BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.03.2020

Delivered on : 10.03.2020

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.(MD)No.16419 of 2016
and
Crl.M.P.(MD)Nos.8034 and 8035 of 2016

Selvakumari, W/o.A.Velappan .. Petitioner

Vs.

1.State, represented by
The Inspector of Police,
District Crime Branch,
Trichy, Trichy District.
[Crime No.19/2014]

2.P.Vijayakumar .. Respondents

Prayer:- Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the impugned charge sheet laid in C.C.No.13 of 2016, on the file of the Judicial Magistrate Court No.III, Tiruchirappalli, quash the same insofar as the petitioner/A5 is concerned.

For Petitioner : Mr.R.Anand
for Mr.M.Saravanan

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

For R2 : Mr.G.S.Ashok Adhithyan

ORDER

This petition has been filed under Section 482 of Cr.P.C., to quash all proceedings in C.C.No.13 of 2016, pending against the petitioner *viz.*, Selvakumari, who is arrayed as fifth accused, for the offences under Sections 403, 406, 420 and 477 r/w. 109 I.P.C.

2.The complaint given by one P.Vijayakumar, second respondent herein and registered in Crime No.19 of 2014, by the first respondent police, reads as below:-

2.1.The second respondent/de-facto complainant - P.Vijayakumar and one Velappan, who is arrayed as first accused, started a Oil Mill by name, V.V.K. Oil Mill at Manachanallur, Trichy. The land in which, the Mill located, belongs to the second respondent/de-facto complainant. The said Velappan agreed to be equal Partner in the business and promised to contribute his share of capital by mobilizing loan and also promised to look after the business personally. Accordingly, on 07.02.2011, the Deed of Partnership was entered between the second respondent/de-facto complainant P.Vijayakumar and the first accused Velappan. Both of them jointly availed loan to the tune of Rs.9,70,000/- from five individuals and Rs.18,12,000/- from the State Bank of India. As an initial capital, the second respondent/de-facto complainant invested Rs.6,75,000/-. Velappan did not contribute any money on his part. The second respondent/de-facto complainant - P.Vijayakumar was employed in a private College. Hence, the other Partner Velappan was administering the Mill. Within five months of the commencement of the business, the second respondent/de-facto complainant found that there was shortage of Rs.5,00,000/- in the accounts. Suspecting that, Velappan has not properly maintained the account, the second respondent/de-facto complainant decided to stop the business. However, Velappan promised to take over the business and its asset and liability and promised to discharge the debt incurred, particularly, the loan availed from the State of Bank of India on showing the property of the second respondent/de-facto complainant as security. The said Velappan failed to clear the debts in the State Bank of India and pay the loan installment as promised. Therefore, the State Bank of India, for the debt, attempted to sell the property of the second respondent/de-facto complainant. With much difficulty by raising loan from various persons, the second respondent/de-facto complainant cleared the debts to save his property.

2.2.Complaint given alleging that Velappan, the erstwhile partner, has committed breach of trust by violating the terms of agreement as entered between them on 27.03.2012 regarding the debts of the Mill. Further, the income of the Mill was taken away by Velappan (A1) and other accused, who are relatives and family members of A1.

2.3.As far as the present petitioner Selvakumari is concerned, she is the wife of A1. The specific allegation against this petitioner in the complaint is that she used to visit the Oil Mill and take the collections to meet out her personal need. The capital of Oil Mill was slowly siphoned by Velappan with the assistance of his relatives, who are all arrayed as accused, since they all abetted A1 in the crime. The second accused *viz.,* Alagaperumal is the father of Velappan, the third accused *viz.,* Selvi is the sister of Velappan, the fourth accused *viz.,* Selvaraj is the husband of

Selvi and the fifth accused *viz.,* Selvakumari, the petitioner herein, is the wife of the said Velappan. Apart from that, the salesman *viz.*, Saravanan is also arrayed as sixth accused, since he helped to fabricate the accounts and allowed to siphon the sale proceeds.

3.The main contention of the petitioner herein to quash the criminal case pending against her is that, in the Partnership business, if at all any dispute in accounting, it can be sorted only by a civil suit. If there is no intention of deception at the inception, no charge for cheating can be attributed. Even if there was any deception as alleged by the de-facto complainant, it can only be attributed to Velappan and not to his wife, the petitioner herein. Likewise, if any element of breach of promise, only the person, who committed the breach can be prosecuted and not his wife.

4.The second respondent/de-facto complainant contends that within five months of the Partnership, he found non-accounting and shortage to the tune of Rs.5,00,000/-. However, instead of giving complaint immediately, he has entered into further Deed of Partnership with Velappan on 27.03.2012 after one year. In the said Partnership Deed, in modification of the earlier Partnership term, the second respondent/de-facto complainant has authorized the said Velappan to be the sole Administrator of the Mill and given the responsible for both the asset and liability on condition that he will clear the debts from and out of the Mill income and render the accounts every month to the second respondent/de-facto complainant. Further, he also agreed to pay interest for a sum of Rs.6,75,000/-, which was the capital investment made by the second respondent/de-facto complainant. While so, without any basis for criminal prosecution, the petitioner has been roped in as fifth accused.

5.In fact, the first accused and the petitioner got separated long back and not living together. She had no occasion either to go to the Oil Mill or to take away the sale proceed. The first accused disappeared and absconded without discharging the debts of V.V.K. Oil Mill, in which, the first accused and his sister Selvi alone are Partners. The petitioner is no way connected with the affairs of the said Oil Mill or in the affairs of the absconding first accused. The learned counsel appearing for the petitioner would submit that the final report has to be quashed, as it is squarely falls within the guidelines laid down by the Hon'ble Supreme Court in the case of **State of Haryana Vs. Bhajan Lal** reported in **1992 Cri. L.J. 527.**

6.The learned Additional Public Prosecutor and the learned counsel for the second respondent/de-facto complainant would submit that based on the complaint given by the second respondent - P.Vijayakumar, the statements of the witnesses have been recorded, in which, the witnesses have spoken about the act of this petitioner that she used to go to the Oil Mill and take away the collections of the Oil Mill. Since there is sufficient material to show that the collections of the Oil Mill were shared by this petitioner along with other accused, after completion of investigation, final report has been filed against this petitioner along with others for the offences under Sections 403, 406, 420 and 477 r/w. 109 IPC.

7.The case is based on the two Partnership Deeds entered between the second respondent/de-facto complainant and the first accused. In the first Partnership Deed dated 07.02.2011, the second respondent/de-facto complainant and Velappan have agreed to start the business by name, V.V.K. Oil Mills and share the profit equally. Clauses 8 to 10 of the Agreement read as below:-

> ''8.The partners shall keep and maintain proper books of accounts securities and be open to inspection of each partner or his agent at all reasonable time with power to take copies.
>
> 9.Disputes or difference between the partners during the partnership shall be referred to and settled according to the Arbitration and Conciliation Act, 1996.
>
> 10.Partners shall punctually pay and discharge their separate debts and liabilities, and shall indemnify and keep indemnified the firm effectually against the same.''

8.In the complaint, the second respondent/de-facto complainant P.Vijayakumar has stated that within five months of the Management by Velappan, he found shortage of Rs.5,00,000/-. However, without mentioning about this, after one year of the Partnership Deed, both P.Vijayakumar and Velappan has entered into second Partnership Agreement on 27.03.2012 in modification of the earlier Partnership Deed. In this modified terms of Partnership, the parties have agreed to give administration of the Mill exclusively to Velappan and the other Partner P.Vijayakumar will be entitled for interest to his capital Rs.6,75,000/- and the debt of the Mill has to be discharged by Velappan. Further, the said Velappan has agreed to produce receipts for the payment of monthly due for the loan availed to the second respondent/de-facto complainant P.Vijayakumar so that he will be rest assured that Velappan is discharging the liability in accordance with their agreement.

9.While so, after two years of this Agreement, on 01.11.2014, a complaint has been given by P.Vijayakumar to the District Superintendent of Police, Tiruchirappalli, alleging cheating by Velappan. In the said complaint, the second respondent/de-facto complainant has specifically stated that Velappan has taken away

Rs.10,00,000/- from the Mill's collection and absconding and from and out of the misappropriated money, Velappan has started business in the name of ''Sivaram Traders'' and ''Sivaram Enterprises'' through his Benami. He has alleged that around Rs.35,00,000/- has been cheated by Velappan and his family members. If the allegation as made in the complaint and the statement of the witnesses are to be accepted as true, the evidence which should be against this petitioner is the allegation of visiting the Mill and taking away the sale proceeds of the Mill. Except the oral assertion, there is no material collected during the investigation against this petitioner that the money of the Mill was given to this petitioner. Because, the petitioner is the wife of A1, the person against whom the second respondent/de-facto complainant had grievance, for that reason, the petitioner cannot be prosecuted, when she is not connected with the affairs and management of the Oil Mill.

10.From the facts and material, the ingredient for cheating and misappropriation if at all available, it is only against Velappan and the newly inducted Partner, not against other family members, more particularly, not as against this petitioner. Though she is the wife of Velappan, there is no evidence to show that money from the Mill flown to this petitioner account. Except the vague statements of some of the witnesses, who claim to be the employees of the Mill, even if it is to be taken as true, without documentary evidence, abetment to commit the crime does not get attracted. No evidence that she aid or assist or conspire to breach the trust, cheat or falsify the account. The second Partnership Deed dated 27.03.2012, empowers the second respondent/de-facto complainant to get the accounts every month, to ascertain the payment of dues. He has filed complaint only after two years, alleging siphoning of funds, misappropriation and cheating. In the course of making such allegation, there must be *prima facie* materials to show that she abetted to commit the crime or misappropriated money passed to the petitioner herein. In the absence of material evidence to that effect, no prosecution can stand the test of trial. Hence, invoking Section 482 of Cr.P.C. to prevent the abuse of process of law, the final report laid in C.C.No.13 of 2016 is quashed in respect of the petitioner alone.

11.In the result, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1.The Judicial Magistrate No.III,
   Tiruchirappalli.

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

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

+1 CC to Mr.M.SARAVANAN, Advocate (SR-10971[F] dated 11/03/2020)

order in
Crl.O.P.(MD)No.16419 of 2016
10.03.2020

VB(17.03.2020) 6P 5C