BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.03.2020

CORAM:

THE HONOURABLE **DR.JUSTICE G.JAYACHANDRAN**

Crl.O.P.(MD)No.13459 of 2015
and
M.P.(MD)Nos.1 & 2 of 2015

1.Kathirvel
2.Balamuruganantham
4.Vetrivelkannan ... Petitioners / Accused No.1 to 3

Vs.

1.The Inspector of Police,
District Crime Branch,
Madurai District, Madurai. ... 1st Respondent / Complainant

2.K.Gunasekaran ... 2nd Respondents / Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the proceedings in C.C.No.164 of 2011 on the file of the Judicial Magistrate No.I, Madurai, quash the same on the ground abuse of process of law.

For Petitioners: Mr.P.Thirumahilmaran

For R1 : Mr.K.Suyambulinga Bharathi,
Government Advocate (Crl.side)

For R2 : Mr.T.A.Ebenezer

ORDER

Petition filed under Section 482 Cr.P.C., to quash the criminal complaint filed by the defacto complainant/second respondent, alleging that he was inducted as a partner in the Sri Mappillai Vinayagar Roller Flour Mill on 24.05.1988 and thereafter, partnership was re-constituted on 11.03.1997 on the death of its founder M.A.Kandasamy. While so, a forgery dissolution deed was created by the petitioners herein on 31.03.2006 and properties were mortgaged in favour of the SBI Bank, which was taken over by the ICICI Bank.

2.The contention of the petitioner is that the said dissolution deed is a genuine document, which was voluntarily executed by the defacto complainant. But for some reason, after lapse of one year, a criminal complaint was given and in this connection a suit for declaration initiated by the petitioners before the Subordinate Judge, Madurai in O.S.No.296 of 2010 and an interim order has also been obtained on 01.06.2010. While so, the present criminal complaint with ulterior motive been filed by the defacto complainant as if the dissolution deed been forged, which has to be quashed.

3. The learned Government Advocate(Crl.side) appearing for the State would submit that based on the complaint given by K.Gunasekaran, First Information Report in Crime No.11 of 2007 was registered for the offence under Sections 463, 465, 471, 406 and 420 IPC. The statement of witnesses have been recorded relating to the genuineness of the dissolution deed alleged to have been executed by the partners of Sri Mappillai Vinayagar Roller Flour Mill. This document, dated 31.03.2006 was denied by the defacto complainant and subject matter of investigation. 161 statements of one Ramasamy, Manager of the firm revealed that in the dissolution deed dated 31.03.2006, Kathirvel, Balamuruganantham, Vetrivelkannan alone signed in the presence of K.Gunasekaran.

4.In this case, Investigating Officer has examined the accused persons and asked them to produce original dissolution deed, for further investigation. The petitioners/accused have informed the Investigating Officer that the original dissolution deed has been handed over to ICICI Bank, which took over the loan of SBI Bank. Hence, the Investigating Officer has examined the Branch Manager, ICICI Bank on 10.12.2009. The Branch Manager has informed that the petitioners have approached their Bank for obtaining loan, however, they have not deposited or produced the dissolution deed, dated 31.03.2006. In the said circumstances, the learned Government Advocate(Crl.side) appearing for the first respondent would submit that due to non-availability of the document, which is alleged to have been forged by the petitioners, they were unable to proceed further.

5.The learned counsel for the petitioners would submit that the original dissolution deed have been filed in the suit in O.S.No.296 of 2010 on the file of the Subordinate Judge, Madurai and if the document is available, they will produce the same to the Investigating Officer.

6.Heard the learned counsel on both sides and perused the C.D.file.

7.The petitioners have relied upon the document and had availed loan from ICICI Bank and sent the defacto complainant out from the partnership firm, however, they have not produced the document for the investigation to verify whether the defacto complainant has voluntarily signed in the dissolution deed and whether the dissolution deed is genuine or not.

8.During the course of investigation, petitioners have informed the Investigating Officer that the document has been given to ICICI Bank, which statement now found to be false.

9.In the said circumstances, the petitioners have no locus to seek quash the investigation without producing the dissolution deed and establishing their innocence. Unless and until the original deed produced before the Investigating Officer to test the genuineness of the deed, the Court cannot pre-conclude that the document is genuine and quash the complaint.

10.Since the alleged dissolution deed has not been produced, with the availability of other materials collected during the investigation, the Investigating Officer has filed the charge sheet and the said charge sheet now sought to be quashed. The petitioners, who are in possession of the dissolution deed and relied upon the deed to oust the defacto complainant from the partnership firm, cannot withhold the same and take advantage of the same. Therefore, this Court finds no merits in this petition and accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1.The Judicial Magistrate No.I, Madurai.

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

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

+1 CC to M/s.P.THIRUMAHILMARAN, Advocate (SR-9689[F]
+1 CC to M/s.T.A.EBENEZER, Advocate (SR-9890[F]

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