit in O.S.No.227 of 2009 before the District Munsif Court, Udumalpet, another suit in O.S.No.285 of 2010 before the District Munsif Court, Palladam and the wife of the defacto complainant has preferred a suit in O.S.No.2218 of 2012 before the Additional District Munsif Court No.I, Coimbatore. He would further submit that when all these civil suits are pending, filing a criminal complaint against the petitioners is abuse of process of law. Accordingly, he prayed for allowing these petitions.

10.In support of his contentions, the learned counsel appearing for the petitioners relied upon the following decisions of the Hon'ble Apex Court:

(i)The decision reported in (2010) 8 SCC 775 (Kishan Singh (Dead) Through LRs. Vs. Gurpal Singh and others), the relevant portion of which reads as follows:

> "22. In cases where there is a delay in lodging an FIR, the court has to look for a plausible explanation for such delay. In the absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an afterthought or had given a coloured version of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the civil court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case. (Vide Chandrapal Singh v. Maharaj Singh [ (1982) 1 SCC 466 : 1982 SCC (Cri) 249 : AIR

1982 SC 1238] ; State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992 SC 604] ; G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513 : AIR 2000 SC 754] ; and Gorige Pentaiah v. State of A.P. [(2008) 12 SCC 531 : (2009) 1 SCC (Cri) 446]"

(ii) The decision reported in 2019 AIR (SC) 3807 (Commissioner of Police and others Vs. Devender Anand and others), the relevant portion of which reads as follows:

"4.1 Even considering the nature of allegations in the complaint, we are of the firm opinion that no case is made out for taking cognizance of the offence under Section 420/34 IPC. The case involves a civil dispute and for settling a civil dispute, the criminal complaint has been filed, which is nothing but an abuse of the process of law.

4.2 It is required to be noted that after having come to know that the property was mortgaged with the Andhra Bank, the original complainant himself paid the mortgage money and got the mortgage redeemed. Not only that, thereafter, he got the sale deed executed in his name. Thereafter also, he filed the complaint with the learned Magistrate, being an application under Section 156(3) of the Cr.P.C., which came to be rejected by the learned Magistrate, vide order dated 27.03.2015. The said order was not assailed by the complainant. It appears that thereafter he filed a private complaint under Section 200 Cr.P.C. which was pending before the learned Magistrate. Despite the above, he filed a writ petition before the High Court, which is nothing but an abuse of the process of law. The criminal proceedings have been initiated by the original complainant to settle the civil dispute. Therefore, in the facts and circumstances of the case, the Investigating Officer and other police officers were justified in not registering the FIR and in coming to the conclusion that the complaint be filed. The earlier opinion on preliminary inquiry was never placed before the DCP. Thereafter, on thorough investigation/inquiry and considering the facts and circumstances of the case narrated hereinabove, when it was opined that the dispute between the parties is of a civil nature, the High Court ought not to have issued further directions. The High Court ought to have closed the proceedings. Not only the High Court has issued further directions, but even has imposed costs and an action against the appellants 3 to 5 herein which, in the facts and circumstances of the case, is not sustainable."

11.Per contra, Mr.Sai Krishnan, learned counsel appearing for the defacto complainant would submit that it is true that the defacto complainant acted as facilitator and entered into agreement with A1 for purchasing a property in Pattanam Village in Coimbatore in favour of A1 or in favour of the persons named by A1. Accordingly, A1 gave some amount to the defacto complainant for giving it as advance to the prospective owners of the land and the defacto complainant also gave the amount as advance to the prospective land owners as per the extent of lands. He would further submit that time is essential in agreement and would further submit that thereafter, A1 did not come forward to give the balance money and execute the sale deed within the stipulated time. Hence, the prospective land owners refused to execute the sale deed and also refused to return the money, for which act, the defacto complainant could not be held responsible.

12.The learned counsel appearing for the defacto complainant would further submit that inorder to extract money from the defacto complainant, contrary to the agreement, A1 along with the other accused trespassed into the house of the defacto complainant on 07.07.2008, abducted the defacto complainant and his wife and taken them to Singanallur Sub Registrar Office, Coimbatore and under threat and coercion forced them to execute the general power of attorney in favour of A1. Hence, the ingredients necessary for the offences under Sections 447, 363 and 384 of I.P.C. are clearly established.

13.The learned counsel appearing for the defacto complainant would further submit that on the strength of the general power of attorney, A1 entered into sale agreement in favour of his brother for the properties owned by the defacto complainant and his wife. Thereafter, the defacto complainant and his wife cancelled the general power of attorney on 18.12.2008 and the defacto complainant issued legal notice to A1 informing about the cancellation of general power of attorney and the same was received by A1 on 23.12.2008. The defacto complainant also lodged complaint before the law enforcing agency. Even thereafter, A1 executed sale deeds on 31.12.2008, 02.01.2009 and on 13.01.2009 in favour of third parties.

14.The learned counsel appearing for the defacto complainant would further submit that though the defacto complainant made repeated complaints, there was no action on the part of the law enforcing agency and hence, he filed Crl.O.P.No.26543 of 2012 and pursuant to the order of this Court, the case in Cr.No.917 of 2012 came to be registered. Even thereafter, there was no progress in the investigation.

15.The learned counsel appearing for the defacto complainant would further submit that since there was no progress in the investigation, the defacto complainant filed Crl.O.P.No.31302 of 2012 before this Court for transfer of investigation and this Court, though did not transfer the investigation, vide order dated 20.06.2013, directed the law enforcing agency to complete the investigation within a period of six months from the date of receipt of the copy of the order. Even thereafter, final report was not filed. Hence, the defacto complainant filed another criminal original petition in Crl.O.P.No.3076 of 2014 before this Court seeking for a direction to the law enforcing agency to complete the investigation and to file a final report and thereafter, the final report was filed.

16.The learned counsel appearing for the defacto complainant would further submit that though civil suits are pending before competent civil Courts, it will not bar the defacto complainant to initiate criminal prosecution against the accused for their criminal activity. He would further submit that when similar issue came up before the Hon'ble Apex Court, the Hon'ble Apex Court refused to interfere with the criminal proceedings. Accordingly, he prayed for dismissal of the criminal original petitions.



17.In support of his contentions, the learned counsel appearing for the defacto complainant relied upon the following decisions of the Hon'ble Apex Court:

(i)The decision reported in (2007) 7 SCC 394 (Japani Sahoo Vs. Chandra Sekhar Mohanty), the relevant portion of which reads as follows:

"14. The general rule of criminal justice is that "a crime never dies". The principle is reflected in the well-known maxim nullum tempus aut locus occurrit regi (lapse of time is no bar to Crown in proceeding against offenders). The Limitation Act, 1963 does not apply to criminal proceedings unless there are express and specific provisions to that effect, for instance, Articles 114, 115, 131 and 132 of the Act. It is settled law that a criminal offence is considered as a wrong against the State and the society even though it has been committed against an individual. Normally, in serious offences, prosecution is launched by the State and a court of law has no power to throw away prosecution solely on the ground of delay. Mere delay in approaching a court of law would not by itself afford a ground for dismissing the case though it may be a relevant circumstance in reaching a final verdict."

(ii)The decision reported in (2019) 9 SCC 677 (Dr.Lakshman Vs. State of Karnataka and others), the relevant portion of which reads as follows:

"8. It is not seriously disputed by the parties with regard to the entering of the agreements for procuring the land in favour of the appellant in Ballur Village, Anekal Taluk, Bangalore Urban District and the respondents have received the amount of Rs 9 crores by way of demand drafts and cheques. It is the specific case of the appellant that there are schedules mentioned to the agreements as per which the respondents have agreed to procure the land covered by Survey Nos. 115 and 117 of Ballur Village apart from other lands. In a petition under Section 482 CrPC it is fairly well settled that it is not permissible for the High Court to record any findings, wherever there are factual disputes. Merely on the ground that there is no pagination in the schedule, the High Court has disbelieved such schedule to the agreements. It is the specific case of the appellant that the lands covered by Survey

Nos. 115 and 117 of Ballur Village were sold even prior to the first agreement, as such the respondents have committed an act of cheating. It is also the specific case of the appellant that two cheques were issued by the respondent-accused by way of security for the amount of Rs 9 crores which is advance but the account of such cheques was closed even prior to entering into the agreement itself. The second complaint filed by the appellant is self-explanatory and he is forcefully made to sign the sale deed which were executed subsequently for the lands covered by Survey Nos. 115 and 117 of Ballur Village. Mere filing of the suits for recovery of the money and complaint filed under Section 138 of the NI 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 CrPC. It is fairly well settled that power under Section 482 CrPC 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 NI Act, 1881 by itself is no ground to quash the proceedings. While considering the petition under Section 482 CrPC, 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 8-11-2012. 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 CrPC.

9. The learned Senior Counsel Shri R. Basant appearing for the accused, in support of his case, relied on the judgment of this Court in S.W. Palanitkar v. State of Bihar [(2002) 1 SCC 241 : 2002 SCC (Cri) 129] and submitted that every breach of contract may not result in a penal offence, but in the very same judgment, this Court has held that breach of trust with mens rea gives rise to a criminal prosecution as well. In a given case, whether there is any mens rea on the part of the accused or not is a matter which is required to be considered having regard to the facts and circumstances of the case and contents of the complaint, etc. In the case on hand, it is clearly alleged that even before entering into the agreement dated 26-9-2012, lands were already sold to third party, which were agreed to be procured in favour of the appellant. Not only that, it is the specific allegation of the complainant that the cheques were issued towards security from the account which was also closed much earlier to the date of agreement itself.

10. The learned counsel also relied on the judgment in Anil Mahajan v. Bhor Industries Ltd. [(2005) 10 SCC 228 : (2006) 1 SCC (Cri) 746] but in the very same judgment it is also held that where there exists a fraudulent and dishonest intention at the time of the commission of the offence, law permits the victim to proceed against the wrongdoer for having committed an offence of criminal breach of trust or cheating. In another case relied on by the learned counsel viz. Inder Mohan Goswami v. State of Uttaranchal [(2007) 12 SCC 1 : (2008) 1 SCC (Cri) 259] this Court has reiterated the scope of power of the High Court under Section 482 CrPC. Having regard to the facts of the case, we are of the view

that the said judgments relied on by the learned counsel would not support the case of the respondents. It is also to be noticed that in the complaint filed in PCR No. 14420 of 2015, investigation has been completed and charge-sheet was also filed on 22-12-2015."

18.The learned Additional Public Prosecutor would submit that trial in this case is yet to be commenced. He would further submit that the issues raised by the petitioners are triable issues which cannot be canvassed in a petition filed under Section 482 of Cr.P.C. Accordingly, he prayed for dismissal of the criminal original petitions.

19.Heard the arguments advanced on either side and perused the materials available on record. This Court also paid active consideration in this case.

20.Perusal of records disclose that the defacto complainant acted as facilitator for purchasing a property in Pattanam Village in Coimbatore in favour of A1 or in favour of the persons named by A1. Accordingly, A1 gave huge amount to the defacto complainant for giving it as advance to the prospective owners of the land. Thereafter, A1 gave the balance money to one Easwaran and executed the sale deed, however, A1 was not able to give the balance money to other prospective land owners and execute the sale deed within the stipulated time.

21.Perusal of records further disclose that the defacto complainant and his wife executed general power of attorney in favour of A1 with regard to the properties owned by the defacto complainant and his wife on 07.07.2008 before the Sub Registrar, Singanallur Sub Registrar Office, Coimbatore.

22.It is un-disputed fact that there was business transaction inbetween the accused and the defacto complainant. Hence, this Court can easily draw presumption that A1 is entitled to meet the defacto complainant in his house frequently. In the course of business transaction, A1 and his friends accompanied the defacto complainant and his wife to Singanallur Sub Registrar Office, Coimbatore.



23.It is the categorical version of the defacto complainant that under threat and coercion, they were forced to execute general power of attorney in favour of A1 on 07.07.2008. However, there is some distance inbetween Singanallur Sub Registrar Office and defacto complainant's house and they did not make any alarm during the travel from their house to Singanallur Sub Registrar Office. They did not make any objection before the Sub Registrar on the same day or on the subsequent days and they only cancelled the general power of attorney on 18.12.2008, after a lapse of five months and thereafter they lodged the first complaint before the law enforcing agency. There is also no proper explanation for the delay in cancellation of the general power of attorney and in lodging the complaint.

24.It is also un-disputed fact that for the very same issue, the defacto complainant and his wife have preferred a suit in O.S.No.227 of 2009 before the District Munsif Court, Udumalpet, another suit in O.S.No.285 of 2010 before the District Munsif Court, Palladam and the wife of the defacto complainant has preferred a suit in O.S.No.2218 of 2012 before the Additional District Munsif Court No.I, Coimbatore. When such being the position, filing criminal complaint against the petitioners is clear abuse of process of law.

25.This Court perused the decisions of the Hon'ble Apex Court relied upon by the learned counsel appearing for the defacto complainant. The decisions relates to cheating and criminal breach of trust and hence does not apply to the present case on hand.

26.The learned counsel appearing for the petitioners has rightly relied upon the decisions of the Hon'ble Apex Court. In the decision reported in (2010) 8 SCC 775 (Kishan Singh (Dead) Through LRs. Vs. Gurpal Singh and others), the Hon'ble Apex Court has clearly observed that in cases where there is a delay in lodging an FIR, the Court has to look for a plausible explanation for such delay. In the absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an afterthought or had given a coloured version of events. In such cases the Court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the civil Court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party.

27.In the present case, it is alleged that under threat and coercion, the defacto complainant and his wife were forced to execute general power of attorney in favour of A1 during July, 2008, however, the first complaint was lodged only during December, 2008. Even thereafter, the defacto complainant did not proceed the matter immediately and he proceeded with the matter only during the year 2012 by filing criminal original petition and only thereafter the criminal law was set in motion and there is no proper explanation for the delay in lodging the F.I.R.

28.Further, there are civil suits pending for the very same issue before the competent civil Court. Simultaneous proceedings is permissible only when the defacto complainant establishes the criminal activities committed by the accused.

29.In the present case, it is alleged that the petitioners trespassed into the house of the defacto complainant and they abducted the defacto complainant and his wife on 07.07.2008 and taken them to Singanallur Sub Registrar Office, Coimbatore and under threat and coercion they forced the defacto complainant and his wife to execute general power of attorney in favour of A1.

30.However, the concerned Sub Registrar when examined as L.W.19, in his statement has stated about the letter he received from the Inspector of Police, Pothanur, regarding the objections raised by the defacto complainant. L.W.19 has further stated that he has forwarded the said letter to one Mrs.Ratna who was the Registrar during the relevant point of time and received report from her and submitted the same to the Police Station. In the said report, it is stated that after obtaining no objection from the defacto complainant only the general power of attorney was executed.

31.In view of the all the above, I have no hesitation to quash the proceedings in C.C.No.123 of 2014 on the file of the learned Judicial Magistrate No.7, Coimbatore.

32.The learned counsel appearing for the petitioners would now submit that during the pendancy of these criminal original petitions, the case in C.C.No.123 of 2014 has been transferred from the file of the learned Judicial Magistrate No.7, Coimbatore, to the file of the learned Judicial Magistrate, Madhukarai, Coimbatore and has been re-numbered as C.C.No.460 of 2019.



33.These criminal original petitions are allowed and the proceedings in C.C.No.123 of 2014 on the file of the learned Judicial Magistrate No.7, Coimbatore [now pending on the file of the learned Judicial Magistrate, Madhukarai, Coimbatore, in C.C.No.460 of 2019], is hereby quashed. It is made clear that the observations made in this order is only for the purpose of disposal of these petitions and it will not have any bearing on the civil suits pending before the competent civil Courts.

34.These criminal original petitions are accordingly allowed. Consequently, connected miscellaneous petitions, if any, are also closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.7,
   Coimbatore.

2. The Judicial Magistrate,
   Madhukarai, Coimbatore.

3. The Chief Judicial Magistrate,
   Coimbatore.

4. The Inspector of Police,
   B-13, Pothanur Police Station,
   Coimbatore.

5. The Public Prosecutor,
   High Court of Madras,
   Chennai 600 104.

+1cc to Mr.T.Saikrishnan, Advocate, S.R.No.18378

Crl.O.P.Nos.15242 and
15243 of 2014



SV(CO)
KKV/21/05/2020