



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2021

CORAM

THE HON'BLE Mr. JUSTICE C.V.KARTHIKEYAN

Cr1.O.P.No.27347 of 2015
and M.P.Nos.1 and 2 of 2015

1. M.Abdul Malick
2. M.Shariq Jamal ... Petitioners/Accused Nos.1 and 2
Vs.

State rep. by
The Inspector of Police,
South Crime Police Station,
Vellore.
(Crime No.07 of 2014)

... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records concerned in C.CNo.319 of 2015 pending on the file of the learned Judicial Magistrate No.1, Vellore and quash the same as against the petitioners.

For Petitioners .. Mr.T.R.Ravi

For Respondent .. Mr.E.Raj Thilak
Government Advocate (Criminal Side)

ORDER

This petition has been filed under Section 482 of Cr.P.C., to quash further proceedings in C.C.No.319 of 2015, now pending on the file of the learned Judicial Magistrate No.1, Vellore.

2.The defacto complainant is the brother of the first petitioner/first accused. The second petitioner/second accused is the son of the first petitioner/first accused. The defacto complainant and the first petitioner are sons of M.Abdul Jabbar Sahib and there was a common Beedy business running in the name of Trade Mark No.14. Trade Mark with respect to said product was settled among two of them and also among other brothers by the father. Documents to that effect had been executed by the father. Insofar as business is concerned, it was to be run jointly by the first petitioner herein and defacto complainant, who are both brothers.



3.It appears from a perusal of notice issued on behalf of the defacto complainant on 17.02.2012 that, the first petitioner herein had given a complaint against the defacto complainant before the South Crime Police Station, Vellore with respect to settlement of shares of the profit by each partner. That notice was suitably replied by the learned Counsel on behalf of the first petitioner herein. Much later, in the year 2014, a complaint had been lodged with respect to the events, which had taken place between 20.01.2011 and 30.12.2011, whereby, the defacto complainant alleged that the first petitioner herein had taken away amounts from the partnership firm and had not accounted for the same.

4.It is pointed out by Mr.T.R.Ravi, learned Counsel for the petitioner that in the first place, the complaint had been lodged after much delay, as a matter of fact, delay of more than two years and it is pointed out that no explanation has been given as to why the complaint was lodged after about two years. It is also pointed out that by Mr.T.R.Ravi, learned Counsel that, as a partner, the first petitioner was entitled to take away money, after entering the amounts in the ledger and learned Counsel pointed out that, documents filed along with complaint also included notings in the ledger on 03.01.2011, 25.08.2011, 25.06.2011 and 30.12.2011, with respect to taking away of money. It is therefore pointed out that, the amounts have been taken out after making necessary entries in the books maintained by the partnership firm and taking it away legally and lawfully.

5. It is also pointed out that, there was no intention to cheat or to take out money unlawfully. The learned Counsel also pointed that with respect to the sales, the area has also been divided by the father himself and there are documents to that effect.

6.More importantly, I am informed that, the defacto complainant had unfortunately expired. A perusal of the list of witnesses, filed along with the final report shows that it is only the de-facto complainant who is the material witness. LW-2 is an employee and he only speak about the records, but he cannot speak about the motive or about the inter se relationship between the 1st petitioner and defacto complainant. LW-3 to LW-6 were witnesses for the mahazer prepared in the course of investigation and also for the confession recorded. They cannot speak about the transactions alleged to be unlawful by the defacto complainant.

7. In so far as the second petitioner is concerned, there is no whisper at all about his role, except the fact that he is the son of the first petitioner herein.



8.The continuation of trial, in these circumstances, would be a futile exercise and therefore, I would interfere with the same and quash the same. No incriminating material would come out during the course of trial, particularly owing to the death of the defacto complainant. He is the only person, who knows about the accounts of the partnership firm. The second witness/LW.2, as a employee would not have any personal knowledge as stated above with respect to the averments.

9. In view of these facts, further proceedings in C.C.No.319 of 2015, now pending on the file of the learned Judicial Magistrate No.1, Vellore are quashed. Hence, the Criminal Original Petition is allowed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

smv/grs
To

1.The Judicial Magistrate-I,
Vellore.

2.-Do- Thro Chief Judicial Magistrate,
Vellore.

3.The Inspector of Police,
South Crime Police Station,
Vellore.

4.The Public Prosecutor,
High Court, Madras.

+1cc to M/s.T.R.Ravi, Advocate Sr.44924

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srg 05/10/2021