IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 10.08.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL. O.P. NO.9555 OF 2018
AND
CRL.M.P.NOS.4904 & 4905 OF 2018

1. Subramanian
2. Rajeshwari
3. Arunkungumaraj
4. S.Sabarish

.. Petitioners/Accused 1 to 4

- Vs -

1. State by
The Inspector of Police,
EDF-II, Team 9 (A),
Central Crime Branch,
Chennai – 600 007. .. 1st Respondent/Complainant

2. Vijayakumari .. 2nd Respondent/Defacto Complainant

Criminal Original Petition has been filed under Section 482 of Cr.P.C, praying to call for the records in Cr.No.40 of 2018 on the file of the Inspector of Police, Central Crime Branch EDF II Team 9(A), Chennai and quash the same.

For Petitioners : Mr. B.Vijay

For Respondents : Mr. C.E.Pratap, GA (Crl. Side) for R-1
Mr. R.Sasikumar for R-2

ORDER

The present petition at the behest of the petitioners is for quashment of the F.I.R. in Crime No.40 of 2018 on the file of the 1st respondent for the alleged offences under Sections 406, 420, 34 and 506 (i) IPC registered at the instance of the 2nd respondent.

2. The case of the prosecution is that the defacto complainant had entered into a partnership with the first petitioner/A1 and Moidu Abubacker Melayil for manufacturing, distribution and marketing of aerated drinks and mortgaged her property to avail loan for the purpose of expansion of firm business. However, due to alleged irregularities committed by the petitioners, the defacto complainant loss. According to the defacto complainant, her property was given as collateral security for obtaining a loan for a sum of Rs.1,90,00,000/- (Rupees One crore and ninety lakhs only) from Canara Bank, Saidapet Branch. While so, the defacto complainant received a notice from Canara Bank stating that the principal and interest have not been paid. Therefore, the defacto complainant went to the residence of A1 to enquire about the affairs and accounts of the Firm and for redemption of the property mortgaged with the Bank. At that time allegedly the second respondent/A2 and her daughter/A5 have caught hold of her and his sons, namely, the third petitioner/A3 and fourth petitioner/A4 have attempted to cause grievous hurt to her. However, the defacto complainant escaped from the scene of occurrence by raising a hue and cry. Thereafter, the defacto complainant has filed complaint before the first respondent-police on 29.01.2018 for the alleged occurrence that took place on 21.12.2017. Challenging the said complaint, the present quash petition has been filed.

3. Mr. B.Vijay, learned counsel appearing for the petitioner submits that admittedly the defacto complainant is a partner in the Firm, namely, M/s.Amman Beverages Company and as per the Partnership Deed dated 06.03.2015, the defacto complainant is having 20% share in the said partnership firm. It is the further submission of the learned counsel that on the basis of the collateral security offered by the defacto complainant, in the capacity of a partner in the said firm, loan was sanctioned in favour of the said Partnership Firm. It is the further submission of the learned counsel that there arose a money dispute between the A-1 and the defacto complainant, which resulted in the institution of a suit in C.S.No.873 of 2016 by the defacto complainant before this Court and the said suit is pending for adjudication before this Court. Suppressing all those facts, the defacto complainant had filed the complaint before the respondent police, as if the petitioners had tried to attack the defacto complainant on 21.12.2017. It is the further submission of the learned counsel for the petitioner that though the occurrence is alleged to have taken place on 21.12.17, curiously, the complaint has been filed only on 29.01.2018, after a delay of 36 days, and there is no possible and plausible explanation for the delay.

4. It is the further submission of the learned counsel for the petitioners that not only the defacto complainant had

suppressed the pendency of the suit filed by her and her share in the Partnership Firm, but only with a view to give the civil dispute a criminal colour, the defacto complainant has clothed the crime with the shade of attack on her by the petitioners merely for the purpose of attracting the offence u/s 506 (i) IPC. It is the further submission of the learned counsel for the petitioners that the ingredients relating to the offences u/s 406, 420 and 34 IPC would not, standing by itself, in the present context of the facts, attract the criminal cloak, and only for the purpose of bringing the complaint within the four corners of criminality, the synthetic attack has been fabricated by the defacto complainant so as to include Section 506 (i) IPC and the delay in the filing the above complaint stands testimony for the defacto complainant to ponder over the possible scenarios and, thereafter, file the complaint. It is the further submission of the learned counsel for the petitioners that there was no prima-facie material available before the respondent police for registering the case against the petitioners. Therefore, entertaining of the complaint is wholly impermissible and the act of the defacto complainant not narrating the true facts squarely hits at the very substratum of the prosecution case and so the petition deserves to be allowed.

5. In support of his submission, learned counsel for the petitioner relied on the decision of the Hon'ble Apex Court in R.K.Vijayasarathy and Others Vs. Sudha Seetharam and Others reported in MANU/SC/0213/2019.

6. Per contra, learned counsel appearing for the second respondent/defacto complainant vehemently submitted that merely because the pendency of the suit and the share held by the defacto complainant in the Firm had not been disclosed in the complaint, the said lacunae would not by itself be construed to mean that the complaint filed by the defacto complainant is unsustainable for the reason that necessary documentary evidence relating to the act perpetrated by the petitioners on the defacto complainant in the form of attack and also the act of A-1 in defrauding the defacto complainant have been produced before the investigating agency, which were taken as the basis for taking the complaint on record for the offences under Sections 406, 420, 34 and 506(i) of I.P.C. The materials placed before the investigating agency had clearly established the culpability of the petitioners in the commission of the offence, which necessitated the respondent police to set the criminal law in motion and in the said backdrop, this Court, at the threshold, may not interfere with the said complaint by invoking its inherent jurisdiction u/s 482 Cr.P.C. and, accordingly, prayed for dismissal of the petition.

7. This Court paid its undivided attention to the submissions advanced by the learned counsel appearing for the parties and also perused the materials available on record.

8. In State of Haryana - Vs - Bhajan Lal (1992 Supp (1) SCC 335), the Hon'ble Supreme Court has expounded the circumstances and the situations in which the inherent power u/s 482 should be invoked for quashment and for better appreciation, the relevant portion is extracted hereunder :-

> "In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide myriad kinds of cases wherein such power should be exercised:
>
> (a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;
>
> (b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code;
>
> (c) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;
>
> (d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code;
>
> (e) where the allegations made in the FIR or complaint are so absurd and inherently

improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. In the instant case, the allegations made in the complaint, do clearly constitute a cognizable offence and this case does not call for the exercise of extraordinary or inherent powers of the High Court to quash the F.I.R. Itself."

9. In yet another case in R.P.Kapur - Vs - State of Punjab (AIR 1960 SC 866), the parameters within which the exercise of inherent powers vested by Section 561-A of the repealed Code of Criminal Procedure, 1898 (corresponding to Section 482 Cr.P.C.) can be invoked had been laid down in the following terms:-

"(i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;

(ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g., want of sanction;

(iii) where the allegations in the first information report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and

(iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge."

10. From the above, it is amply evident that this Court is clothed with the requisite power to interfere with the proceeding at any stage, provided, the necessary satisfactions, as enumerated above, are fulfilled. Therefore, the test that is required to be made is whether the materials placed on record by the prosecution fulfils the test for the continuance of the case or falls short for its quashment is the sole question that requires consideration.

11. This Court is not averse to the invocation of its powers u/s 482 Cr.P.C., but the only limitation being that the tests as adumbrated by the Hon'ble Supreme Court in the aforesaid decisions should stand satisfied so as to continue the case, else, the same would deserve setting aside.

12. A perusal of the complaint, which is the fulcrum of the whole prosecution case, reveals that the involvement of the defacto complainant in the partnership business, the loss suffered on account of irregularities in the functioning of the partnership firm and the alleged attack meted out to the defacto complainant by the petitioners have been spoken to. It is also evident from the said complaint that the occurrence had taken place on 21.12.17, while the complaint had been lodged on 29.01.18, after a delay of 36 days. It is to be pointed out that there is no plausible explanation/reason given by the defacto complainant for lodging the complaint 36 days after the date of occurrence.

13. Be that as it may. It is the specific case of the petitioners that with respect to the irregularities in the business of the partnership firm and also with regard to the non-repayment of loan relating to the property mortgaged by the defacto complainant with the bank, already the defacto complainant had filed C.S. No.873 of 2016 before this Court. Though the said suit had been filed as early as in the year 2016, curiously it is the case of the defacto complainant that she had gone to the house of the petitioners for demanding payment of the dues, due and payable to the bank due to the alleged irregularities committed in the functioning of the partnership firm.

14. A perusal of the suit filed before this Court reveals that the property, which is mortgaged with the bank, has been given as collateral security to the bank in respect of the loan availed. The defacto complainant has merely filed a suit against the petitioners in C.S.No.873 of 2016 before this Court for recovery of money. It has not been averred in the suit that the property had been given as collateral security with the bank. A perusal of the partnership deed reveals that the defacto complainant has a 20% of the share in the partnership

business. It is to be pointed out that the filing of the suit, which is civil in nature and also the partnership deed, which is the basis of the link between the parties, are crucial materials, which requires to be placed before the investigating agency to come to a conclusion as to whether the case projected by the defacto complainant would fall within the four corners of criminality. However, for reasons best known to the defacto complainant, both the crucial materials, which have a bearing on making a decision for registering the complaint has not been placed before the investigating agency. The act of the defacto complainant in this regard is a deliberate suppression for the purpose of giving a criminal colour to a civil dispute.

15. In this background, the decision in Vijayasarathy's case (supra), relied on by the learned counsel for the petitioner assumes significance and for better clarity, the relevant portion of the said decision is reproduced hereinbelow :-

> “20. The suit for recovery of money was instituted by the son of the appellants against the first respondent in 2013. The complaint alleging offences under the Penal Code was filed by the first respondent belatedly in 2016. It is clear from the face of the complaint, that no amount was entrusted by the first respondent to either of the appellants and there was no dishonest inducement of the first respondent by the appellants to deliver any property. As stated by the first respondent in the complaint, the money belonged to the son of the appellants. It was transferred by the appellants' son to her on his own volition. The money was alleged to have been returned to the appellants on the instructions of their son. A plain reading of the complaint thus shows that the ingredients necessary for constituting offences under Sections 405, 415 and 420 of the Penal Code are not made out.
>
> 21. The respondents have relied on the decision of this Court in Rajesh Bajaj v State of NCT of Delhi MANU/SC/0155/1999 : (1999) 3 SCC 259. In that case, the Delhi High Court had quashed an FIR alleging an offence under Section 420 of the Penal Code on the ground that the complaint did not disclose the commission of any offence. Allowing the complainants appeal, this Court held thus:
>
>> 9. It is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words that

> the intention of the accused was dishonest or fraudulent. Splitting up of the definition into different components of the offence to make a meticulous scrutiny, whether all the ingredients have been precisely spelled out in the complaint, is not the need at this stage. If factual foundation for the offence has been laid in the complaint the court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details...

The decision does not advance the submission of the first respondent. As we have noted above, the complaint in the present case is bereft of the basic facts necessary to constitute the offences alleged under Sections 405, 406, 415 and 420 of the Penal Code.

22. Learned Senior Counsel for the appellant contended that the actions of the first respondent constitute an abuse of process of the court. It is contended that the present dispute is of a civil nature and the first respondent has attempted to cloak it with a criminal flavor to harass the aged appellants. It is also contended that there is an undue delay in filing the complaint from which the present appeal arises, and this demonstrates the mala fide intention of the first respondent in filing the complaint against the appellants. Learned Senior Counsel for the appellants relied on the decision of this Court in State of Karnataka v. L Muniswamy MANU/SC/0143/1977 : (1977) 2 SCC 699. In that case, the prosecution alleged that eight of the accused had conspired to kill the complainant. The Karnataka High Court quashed the proceedings on the ground that no sufficient ground was made out against the accused. A three judge Bench of this Court dismissed the appeal by the State with the following observations:

> 7. ...In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court

proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice.

23. The jurisdiction under Section 482 of the Code of Criminal Procedure has to be exercised with care. In the exercise of its jurisdiction, a High Court can examine whether a matter which is essentially of a civil nature has been given a cloak of a criminal offence. Where the ingredients required to constitute a criminal offence are not made out from a bare reading of the complaint, the continuation of the criminal proceeding will constitute an abuse of the process of the court.

24. In the present case, the son of the appellants has instituted a civil suit for the recovery of money against the first respondent. The suit is pending. The first respondent has filed the complaint against the appellants six years after the date of the alleged transaction and nearly three years from the filing of the suit. The averments in the complaint, read on its face, do not disclose the ingredients necessary to constitute offences under the Penal Code. An attempt has been made by the first respondent to cloak a civil dispute with a criminal nature despite the absence of the ingredients necessary to constitute a criminal offence. The complaint filed by the first respondent against the appellants constitutes an abuse of process of court and is liable to be quashed."

16. A perusal of the above decision clearly shows that the said decision is also squarely applicable to the present case on hand. Admittedly, the suit was filed in the year 2016 and the present complaint was filed in the year 2018. Further, the Partnership Deed was executed in the year 2015 and the loan was sanctioned on 30.01.2016 in favour of the Firm and the suit was filed on October, 2016. There was also exchange of legal notice between the parties. Hence, the conditions necessary to constitute a case for the offences under Sections 405 and 406 IPC are clearly not established in the complaint.p

17. In the above backdrop of the facts and circumstances, the delay in filing the complaint assumes significance. Had really an incident of the nature, as spoken to in the complaint,

really taken place, not only there would have been some injuries on the defacto complainant, which would stand proved on the basis of medical records, but even according to the defacto complainant, on her being attacked, she escaped by raising a hue and cry. If that be the case, definitely the public around the locality would have definitely come to the aid of the defacto complainant. However, curiously, such is not the case pleaded by the defacto complainant. Pausing here for a moment, though such pleadment has not been made by the defacto complainant, yet the defacto complainant had left the matter to cool for a period of 36 days and, thereafter, knocked on the doors of the 1st respondent for registration of the complaint. This Court sees no other reason other than that the defacto complainant had weaved the synthetic story of her being attacked by the petitioners and that she had escaped from that place by raising a hue and cry. The said statement of the defacto complainant also is unbelievable for the simple reason that even according to the defacto complainant, she was restrained by three male persons, viz., petitioners 1, 3 and 4 and a lady, viz., 2nd petitioner, but inspite of three masculine personality imposing upon her, the defacto complainant was able to escape from the scene unhurt is beyond the comprehension of this Court. The story of the defacto complainant as to the occurrence, which is alleged to have taken place could be nothing else, than a figment of imagination and further fabrication to bring the petitioners within the boundaries of criminal prosecution.

18. The facts and circumstances narrated above and the analogy that could be drawn from the said facts and circumstances clearly falls within the parameters enumerated by the Hon'ble Supreme Court in Bhajan Lal's case (supra) and R.P.Kapur's case (supra) and this is a case of nature that squarely falls within the parameters enumerated in the aforesaid decisions and, therefore, this petition, on all fours, requires to be allowed by quashing the complaint.

19. For the reasons aforesaid, this Criminal Original Petition is allowed. However, any observation made by this Court aforesaid will not stand in the way of deciding the Civil Suit pending before this Court on its own merits. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

rsi/GLN

To

1. The Inspector of Police,
   EDF-II, Team 9 (A),
   Central Crime Branch,
   Chennai - 600 007.

2. The Public Prosecutor
   High Court, Madras.

CRL. O.P. NO.9555 OF 2018
and
CRL.M.P.NOS.4904 & 4905 OF 2018

BS(CO)
PM/07/10/2021