IN THE HIGH COURT OF JUDICATURE AT MADRAS

| Reserved on 10.02.2021 | Delivered on 15.02.2021 |
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CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.OP Nos.7325, 11095, 11427 of 2018
in
Crl.MP Nos.12460,3774,5705,5940 of 2018

1. N.Dhanraj Kochar

2. Inderchand D Kochar

3. D.Suresh Kumar Kochar

4. Ramesh Kumar Kochar

5. Jitesh Kumar ..Petitioners in Crl OP No.11427 of 2018 /Accused 1, 2 3, 5 & 6

6. Naveen Kumar Kochar

7. Shanthi Bai .. Petitioners in Crl OP No.7325 of 2018 / Accused 4 & 7

8. Rajkumari

9. Anitha

10. Sarala ..Petitioners in Crl.O.P No.11095 of 2018 /Accused 8 to 10

.Vs.



1. State Rep. By
The Inspector of Police,
Central Crime Branch -I,
Chennai .. 1st respondent / Complainant

2. Mr.Sadhak Ahmed Shaw .. 2nd Respondent/Defacto Complainant in all Crl OPs

COMMON PRAYER: Criminal Original petition has been filed under Section 482 of Cr.PC to call for the records relating to Crime No.73 of 2018 on the file of inspector of police, Central Crime Branch – I, Chennai CCB, Vepery, Chennai.

For Petitioners: Mr. B. Kumar
Senior Counsel
for Petitioner/Accused 1 to 3, 5 6, 8 to 10 in
Crl.OP Nos.11095, 11427 of 2018
Mr.R.Bharath Kumar
Counsel for A4 and 7
Crl OP No.7325 of 2018 &
Crl.OP.11427/18

For Respondents: Mr.C.Raghavan
Government Advocate for R1
in all Crl.OPs
Mr.R. Shanmugasundaram
Senior counsel for R2
in all Crl.OPs

COMMON ORDER

The issues involved in all these petitions are common, and therefore, they are taken up together, heard and disposed of through this common order.

2. The FIR registered by the 1st Respondent in Crime No. 73 of 2018, is the subject matter of challenge in all these petitions.

3. The 2nd Respondent preferred a complaint before the 1st Respondent alleging that his father, along with A-1 and one Mr. Abdul Rawoof formed a company registered in the name M/s. D.R. Foundation and Estates Pvt. Ltd., and that his father had invested a sum of Rs.1.71/- crores in the said Company. The object of the Company was to purchase lands in its name at Siruseri and Chemmencheri villages, respectively. It was alleged that the funds were diverted and properties were purchased in the name of the family members of A-1 with the help of A-11. This resulted in a complaint being given by the father of the 2nd Respondent before the Crime Control Bureau, Chennai and the same was registered in Crime No. 815 of 2006. The complaint was given against 11 named accused persons, and all of them faced trial in C.C. No. 530 of 2007 before the learned Judicial Magistrate, Alandur. The learned Magistrate by judgment dated 01.11.2017 convicted A-1, A-2, A-3, A-5,A-7, A-8, A-9 and A-10 for various offences under the Indian Penal Code, 1806 and sentenced them accordingly. While so, the 2nd Respondent noticed that the accused persons had entered into an agreement of sale with M/s. Lanco Horizon Pvt. Ltd. on 23.05.2007 during the pendency of the earlier criminal proceedings, by misappropriating the amount invested by his father. Hence, according to the 2nd Respondent, the accused persons have committed an offence of cheating. Based on this complaint, the 1st Respondent has registered an FIR in Crime No. 73 of 2018.

4. Mr. B. Kumar, learned senior counsel appearing on behalf of the Petitioners/Accused 1 to 3, 5,6, 8 to 10 in Crl. O.P. Nos. 11095 and 11427 of 2018, made the following submissions:

· The 2nd Respondent does not have the locus standi to file a complaint since he is not even a shareholder in the Company.

· Even if the 2nd Respondent is taken to be a shareholder of the Company, he will only be entitled to claim for the dividend if so, declared by the Company and the claim for the property will arise only at the time of winding up of the Company. Therefore, the very basis of the complaint is unsustainable in law.

· The properties purchased became a subject matter of challenge in O.S. No. 317 of 2007, which was filed by the father of the 2nd Respondent and on his death, the 2nd Respondent was also impleaded as a party, and this suit came to be dismissed by judgement dated 05.10.2009 and an appeal against the said judgment and decree is now pending before this Court in A.S. No. 1002 of 2009. Much after this judgement, the 2nd Respondent has given this complaint and the same amounts to misuse of criminal law.

· The father of the 2nd Respondent, even during the pendency of the earlier criminal proceedings had sought for a further investigation on the very same transaction that took place with M/s. Lanco Horizon Pvt. Ltd. and the same was dismissed. This transaction also formed part of the earlier criminal proceedings which dealt with misappropriation of the amount invested by the father of the 2nd Respondent and the present complaint on the same cause of action is barred under Article 20(2) of The Constitution of India, 1950 and Section 300 of The Code of Criminal Procedure, 1973.

· There was no cause of action for the 2nd Respondent to give a fresh complaint in the year 2018 and even assuming that there is one, there is an unexplained delay of nearly 11 years in giving the complaint and the same is fatal to the maintainability of the present FIR.

· The learned senior counsel in order to substantiate his submissions, relied upon the following judgments:

(a) Prem Kumar v. the State of Rajasthan reported in 2016 SCC OnLine SC 923

(b) Kishan Singh v. Gurpal Singh and Ors.reported in (2010) 8 SCC 775

(c) Thermax Limited and Ors. v. KM Johny and Ors. reported in (2011) 13 SCC 412

(d) Shanmugam and Ors. v. Inspector of Police, Ariyalur Police Station &Ors. reported in CDJ 2019 MHC 3532

(e) RadheshyamKejiriwal v. State of West Bengal and Another reported in (2011) 3 SCC 581

(f) Joseph Selvaraj A. v. State of Gujarat and Ors. reported in (2011) 7 SCC 59

(g) Bacha F. Guzdar v. Commissioner of Income Tax reported in 1955 AIR 740

(h) Kharkan and Ors. v. State of U.P. Reported in AIR 1965 SC 83

(i) Vijaychandra Prakash Shukla and Ors. v. State of Gujarat &Anr. reported in ABC 2017 (I) 117 GUJ

(j) Sushil Sethi and Anr. v. State of Arunachal Pradeshreported in (2020) 3 SCC 240

5.Mr. R. Bharath Kumar, learned counsel appearing on behalf of the Petitioners/Accused 4 and 7 in Crl. O.P.No. 7325 of 2018, apart from adopting the submissions made by the learned senior counsel also submitted that the 1st Petitioner, who was ranked as A-4 in the earlier case was acquitted. The 2nd Petitioner, who is the wife of A-1, was not even shown as an accused person in the earlier case. The learned counsel, therefore, submitted that there are absolutely no materials to rope in these Petitioners as accused persons in the present case.

6. Mr.C.Raghavan, learned Government Advocate appearing on behalf of the Respondent police submitted that the accused persons had colluded with each other and entered into an agreement with M/s Lanco Horizon Pvt. Ltd. and have received a sum of Rs.25/- crores when the earlier criminal proceedings were pending and thereby, they have cheated the father of the

2nd Respondent and the other shareholders. There are sufficient allegations made in the complaint given by the 2nd Respondent, which requires a thorough investigation and the same cannot be stalled at the threshold. The Respondent police must be permitted to investigate the case, and these petitions are liable to be dismissed.

7. Mr. R. Shanmugasundaram, learned senior counsel appearing on behalf of the 2nd Respondent submitted that even though the father of the 2nd Respondent was aware of the agreement of sale entered into by the accused persons in the year 2007, and efforts were taken for further investigation, the same did not materialize and he also died subsequently. The accused persons were involved in the offence of cheating by misappropriating the amount invested by the father of the 2nd Respondent even during the pendency of the earlier criminal proceedings. This transaction has given rise to a fresh cause of action which requires to be investigated by the respondent police. The learned senior counsel submitted that there are absolutely no grounds to interfere with the investigation at the threshold and these petitions are liable to be dismissed and a time limit must be fixed for the 1st Respondent to complete the investigation.

8. This Court has carefully considered the submissions made on either side and the materials available on record.

9. The main issue involved in the present case is as to whether the allegations made in the complaint given by the 2nd Respondent formed part of the same transaction for which the earlier complaint was given by the father of the 2nd Respondent which ultimately culminated in the conviction and sentencing of some of the Petitioners herein and hence placing a bar under Section 300 of the Code of Criminal Procedure, 1973.

10. The father of the 2nd Respondent gave a complaint on 29.07.2006 against 11 accused persons, and an FIR came to registered for offences under Sections 408, 420, 468 and 120-B of the Indian Penal Code, 1860. The complaint, in essence, is that, based on the offer made by the accused, a company named M/s. D.R. Foundations and Estates Pvt. Ltd., was incorporated for the purpose of carrying on business as land developers, promoters, builders and contractors. In the course of business, based on the proposal of A-1, funds were diverted to the tune of Rs.16/- lakhs to purchase lands in the name of the Company at Siruseri and Chemmencheri villages, respectively. The complainant therein, namely the father of the 2nd Respondent, contributed a further sum of Rs.1.55/- crores to purchase properties to the extent of 40 acres. The complaint stated that the funds were misappropriated with an ulterior motive to cheat the complainant and that the lands purchased were illegally transferred by A-1 to and in favour

of his family members.

11. Based on this FIR, a charge sheet was filed and was taken on file in CC No. 530 of 2007 on the file of the learned Judicial Magistrate, Alandur on 18.04.2007. Subsequently, a further complaint was given to the Inspector of Police, Thuraipakkam on 13.06.2007 by the father of the 2ndRespondent, to conduct further investigation, and a Criminal Original Petition seeking for a direction to the police to conduct further investigation was also filed before this Court in Crl. OP No. 17174 of 2009 and the same was dismissed by this Court in its order dt. 25.06.2010, on the ground, that the father of the 2ndRespondent (the Petitioner therein) had expired and there were no further instructions to prosecute the case.

12. Meanwhile, the trial commenced in the criminal case and a judgement dated 01.11.2007 came to be passed by the learned Judicial Magistrate, Alandur in CC No. 530/2007 through which A-1, A-2, A-3, A-5, A-7, A-8, A-9, A-10 were held to be guilty of offences under Sections 409 r/w. 109 and 120-B of the Indian Penal Code, 1860, and A-4 and A-11 were acquitted. For proper appreciation, the details of the previous round of litigation and the present complaint given by the 2ndRespondent, respectively, are captured in the form of a tabulation herein below:

| C.C. No./ FIR No. | Summary of Complaint | Offences | Amount In Rs. | Accused | Judgement of Trial Court |
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| C.C. No. 530 of 2007 | Subsequent to the incorporation of the Company M/s. D.R. Foundations and Estates Pvt. Ltd., A1 induced the complainant to part with a sum of Rs. 1.71 crores for purchase of lands in the name of the Company. However, he purchased lands in several survey numbers and transferred the same in the name of his sons and close relatives. | Ss. 408, 420, 468 and 120-B, IPC | 1.71 crores<br><br>Two transactions of Rs. 16 Lakhs and Rs. 1.55 Crores respectively<br><br>1st transaction pertaining to S. Nos. 102/1A, 104/1, 104/2, 104/4,104/6, 105, 106/5, 106/6B, 111/2,235/5, 239/3 in all admeasuring 470 cents registered in the name of the Company vide sale deed dt. 01.10.2004, document no. 4432/04 and 9.11.2004, document no. 5003/04 at SRO, Tiruporru | 1. Dhanraj Kochar<br>2. Inderchand D. Kochar<br>3. D. Suresh Kumar Kochar<br>4. Naveen Kumar Kochar<br>5. Ramesh Kumar Kochar<br>6. Shirenik Kumar (Tried by Juvenile Justice Board)<br>7. Jitesh Kumar<br>8. Rajkumari<br>9. Anitha<br>10. Sarala<br>11. Gopal Rao | Dt. 01.11.2017<br><br>Accused 1, 2, 3, 5, 7, 8, 9, 10 held to be guilty of offences under Ss. 409 r/w. 109 and 120-B<br><br>Accused 4 and 11 acquitted |

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| FIR No. 73 of 2018<br><br>[The present petition is filed seeking to quash this FIR] | Pending trial in CC. No. 530 of 2007, the Accused entered into an agreement with M/s. Lancor Horizons Pvt. Ltd. to dispose of the subject property for a sum of Rs. 25 crores, concealing the pending trial. | Ss. 420 and 34, IPC | | 1. Dhanraj Kochar<br>2. Inderchand D. Kochar<br>3. D. Suresh Kumar Kochar<br>4. Naveen Kumar Kochar<br>5. Ramesh Kumar Kochar<br>6. Shirenik Kumar (Tried by Juvenile Justice Board)<br>7. Jitesh Kumar<br>8. Rajkumari<br>9. Anitha<br>10. Sarala<br>Gopal Rao | - |

13. Simultaneously, a suit in CS No. 600 of 2006 came to be filed by the Company, the father of the 2nd Respondent and one another shareholder of the Company against A1, his family members and others. This suit was later transferred to the file of the Additional District Judge, Chengalpet and numbered as O.S. No. 317 of 2007. This suit was filed seeking for a declaration of title of the suit property in the name of the Company, recovery of possession, declaration of the various transactions as null and void, for the rendering of accounts and for other consequential reliefs. The said suit was dismissed on 05.10.2009 mainly on the ground that there was no conclusive evidence to hold that fraud was played by the Defendants therein. It was brought to the notice of this Court that an appeal against this judgement has been filed in A.S. No. 1002 of 2009 before this Court and

the same is pending. This Court has also passed an order of interim injunction restraining the Defendants from alienating the suit properties pending disposal of the appeal.

14. In the given circumstance, the 2ndRespondent has preferred a complaint after 11 years leading to registration of FIR in Crime No.73 of 2018 on the same issue of agreement of sale of the subject property, entered into by A-1 with M/s. Lancor Horizons Pvt. Ltd., for a sum of Rs.25/- crores. This issue was in fact raked up by the father of the 2ndRespondent in the year 2007 on the ground that M/s. Lancor Horizons Pvt. Ltd. has colluded with the accused persons therein to purchase the misappropriated property. He sought further investigation, and it ended in dismissal before this Court. Now, on the very same transaction, the 2ndRespondent has given a complaint by giving it a different dimension, stating that the property was purchased by M/s. Lancor Horizons Pvt. Ltd. for a sum of Rs.25/- crores. On the face of it, this allegation is factually wrong since what is referred to even in the complaint is the transaction dated 23.05.2007 and this transaction is nothing but the agreement of sale entered into with M/s. Lancor Horizons Pvt. Ltd. This agreement of sale did not go through and culminate into a sale. Probably, that is the reason why the 2ndRespondent wanted to give an impression that M/s. Lancor Horizons Pvt. Ltd. purchased the subject property and thereby, has attempted to create a new cause of action.

15. It is an admitted case that what was invested by the father of the 2ndRespondent in the Company, was a sum of Rs.1.71/- crores. The main grievance in the earlier complaint was that this amount was misappropriated by the accused persons therein. The transaction in question, namely the agreement of sale dated 23.05.2007, also formed part of the same transaction and this agreement of sale, also falls within the same misappropriation of the funds infused by the father of the 2ndRespondent, into the Company. The accused persons were also found guilty of the criminal misappropriation and were convicted and sentenced by the competent criminal court. Under such circumstances, whether the 2ndRespondent can once again initiate a fresh complaint after 11 years, for the misappropriation which took place in the course of the same transaction in the earlier case is the issue which requires to be answered by this Court.

16. It will be relevant to extract Section 300 of the Code of Criminal Procedure, 1973 herein under:

> S. 300. Person once convicted or acquitted not to be tried for same offence. —
>
> (1)A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such

conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof.

(2)A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under sub-section (1) of section 220.

(3)A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened at the time when he was convicted.

(4)A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5)A person discharged under section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first-mentioned Court is subordinate.

(6) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897 (10 of 1897) or of section 188 of this Code.



17. The above provision is based upon the general principle of autrefois acquit and autrefois convict,which means that a person cannot be put twice in jeopardy for the same offence. The second trial is barred for the same offence or for an offence based on the same facts for which an accused has been:
a) tried by a court of competent jurisdiction; and b) convicted or acquitted by the said competent court. It is here the significance of Sections 220(1) and 221(1) and (2) of the Code of Criminal Procedure, 1973 gains a lot of significance.

18. Section 220 of the Code of Criminal Procedure, 1973 is an enabling provision which permits the Court to try more than one offence in one trial. If one series of acts which are so connected as to form part of the same transaction and as a result of the same, more offences than one are committed by the same person, they may be charged with and tried at one trial for every such offence. Section 221 of the Code of Criminal Procedure, 1973 authorizes the court to frame cumulative charges or charges in the alternative. Sections 300 (1) and (2) of the Code of Criminal Procedure, 1973 specifically provide that where an accused person is tried by a court of competent jurisdiction, for an offence and convicted or acquitted for such offence, is not liable to be tried again for any other offence for which a separate charge might have been made against him at the former trial, either under Sections 220(1) or 221(1) and (2) of the Code of Criminal Procedure, 1973. In the present case, the agreement of sale dated 23.05.2007 formed part of the same transaction in the series of acts forming part of the criminal misappropriation committed by the accused persons. It must be borne in mind that this transaction was sought to be made a subject matter of further investigation, and this attempt failed. Even though this attempt failed, the accused persons were found guilty of criminal misappropriation and were convicted. Therefore, the same transaction cannot again be revived after the death of the father of the 2nd Respondent since his death does not give rise to a fresh cause of action. It is now a well-settled principle of law that a second complaint on identical facts is not maintainable where the first complaint has already been dealt with on merits. Useful reference can be made to the judgement of the Hon'ble Supreme Court in Prem Chand Singh v. the State of U.P., reported in (2020) 3 SCC 5(paragraphs 11 to 13).

19. It will be relevant to take note of the judgment of the Hon'ble Supreme Court in Kharkan v. the State of U.P., reported in (1964) 4 SCR 673: AIR 1965 SC 83: (1965) 1 Cri LJ 116. The relevant portions of the judgement are extracted hereunder:

> 6. The next contention of the appellants is that the prior acquittal in the second case operates as a bar to the conviction in the present case and the High Court ought to have given the appellants the benefit of the prior acquittal. Reliance in this connection is placed upon a decision of the Privy Council in a case from Malaya State reported in Sambasivam v. Public Prosecutor [(1950) AC 458 at p. 479]. Federation of Malaya and particularly the following passage from the judgment of Lord Mac Dermott:

> "The effect of a verdict of acquittal pronounced by a competent court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication. The maxim 'Res judicata pro veritateaccipitur' is no less applicable to criminal than to civil proceedings. Here, the appellant having been acquitted at the first trial on the charge of having ammunition in his possession, the prosecution was bound to accept the correctness of that verdict and was precluded from taking any step to challenge it at the second trial. And the appellant was no less entitled to rely on his acquittal insofar as it might be relevant in his defence. That it was not conclusive of his innocence on the firearm charge is plain, but it undoubtedly reduced in some degree the weight of the case against him, for at the first trial the facts proved in support of one charge were clearly relevant to the other having regard to the circumstances in which the ammunition and revolver were found and the fact that they fitted each other."

20. The 2nd Respondent has virtually reignited a failed attempt of his father after 11 years and the same is clearly barred by law. In view of the above discussion, the complaint given by the 2nd Respondent against the Petitioners is a clear abuse of process of law which requires the interference of this Court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, 1973.

21.In the result, the FIR in Crime No. 73 of 2018, pending investigation on the file of the 1st Respondent is hereby quashed and this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The learned Judicial Magistrate, Alandur

2. State Rep. By
   The Inspector of Police,
   Central Crime Branch -I,
   Chennai

2. The Public Prosecutor,
   High Court, Madras.

+4cc to Mr.K.Dhanajayan, Advocate SR.8582, 8581

Crl.OP Nos.7325, 11095, 11427 of 2018
in
Crl.MP Nos.12460,3774,5705,5940 of 2018

SR-II(CO)
CB(03/03/2021)