IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.12.2021

CORAM:

THE HONOURABLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

Crl.O.P.No. 26052 of 2016
and
Crl.M.P.No. 12925 of 2016

A.L. Narasimhan ... Petitioner/A5

Versus

A.S. Santhanam ... Respondent

Criminal Original Petition filed under section 482 of Criminal Procedure Code, to call for the records made in the complaint in C.C.No. 2141 of 2016 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai-15 and quash the same.

For Petitioner : Mr.S.P. Sudalaiyandi

For Respondent : Mr.A.S.Santhanam
No Appearance

ORDER

This Criminal Original Petition has been filed seeking to quash the proceeding in C.C.No.2141 of 2016 on the file of XVIII Metropolitan Magistrate, Saidapet, Chennai-15.

2. The case of the respondent/complainant is that the accused 1, 3, 4 and 5 are the younger brothers of the complainant and the second accused is the wife of the first accused. According to the complainant, in the year 1957, the complainant's father had purchased the immovable property in Door No.36/53, Rajunaicken Street, West Mambalam, Madras-600 033 and another property in Old No.15, Aryagowder Road, West Mambalam, Chennai - 600 033. But those properties were purchased in the name of the mother of the complainant. Thereafter, the complainant's father made a registered settlement deed dated 24.03.2003 at Old No.36, Rajunaicken Street, West Mambalam, Chennai-600 033 in favour of the

petitioner's mother and also petitioner's brothers namely A.Rajagopalan, A.Mukundan under the condition that the two brothers should take care of the retarded son Mr.A.Rangaraghavan till his death. Subsequently, the petitioner's mother also made an unregistered Will dated 12.12.2002 bequathing the property at Old No.15, Aryagowder Road, West Mambalam, Chennai-600 033, in favour of the above said two brothers on the same condition. In the meanwhile, the petitioner's brothers had filed the original petition No.274 of 2008 for probate and the said OP was converted into TOS No.29 of 2009 and the same is pending before this Court. In the said proceedings, the respondent/complainant herein stated that the WILL as well as the settlement deed executed by the parents are genuine and the petitioner also had not disputed the WILL and the said settlement deed. In 2006, one of the petitioner's brother namely Mr.A.Vijaya Sarathy filed a Civil Suit in C.S.No.340 of 2006 seeking partition of the above said properties. In the suit, the respondent/ complainant was arrayed as first defendant. Therefore, the complainant is well aware in the year 2006 that there is a settlement deed and the WILL executed by the petitioner's parents in favour of the above said two brothers. Apart from the above proceedings, the respondent/complainant herein filed two suits before this Court in C.S.No. 404 of 2013 and C.S.No.592 of 2013 for declaration and the same were pending for adjudication. While so, the respondent/Complainant herein filed the above criminal complaint on the allegations that his brothers, who are accused in the complaint colluded, fabricated and forged the settlement deed as well as the WILL which are the subject matter of the above pending suits before this Court. Therefore, it is alleged that they have committed the alleged offences under Sections 463, 464, 467, 471, 209, 210 199 and 200 IPC. The averments in the complaint are nothing but false. The entire averments in the complaint are already reiterated in the civil suits filed by the respondent/complainant and the complainant has not made out any case against the petitioner. The complaint is a clear abuse of process of law intended to harass the petitioner. The averments in the complaint are disputes which are exclusively triable by a Civil Court. Earlier, the respondent/ complainant herein filed a criminal complaint before the Inspector of Police, Ashok Nagar Police Station against the petitioner and others on the same set of facts. The Inspector of Police enquired into the matter and closed the complaint on the ground that no case is made out against the petitioner and others. In spite of the same, the present complaint has been filed with the same set of facts. Hence, the petitioner is constrained to file this petition to quash the above compliant in C.C.No.2141 of 2016 pending on the file of XVIII Metropolitan Magistrate, Saidapet, Chennai-600 015.

3. The learned counsel appearing for the petitioner submitted that in respect of the very same dispute, suits are

pending before this Court. The allegation in the complaint is that the petitioner and other brothers have colluded, fabricated and forged the settlement deed as well as the WILL, which are the subject matter of the above suits before this Court. With the very same averments, the respondent/complainant herein has already filed the suits, questioning the genuineness of the settlement deed and WILL. While so, the above criminal prosecution launched against the petitioner is nothing but a clear abuse of process of law in order to harass the petitioner. He further submitted that the Hon'ble Supreme Court in an identical case, where an attempt has been made to convert a civil dispute into a criminal case, held in the case of Kishan Singh (D) through L.Rs. v. Gurpal Singh and Ors reported in (2011) 1 MLJ (Crl) 566 (SC), dated 12.08.2010, that if there is a colour of civil dispute, then there is no scope for any criminal prosecution. He has also relied on another judgment in the case of Suneet Gupta v. Anil Triloknath Sharma and Ors reported in (2008) 11 SCC 670, dated 28.04.2008, wherein, it was held that in respect of disputes which are civil in nature, criminal proceedings initiated by the complainant amounts to abuse of process of law. In yet another judgment in the case of V.Y.Jose and Anr v. State of Gujarat and Anr reported in (2009) 1 SCC (Crl) 996, dated 16.12.2008, it was held that a case essentially involving a civil dispute cannot be entertained in exercise of power under Section 482 which serves a salutary purpose that a person should not undergo harassment of litigation even though no case has been made out against him. It was also held that a dispute, which essentially involves civil adjudication, should not be allowed to become the subject matter of criminal proceedings, which a gullible litigant may resort to as a short cut to execute a non existence decree.

4. He further submitted that even though the respondent/complainant is well aware that the WILL was executed in the year 2002 as well as the settlement deed executed in the year 2003 as also the partition suit in C.S.No.340 of 2006 and the TOS pending from the year 2009, he has filed the instant complaint in the year 2016 after a period of more than 10 years and therefore the complaint is barred by limitation. In the decision of the Honourable Supreme Court in (2011) 7 SCC 59 it was held that it is necessary to draw a distinction between civil wrong and criminal wrong and hence, the appellant cannot be allowed to be subjected to rigmarole of criminal prosecution for long number of years, even when admittedly a civil suit has already been filed and is still sub-judice. The learned counsel for the petitioner also submitted that the petitioner is a Chartered Accountant and having many clients and in view of the false complaint filed by the complainant, he is made to appear before the concerned Court and it has affected his professional duties very much. Hence, he prayed the above complaint is

liable to be quashed.

5. The respondent/complainant has not filed any Counter Affidavit in this case.

6. Heard Mr.S.P.Sudalaiyandi, learned counsel appearing for the petitioner. There is no representation on behalf of the respondent and perused the materials placed on record.

7. On perusal of the documents, it is seen that the accused 1, 3, 4 and 5 are the younger brothers of the complainant. The 2nd accused is the wife of A1. The respondent/complainant namely Mr.A.S.Santhanam, filed the instant complaint under Sections 200, 201 and 202 of CrPC., praying to launch criminal prosecution against the accused for having committed the offences punishable under Sections 419 and 420 IPC r/w Section 34, 120B, (2) and 406, 447 and 448 of IPC. It is seen that the immovable property in Door No.36/53, Raju Naicken Street, West Mambalam, Madras 33 was the absolute property of the complainant's father. It is his own self acquired immovable property having purchased it in the year 1957 and he constructed the building out of his own hard earned money. There is another immovable property bearing Door NO.15, New No.43, Arya Gowder Road, West Mambalam, Madras - 33, which was purchased for a total sum of Rs.1,10,000/- by the complainant's father out of his hard earned money. In 1986, the complainant's mother viz. A.Kamala constructed the first floor shops and the second floor office room to the extent of 1986 sqft. Thereafter, it is alleged that the accused 1, 3, 4 and 5 prevented the complainant from entering into the immovable properties namely Door NO.15, New Door No.43, Arya Gowder Road, West Mambalam, Madras - 33. It is also alleged that after the demise of the complainant's parents, on account of very serious intestinal cancer, this complainant, as the first and own and natural son of his parents, could not get even a single pie out of his parent's own moveables and immovables and funds. It is also alleged that the mother of the complainant was having the funds of Rs.10,00,000/- in cash, and after her death, this amount was also cheated and criminally misappropriated by the accused 1 to 5 to themselves. It is clear that the complainant's mother did not execute any Deed of Will in respect of the residence in her occupation on 12.12.2002 and as stated above, there were no attesting witnesses at all on the same day.

8. It is seen from the records that the complainant was appointed as Receiver by this Court in C.S.No.340 of 2006 and the respondent/complainant came to know about the existence of a forged and fabricated Will alleged to have been executed by the complainant's mother A.Kamala on 12.12.2002. Thereafter, O.P.No.274 of 2008 was filed on the basis of the forged and

fabricated Will was served. There were caveats and affidavit of protest filed by the complainant in the same O.P.No.274 of 2008 but the complainant was not made a defendant in O.P.No.274 of 2008, which made the proceedings to be converted into a Testamentary Original Suit in TOS.No.29 of 2009 before this Court and the complainant was impleaded as 2nd defendant in Appln.No.5059 of 2011 on 10.11.2011. Thus, it is clear that there is a legal bar to the complainant under Section 195(1) (b) CrPC., 1973 from prosecuting the accused for the offences of Forgery and cheating since in this case the alleged forged documents were used in judicial proceeding in TOS.No. 29 of 2009.

9. The learned counsel for the respondent/complainant contended that he had filed an application under the provisions of RTI Act, 2005, obtained information as to the fact that the deceased A.Kamala had not furnished accounts for purchasing Non Judicial Stamps and therefore, the alleged Will of A.Kamala was proved to be a forged document. When the accused 1&2 represented before this Court in TOS.No.29 of 2009, as if they were executors on the basis of the forged and fabricated will of deceased A.Kamala, they committed the offence of impersonation, punishable under Section 419 IPC. It is also alleged that the accused 1 to 5 joined together in order to make false representation as if there was a Will of the deceased A. Kamala dated 12.12.2002 and the same is a false and forged Will of deceased, thereby, misappropriated the immovable property in its entirety, and the rent advance from the tenants in possession therein, from 15.09.2005 to till date to the tune of Rs.1,51,50,000/- thereby causing wrongful loss to the complainant and wrongful gain to themselves. Thus, it is stated that the accused 1 to 5 have jointly committed the offence of cheating punishable under Section 420 IPC. After the demise of his mother viz., A.Kamala, being the mother of the complainant, 1/5th of the equal amount is owned by the complainant, which was not paid to him. Hence, it is complained that the accused 1 to 5 have committed the offence of criminal misappropriation punishable under Section 406 IPC to the total amount of Rs.44,16,000/- for which the accused are liable to be punished for the same. Further, it is alleged that the accused 1 to 5 have joined together and conspired in each and every act to commit the offences of cheating, committed the offence of impersonation as if they were executors under forged and fabricated will of deceased A.Kamala and jointly conspired to commit misappropriation of the complainant's father's movables to the value of Rs.44,16,000/- and thereby committed the punishable offence under Section 120B (2) IPC and they have committed all the aforesaid offences with the common intention of cheating, impersonation, criminal misappropriation of the amounts owned by the complainant and jointly criminally

conspired to commit those offences and therefore, the accused 1 to 5 are to be punished under Section 34 IPC and the same is liable to be quashed.

10. It is evident that the complainant is fully aware of the civil proceedings are pending before this Court in respect of very same subject matter. In fact, one of the petitioner's brothers namely Mr.A.Vijaya Sarathy has filed a civil suit in C.S.No.340 of 2006 for partition of the aforesaid properties. In the civil suit, the complainant is also one of the defendants. During the pendency of the suit, an application was also filed for appointment of Receiver and this Court passed an order dated 27.03.2008, by which, the complainant himself was appointed as a Receiver to collect the rent and other profits from the immovable property mentioned in the schedule "B" thereof.

11. The main grievance of the complainant appears to be that he was not paid any amount by the accused in this case from and out of the rental amount received from the immovable properties left by his parents. If that be so, the respondent/complainant is not expected to file the criminal complaint alleging that he was deprived of the rental amount. Precisely, the complainant was appointed as a Receiver to collect the rental amount pending the civil suit in C.S.No.340 of 2006 filed by Mr.A.Vijaya Sarathy. Still the complainant cannot complain that he was deprived of the rental income or the profits derived from and out of the immovable property. In any event, on the aforestated premise, the respondent cannot prefer any criminal complaint against the petitioners alleging cheating, forgery, impersonation etc. The interse dispute between the parties, who are brothers and sisters, to get a share in the properties left by their parents is the subject matter of two civil suits. The complainant having subjected himself to the civil proceedings is estopped from filing the instant criminal complaint. Even on perusal of the complainant, the complainant himself has referred to the civil suit in C.S.No.340 of 2006 filed by Mr.A.Vijaya Sarathy. Further, the complainant himself has made reference to the two suits filed by him namely C.S.No.404 of 2013 and C.S.No.592 of 2013 for declaration to declare the settlement deed executed by his mother namely A.Kamala as null and void, while C.S.No.592 of 2013 was filed for declaration to declare the WILL executed by his mother as null and void. The complainant, having filed two suits to declare that the settlement deed as well as the WILL executed in favour of his brothers as null and void, is estopped from filing the present complainant complaining acts of forgery, cheating and impersonation etc., to create and fabricate the WILL. Therefore, this Court is of the considered view that the instant criminal complaint filed by the respondent/complainant

is a clear abuse of process of law. What could not be achieved by the respondent/complainant by filing the two suits, is sought to be achieved by filing the instant complaint to threaten and make the accused to come to terms. Such an action resorted by the respondent/complainant cannot be permitted under law. The only recourse available for the complainant is to proceed with the civil suits filed by him as well as his brother where he can prove his right, title or interest in respect of the properties left by his parents. Without doing so, the respondent/complainant intended to file the present complaint as a short cut method to achieve, what he could not achieve in the civil proceedings. Thus, the accused herein cannot be subjected to the ordeal of a criminal trial at the instance of the respondent/complainant herein. Therefore, the petition filed by the petitioner seeking to quash the criminal proceedings in C.C.No.2141 of 2016 is allowed. It is open to the respondent/ complainant to participate in the civil proceedings and to get his right and share in the immovable properties declared by the civil Court.

12. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

msm

To

1. The XVIII Metropolitan Magistrate,
   Saidapet, Chennai-15.

2. The Public Prosecutor,
   High Court, Madras.

Crl.O.P.No. 26052 of 2016
and Crl.M.P.No. 12925 of 2016

GP(CO)
SU(30/12/2021)