BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 11.12.2019
PRONOUNCED ON: 15.05.2020
CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P.(MD)No.5774 of 2015
and
M.P.(MD)Nos.1 & 2 of 2015

K.Mohammed Amarudeen ... Petitioner/Accused

Vs.

1. The State rep. by,
   The Inspector of Police,
   District Crime Branch,
   Ramanathapuram,
   Ramanathapuram District. ... 1st Respondent/Complainant

2. R.Martin,
   S/o.Rathinasamy,
   Partner, Trinity & Co-Industrial Painting Contractors,
   C/o.Sammaddi Fuel Centre,
   Mandapam, Ramanathapuram,
   Ramanathapuram District. ... 2nd Respondent/
   Defacto Complainant

3. Trinity & Co MR-HI-TECH Engineers Pvt. Ltd.,
   (Joint Venture)
   Rep. by R. Martin(Partner),

   Head Office : 104, Lourdu Doss Road,
   Little Mount, Saidapet,
   Chennai – 600 015.

   Branch Office : 10-A, Railway Feeder Road,
   Ramanathapuram – 623 504. ... 3rd Respondent/
   3rd Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C, to quash C.C.No.2 of 2015 in First Information Report in Crime No.25 of 2014 on the file of the Judicial Magistrate No.II, Ramanathapuram.

For Petitioner : Mr.N.Thiyagarajan,
Senior Advocate,
for Mr.T.Sakthi Kumaran,
for M/s.Victory Associates.

For R-1 : Mr.A.Robinson,
Government Advocate(Crl.Side).

For R-2 : Mr.S.R.Sundaram

ORDER

This criminal original petition has been filed for quashing the proceedings in C.C.No.2 of 2015 on the file of the Judicial Magistrate No.II, Ramanathapuram.

2. The petitioner is figuring as the sole accused in the said case. The defacto complainant is the second respondent herein. The second respondent alleged that the petitioner was engaged by them as a subcontractor and that the petitioner had cheated and caused wrongful loss to him. The case was registered as Crime No.25 of 2014 on the file of the Inspector of Police, District Crime Branch, Ramanathapuram, for the offence under Section 420 of I.P.C. The case was investigated and final report was filed and it was taken on file by the learned trial Magistrate. To quash the same, this criminal original petition has been filed.

3. Heard the learned senior counsel appearing for the petitioner, the learned Government Advocate(Crl. Side) appearing for the first respondent and the learned counsel appearing for the defacto complainant.

4. The contention of the learned senior counsel appearing for the accused is that the second respondent who is running Trinity & Co MR-HI-TECH Engineers Pvt. Ltd., subcontracted the work of grouting and spalling in the Pamban Bridge in the year 2013. The terms and conditions of the contract were reduced into writing. The petitioner executed the works in time and it was also duly certified by the concerned authority. The second respondent had originally paid a sum of Rs.1,00,000/- as advance and also made certain lumpsum payments. After adjusting them, respondents 2 and 3 who were still liable to pay a sum of Rs.10,00,000/- to the petitioner as per the bills raised by him. Since the payment was not forthcoming, the petitioner sent a notice on 14.12.2013. The petitioner would claim that after receiving the notice, the second respondent called upon the petitioner to meet him in person on 31.12.2013 at Pamban for receiving the balance amount. The petitioner claims that the second respondent persuaded the petitioner to take up the painting works also. While giving him a cheque for Rs.10,00,000/-, the second respondent is said to have requested the petitioner to keep the said cheque for Rs.10,00,000/- as security. However, a sum of Rs.50,000/- was paid as advance for the painting work. The petitioner asserts that the second contract work was also completed in time and that the second respondent owed him a sum of

Rs.30,00,000/-. The petitioner claims that he returned the cheque given by the second respondent for a sum of Rs.10,00,000/- believing his assurance that he would settle the dues payable to the petitioner under both the contracts. It appears that apart from the petitioner, the second respondent had engaged a few others also as subcontractors and since the petitioner had played some facilitatory role, the second respondent agreed to deposit a sum of Rs.50,00,000/- in the petitioner's account in Bank of Baroda, Mandapam Branch, Ramanathapuram. Instead of acting in terms of the understanding, the second respondent chose to file a baseless criminal complaint against the petitioner herein. The learned senior counsel would contend that the impugned proceedings deserve to be quashed as the transactions are purely civil in nature.

5. It is not in dispute that there was a works contract entered into between the petitioner and the second respondent. The petitioner had admittedly performed his part of the contract. The second respondent had deposited a sum of Rs.50,00,000/- in the petitioner's bank account. According to the petitioner, the entire sum belonged to the petitioner in terms of the understanding between the parties. Assuming that there was some difference of opinion in the matter of calculation, it is eminently a civil dispute which has to be resolved only before the appropriate civil forum. Invoking the remedy under the Criminal Law is only an abuse of legal process. In this regard, the learned senior counsel appearing the petitioner placed reliance on the decisions reported in (2001) CRI.L.J.869(Elamma John V. Mercy) and (2018) 13 SCC 374 (Medmeme LLC and others V. Ihorse BPO Solutions (P) Ltd.).

6. The learned senior counsel would further contend that since the second respondent had given him a cheque for Rs.10,00,000/- to be kept as security, the petitioner in turn handed over his bank cheque book to the second respondent. When the petitioner came to know that the cheque book handed over by the petitioner was being misused, he issued stop payment to the bank on 16.05.2014. Only as a counter blast, the instant complaint was given on 24.06.2014. The petitioner's senior counsel would pointedly contend that it is the defacto complainant who had defrauded the petitioner by misusing his cheque book and that the petitioner had not committed any offence of cheating as alleged. Even if all the averments set out in the prosecution case are taken to be true on the face of it, still there is no offence of cheating. His core argument is that to make out the acts of cheating, there must be dishonest intention at the very inception. In this case, no such element can be made out. Therefore, according to him the impugned proceedings deserve to be quashed. He also placed reliance on a few decisions of the Hon'ble Supreme

Court. The learned counsel also filed written submissions in support of his contentions.

7. The learned Government Advocate(Crl. Side) submitted that the impugned proceedings cannot be quashed because of the factual nature of the contentions advanced by the petitioner.

8. The learned counsel appearing for the defacto complainant submitted that the petitioner is being rightly prosecuted and that the inherent powers of this Court ought not to be invoked. The defacto complainant is an industrial painting contractor. He was awarded Government contract and he had engaged the petitioner as a subcontractor. It is well known that though mobilization advance is paid, the Government departments pay the balance amount only at the conclusion of the contract. But the petitioner and the other subcontractors insisted for weekly payments so that they could pay wages to the workers. Thus there was an understanding between the petitioner and the second respondent in this regard. The other subcontractors did not want to open any separate bank accounts. Therefore, the petitioner's bank account with Bank of Baroda, Mandapam Branch was used to settle the weekly bills of not only the petitioner, but the other subcontractors also. The second respondent has filed a very detailed counter affidavit setting forth the terms of understanding. In fact the complainant claims in the counter affidavit that the current account in the name of AB Engineering Enterprises Pvt. Ltd., was itself opened only on his introduction. Since the said bank account did not serve any other purpose, the petitioner had also handed over his cheque book containing 50 leaves.

9. I must record at this juncture that the learned counsel appearing for respondents 2 and 3 produced the original cheque book before this Court. In fact in the written submissions filed by the petitioner/accused, this is not disputed. The stand of the defacto complainant is set out in the following paragraphs in the counter affidavit:-

> "iv. On receipt of the Cheque Book containing 50 leaves by Amarudeen, he had entrusted the Cheque Book to my custody for the apparent reason that the entire sum of Rs.50,00,000/-(Rupees Fifty Lakhs) are my own money, and, to ensure that the above said sum should not be misused by Amarudeen. I have transferred the sum of Rs.50,00,000/-(Rupees Fifty Lakhs) to M/s.AB Engineering Enterprises Pvt. Ltd., Account on 15.05.2014 as per the agreed arrangement, to return and repay the amount of Rs.50,00,000/-(Rupees Fifty Lakhs) by cash which was paid to him towards Settlement of Contract Bills for various Sub Contractors on

completion of grouting and other works for the Bridge. On the same day i.e., on 16.05.2014 while the cheque amount of Rs.50,00,000/-(Rupees Fifty Lakhs) was being transferred from my account with Bank of Baroda to M/s.AB Engineering Enterprises Pvt. Ltd., Account with same Branch, Bank of Baroda, Amarudeen had used 4 cheque leaves bearing Nos.000001 to 000004 with which Amarudeen encashed Rs.20,00,000/- in cash, which was returned to me, in order to make cash disbursements for various Sub Contractors including Amarudeen. Amarudeen had used two more cheque leaves bearing No.000005 to 000006 without any names written to be encashed in the next day. But, Amarudeen had given stop payment on the same day evening without assigning any reason whatsoever. When, I tried to contact him over phone, more than 10 times, he has avoided to speak to me. When I checked the balance amount in M/s.AB Engineering Enterprises Pvt. Ltd., Account, it was having balance only Rs.17.50 Lakhs instead of Rs.30 Lakhs, to be handed over to me. It is preplanned arrangement for cheating.

v. On 17.05.2014, I have noticed that last leaf of the cheque bearing No.000050 had been removed stealthily by Amarudeen from the cheque book which was handed over directly by him to me in the presence of Bank Manager Mr.Suresh on the previous day morning i.e. On 16th May.

vi. Amarudeen had stealthily credited Rs.12,50,000/- to his Bank Account at Chennai on 17th May, by using the stolen cheque leaf No.000050. The remaining balance of Rs.17,50,000/- due to be paid rested in Amarudeen's Account in the Bank of Baroda, Mandapam Branch. On protection of the Banking Guidelines, the Bank Manager had frozen the balance Amount of Rs.17,50,000/- in the aforesaid Account. The Ramnad District Crime Branch directed to aforesaid Branch Manager not to Release the aforesaid sum of Rs.17,50,000/- from Amarudeen's Account to him.

vii. Thus, by stealthily removing the cheque No.000050, Amarudeen had committed theft, fraud and misappropriation of Rs.12,50,000/- to me and to my Company being the Defacto and Dejure owner of the entire amount of Rs.30,00,000/- which was to be returned by cash to me as per the oral mutual arrangement and agreement, as made at the time of depositing of Rs.50,00,000/-(Rupees Fifty Lakhs) by me in Amarudeen's account.

viii. The aforesaid unlawful, illegal offensive action by giving stop payment to the aforesaid Two cheques drawn and signed by him, and fraudulently transferring a sum of Rs.12,50,000/- by the stolen cheque No.000050 into his Bank Account at Chennai is proven case of misappropriation, cheating, theft and Criminal Breach of Trust committed by Amarudeen against me and my Company. Amarudeen had handed over his cheque book to me in the presence of the Branch Manager Mr.Suresh, and this Cheque leaves are to be used as per the oral mutual arrangement and agreement for withdrawing Cash for repayment of loans taken from other Lenders. On the basis of the aforesaid facts, I have given a Complaint dated 24.06.2014 to the District Superintendent of Police, Ramnathapuram, and, the FIR No.25/14, dated 04.07.2014, in Crime No.1399 of 2014 was registered against Amarudeen and his father Kudbudeen A1 & A2 respectively."

10. I am of the view that the inherent powers of this Court exercising under Section 482 of Cr.P.C. are not meant to be invoked in a case of this nature. A mere look at the narration of the respective contentions would lead one to the conclusion of the issue involves complicated and disputed facts. The prosecution of course is under an obligation to prove its case beyond reasonable doubt. But then, if this Court answers the various contentions urged by the petitioner's senior counsel, it has to necessarily delve into the factual aspects.

11. The Hon'ble Supreme Court in a recent decision reported in CDJ 2019 SC 855(Chilakamarthi Venkateswarlu and others V. State of Andhra Pradesh and others) held as follows:-

> "12. The plenary inherent jurisdiction of the Court under Section 482 of Code of Criminal Procedure may be exercised to give effect to an order under the Code; to prevent abuse of the process of the Court; and to otherwise secure the ends of justice.
>
> 13. The inherent jurisdiction, though wide and expansive, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself, that is, to make orders as may be necessary to give effect to any order under the Code, to prevent the abuse of the process of any Court or to otherwise secure the ends of justice.
>
> 14. For interference under Section 482, three conditions are to be fulfilled. The injustice which comes to light should be of a grave, and not of a trivial character; it should be palpable and clear and not doubtful and there should exist no other provision of law by which the party aggrieved could

have sought relief.

15. In exercising jurisdiction under Section 482, it is not permissible for the Court to act as if it were a trial Court. The Court is only to be prima facie satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate materials and documents on record, but it cannot appreciate the evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

16. The High Court should not, in exercise of jurisdiction under Section 482, embark upon an enquiry into whether the evidence is reliable or not, or whether on a reasonable appreciation of the evidence the allegations are not sustainable, for this is the function of the trial Judge. This proposition finds support from the Judgment of this Court in Zandu Pharmaceutical Works Ltd., and Ors. V. Mohd. Sharful Haque and Anr. MANU/SC/0932/2004: (2005) 1 SCC 122.

17. The High Court may have an obligation to intervene under Section 482 of the Code in cases where manifest error has been committed by the Magistrate in issuing process despite the fact that the alleged acts did not at all constitute offences. Reference may be made to S.W.Palanitkar and Ors. V. State of Bihar and Anr. MANU/SC/0672/2001: (2002) 1 SCC 241. However, it is important to remember that while exercising powers under this Section, the High Court does not function as a Court of appeal or revision."

12. I am therefore of the view that the case on hand is not a fit case for exercising the inherent powers of this Court. I make it clear that this Court has not gone into the merits of the matter. All the defences of the petitioner are left open. However, considering the overall facts and circumstances of this case, the personal appearance of the petitioner before the Court below is dispensed with.

13. The learned trial Magistrate shall insist on the personal appearance of the petitioner only when it is absolutely necessary and imperative. The petitioner shall be called upon to appear in person before the trial Court at the time of answering the charges and at the time of examination under Section 313 of Cr.P.C., and at the time of pronouncement of Judgment. On all other occasions, the petitioner can be represented through his counsel.

14. With this observation and direction, the criminal original petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

pmu

To:

1. The Judicial Magistrate No.II,
   Ramanathapuram.

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

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

Crl.O.P.(MD)No.5774 of 2015
and
M.P.(MD)Nos.1 & 2 of 2015
15.05.2020

_KM (09.06.2020) 8P 4C