IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.09.2020

PRONOUNCED ON : 13.08.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.15163 of 2014
and
Crl.M.P.Nos.1, 2 & 3 of 2014

1. SA Law LLP,
   Represented by its Partner,
   Mr.Robert Ryall,
   No.60, London Road,
   ST Albans,
   Herts AL 1 ING,
   England.

2. Robert Ryall,
   No.60, London Road,
   ST Albans,
   Herts AL 1 ING,
   England

... Petitioners/Accused

Vs.

Narain Karthikeyan,
Aged about 37 years,
S/o.Karthikeyan,
No.14, Huzur Road,
Coimbatore-641 018.

... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the complaint filed against the petitioners/accused in

C.C.No.188 of 2014 on the file of the learned Judicial Magistrate-III, Coimbatore and quash the same.

For Petitioner : Mr.N.R.Elango, Senior Counsel for Mr.V.V.Sivakumar

For Respondent : Mr.G.Vijay Anand Associates

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.188 of 2014 pending before the learned Judicial Magistrate No.III, Coimbatore.

2.The petitioners are accused in C.C.No.188 of 2014 and facing trial for offence under Sections 465, 468, 471, 477A, 420 and 406 of IPC before the learned Judicial Magistrate No.III, Coimbatore.

3.For the sake of convenience, the petitioners and the respondent are referred to as accused and the complainant as per the complaint in C.C.No.188 of 2014.

4.The gist of the case is that the complainant is a reputed Sportsman in the field of Formula Car Racing and he is the first Indian in Formula 1 Racing Championship and role model for many Indian Sportsman. The complainant is conferred with one of the highest civilian award in recognition of his contribution in the field of Motorsport by the Government of India. After the complainant had completed the first year in Formula 1 Championship in 2005, a civil dispute arouse with Midland F1 Marketing Limited as well as another company by name Dartry Limited with regard to payment of commission arising out of sponsorship of the complainant. From the above dispute, two claim suits were filed before the High Court of Queens Bench in London England Claim No.2006 Folio 1264 and Claim No.H206X00979, wherein Midland F1 Marketing Limited claimed an amount of £6,75,000/- in their Claim Petition and Dartry Limited claimed £31,250/-, in their Claim Petition against the complainant. The accused were engaged by the complainant for defending him with regard to the dispute resolution in the field of Motor Sports.

The complainant chose the accused on seeing advertisement in the website, claiming themselves to be a leading firm with regard to the dispute in the field of Motor Sports. The above two cases lasted for a year and the accused represented the complainant in the Court nearly 5 to 6 times. During the course of hearing objections were filed on behalf of the complainant and the complainant felt his presence would be often required before the London Courts. Since the complainant was busy participating in international racing schedule and travelling throughout the globe, he decided to resolve the matter out of Court by compromise in the above two claims and thereafter, both the cases were settled by way of compromise. The complainant agreed to pay a total amount of £2,25,000/- in this regard. During the course of the litigation, the complainant for the above two cases had paid a sum of £60,250/- as legal fees to the accused on the bills raised by them. The complainant was surprised to receive around 10 unexplained bills from the accused for the period from July 2006 to September 2007 and the same are as follows:-

Sl.No.	Date	Invoice No's and Bill No
1.	15.07.2007	Unexecuted Bill Invoice No.309362 for £26,834.06
2.	27.10.2006	Unexecuted Bill Invoice No.306540 for £2,884.45
3.	28.11.2006	Unexecuted Bill Invoice No.306880 for £2,242.49
4.	31.07.2006	Unexecuted Bill Invoice No.305163 for £587.50
5	31.07.2006	Unexecuted Bill Invoice No.305489 for £2,800.00
6	28.09.2006	Unexecuted Bill Invoice No.306205 for £826.97
7	27.10.2006	Unexecuted Bill Invoice No.306545 for £6,012.83
8	28.11.2006	Unexecuted Bill Invoice No.306886 for £1,484.03
9	30.04.2007	Unexecuted Bill Invoice No.308791 for £17,615.00

Sl.No.	Date	Invoice No's and Bill No
10	28.09.2007	Unexecuted Bill Invoice No.310978 for £6,887.00

5.Since the complainant was busy in the International Motorsports schedule, he failed to immediately raise any objection for the above forged bills. The accused taking advantage of the complainant's busy schedule, had filed litigation before the East Bourne Country Court in England in Claim No.8SI01925 and obtained a default judgment without properly serving summons to the complainant. Since the default judgment obtained by the accused before the Eastbourne County Court is inexecutable in India, again in the year 2010, the accused filed a petition for setting aside the default judgment and then filed a petition for summary judgment before the Eastbourne County Court in England. The East Hourne County Court was pleased to grant summary judgment in favour of the accused. The accused on the fraudulent and fabricated bills have filed enforcement proceedings before the Court in England. The accused in the guise of resolving the complainant's legal dispute as promised by them in the website had created, fabricated number of false and fraudulent bills and documents for the purpose of making false claim against the complainant. The fabrication of bill has been carried out in England and the same was sent to the complainant at his residence No.14, Huzur Road, Coimbatore for the purpose of illegally encashing the same. The accused is claiming to the tune of £1,12,580.02/- which is nearly 70 to 75% of the litigation settlement amount of £2,25,000/. It is a settled law that for legal services rendered by lawyer/solicitors in favour of his client, the legal fee bill should be in commensurate with the service rendered that is, in any money suit it should not exceed 10 to 20% of the value of the claim suit. But in the present case, the accused raised bill to the tune of 75% of the value of the litigation. In fact in one of the cases filed by Dartry Limited is concerned, which is a claim suit for £31,250/- the bill claim admittedly according to the accused is £41,026.97/- which is nearly 130% of the value of the litigation which is confirmed by the accused through E-Mail letter dated 05.07.2013.

6.Taking advantage of the complainant's busy schedule and based on the trust reposed on them, the accused falsified the accounts, fabricated false bills with an intention to cheat the complainant and have committed serious offence. The fraudulent bills were received by the complainant at Coimbatore and the payments were made from the bank at Coimbatore. Hence, a complaint was filed before the learned Judicial Magistrate No.III, Coimbatore and thereafter, C.M.P.No.5511 of 2013 was assigned. After examination of complainant as PW.1 and one Prabhakaran as PW.2 and on perusal of the statement of Edmund Patrick Jordan (The consultant of the Dartry Limited) and bank statements and E-Mails, invoices, the learned Judicial Magistrate No.III, Coimbatore, by order, dated 21.04.2014, took cognizance of the offence and ordered to take the case on file for offence under Sections 406, 420, 465, 468, 471 and 477A of IPC against the accused and issued summons to them under Section 204 Cr.P.C., and a case in C.C.No.188 of 2014 was assigned.

7.The learned Senior Counsel for the petitioners/accused submitted that the complainant approached the accused to represent him for the two civil disputes which was initiated by the Midland F1 Marketing Limited and a separate unrelated dispute had also arisen between Dartry Limited and the complainant. In both the proceedings, one Mr.Piers Hunnisett was also a party. The terms and conditions of engagement were explained to the complainant and letter of engagement dated 27.04.2006 was agreed and acted upon between the accused and the complainant. As regards the proceedings involving Midland F1 Marketing Limited is concerned, it was settled by consent among the parties and a confidential consent order was signed between the parties. As regards the second proceedings involving Dartry was concerned, the accused successfully defended the complainant. The interim third party garnishee order obtained by Dartry against the complainant was successfully set aside solely on the efforts of accused. The accused successfully defended the complainant's from Dartry limited.

8.The learned Senior Counsel for the accused further submitted that right from the outset, the complainant was delaying in making professional fee payments. Based on the assurance of the complainant that all outstanding dues to be cleared later, the accused continued to represent him before the

Court in London in both the proceedings. After conclusion of the proceedings, the accused continued to follow up the complainant regarding outstanding due to the tune of £44,891.43. Despite sending several reminder and request, the complainant was dogging the accused. Hence, the accused had no other alternative, had to initiate proceedings against the complainant and Mr.Piers Hunnisett for the above said amount of BP £44,891.43 with interest. The proceedings commenced in the St.Albans County Court on 07.08.2008 and the notice was ordered and served on the complainant and the other respondents in the suit. Following the non appearance of the complainant, an exparte order was passed against him and the accused sought to execute the above mentioned order by filing an Execution Petition on 31.01.2009 before the learned District Judge, Hissar. Since the learned District Judge declined to entertain the Execution Petition on the ground that it was an exparte order, the accused again approached the East Bourne County Court, obtained order setting aside the original exparte judgment against the complainant and applied for a summary judgment on merits, which was granted on 13.04.2010. Pursuant to the order dated 13.04.2010, various steps were taken to recover the dues from the complainant. The complainant attended these hearing through his counsel and no appeal was filed by him to set aside the order dated 13.04.2010. On the contrary, it is to be seen that pursuant to the order made by the East Bourne County Court on 08.10.2013, the complainant was intermittently making payments @ BP 200 per month through his counsel in India. Now the complainant makes wild allegations against the accused that the accused had excessively billed the complainant and he is not aware of the amounts paid to the accused. All these allegations are made by him to escape from his liability in making payment to the accused.

9.The learned Senior Counsel for the accused further submitted that the accused was surprised to receive copy of the summons from the learned Judicial Magistrate No.III, Coimbatore. The above case is not maintainable and the learned Magistrate took the complaint on file without any prima facie material. Since all the offences were committed in England, as to how mere receipt of the bills in India would confer jurisdiction of a Court in Coimbatore. The complainant had participated in the proceedings in England and failed to file any appeal. On the contrary, he filed a criminal complaint against the accused in

India after several years. The complainant engaged the service of the accused in the year 2006 and he has been in regular touch with them regarding the above two suits filed in England and the accused repeatedly requested the complainant to pay the professional legal fees and no objection was raised in this regard, the complainant appeared before the Eastbourne County Court and agreed to pay in installments. After seven years,this private complaint is filed. The admitted case of the complainant is that the bills were allegedly fabricated by the accused in England. The provisions of the Indian Penal Code are applicable to the whole of India and not beyond India. Therefore, the complaint is liable to be quashed in accordance with Section 4 of IPC.

10.The learned counsel for the petitioner further submitted that in this case, no previous sanction was obtained from the Central Government to prosecute the accused and hence, the case cannot be proceeded with as per Section 188 of Cr.P.C. There is nothing to show that the learned Magistrate had applied his mind to the facts of the case. The learned Magistrate has to record his satisfaction before taking the case on file before issuing summons to the accused. The learned Magistrate mechanically taken the case on file. Assuming that the entire case of the complainant is true, no part of cause of action has arisen in India. Further, the role played by the accused are purely civil in nature and no criminal case is made out. The learned counsel further submitted that this complaint was lodged as a counter blast for the action taken by the accused in initiating recovery proceedings against the complainant in Eastbourne County Court. In fact the complainant is continuing to pay 200 pounds per month to the accused in accordance with the order dated 08.10.2013 passed by the Deputy District Judge at Eastbourne County Court.

11.The learned counsel for the accused further submitted that the accused is a counsel, who raised bills for the legal services rendered by them. The accused had only approached the Court for initiation of proceedings against the complainant in recovering the legal fees. The complainant had received the copy of the bills prepared in England. In this case, though the complainant stated that the bills were sent through post and no postal proof produced, admittedly the complainant was making payment till March 2020.

12.In order to substantiate his submissions, the learned counsel for the accused relied on the case of "M/s.Indian Oil Corporation Versus NEPC India & Others; State of Haryana Versus Bhajan Lal reported in AIR 1992 SC 503" and in the case of "Fatima Bibi Ahmed Patel Versus State of Gujarat & Another reported in 2008 (6) SCC 789" for the preposition that the above complaint is not sustainable in any manner and continuation of proceedings would amount to abuse of process of law. Further, the copy of the statement of accounts and the judgment passed by the Eastbourne County Court directing the complainant to make payment of BP 200 per month are filed in support of his submissions and prayed for quashing of the complaint.

13.The learned counsel for the complainant filed counter and three typed sets and made his submissions that the complainant is a reputed Indian Sportsman in the field of Formula 1 car racing. The complainant participated in the 1st Formula F1 Championship in the year 2005. During that period, two civil disputes arouse between the complainant and his team Midland F1 Marketing Limited and another Company Dartry Limited, with regard to payment of commission arising out of sponsorship. This company have filed two claim suits before the Court of Queens Bench in London in Claim No.2006 Folio 1264 and Claim No.HQ06X00979. The 1st accused is the law Firm and the 2nd accused is an Advocate and one of the partner of A1, who was engaged for the professional service to defend the complainant. The grievance of the complainant is that during engagement of service, no terms of business was provided by the complainant and no document to that effect was executed. Subsequently, out of compromise entered between the parties in the suit, the complainant agreed to pay a total amount of £2,25,000/- to the said two companies. Based on which, the two companies closed the claim suits by filing a compromise memo before the England Court. The accused paid £60,500/- as legal fees for defending the complainant. The entire money was paid through the complainant's bank account from India. Not satisfied with the same, the accused sent ten unsigned bills to the complainant to his Coimbatore address and sought for further amount of £52,330.02 during the period from July 2006 to September 2007 which are illegal fees. Since the complainant was busy with International racing, he was unable to immediately raise any objection for the ten unsigned bills. Taking advantage of the same, the accused filed a claim petition before the Eastbourne County Court in England and obtained an exparte judgment without serving summon to the complainant. The accused filed another petition for summary judgment before the Eastbourne County Count in England and obtained summary judgment. Thereafter, the accused filed enforcement proceedings before the Court in England and forced the complainant to settle the undue demand made on the forged bills.

14.The learned counsel for the complainant further submitted that the accused is illegally claiming a total amount of £1,12,580.02 from the complainant. The accused is unethically claiming almost 70 to 75% of the settlement amount of the original claim petition. The accused admitted that he received £60,250/- from the complainant and adjusted £41,026.97 towards Dartry's case as legal fee. The original claim amount made by Dartry's Limited is only £31,250/-, but the accused has claimed legal fee from the complainant for the Dartry to a tune of £41,026.97 i.e., 130% of the original claim amount. This would clearly expose the criminal intention of the accused on the forged bills. Hence, the respondent filed the private complaint before the learned Judicial Magistrate No.III, Coimbatore and the same was taken on file as C.M.P.No.5511 of 2013. After examination of complainant as PW.1 and one Prabhakaran as PW.2 and on perusal of the statement of Edmund Patrick Jordan (The consultant of the Dartry Limited), the bank statements and E-Mails, invoices etc., the learned Judicial Magistrate No.III, Coimbatore, by order, dated 21.04.2014, took cognizance of the offence and ordered to take the case on file for offence under Sections 406, 420, 465, 468, 471 and 477A of IPC against the accused and issued summons to them under Section 204 Cr.P.C. Thereafter, a case in C.C.No.188 of 2014 was assigned.

15.It is further submitted that the accused failed to appear before the trial Court and immediately rushed to this Court and obtained stay, due to which, the trial is stalled for all these years. The accused had committed the offence by sending unsigned forged bills to the complainant to his residence in Coimbatore. The complainant made the payments from his bank in Coimbatore. Since the part of cause of action had taken place in Coimbatore, the question of jurisdiction does not arise in this case. As per Section 179 and 182 of Cr.P.C., the complaint is maintainable. As per the Solicitors Act, 1974, there is a provision contemplated how to proceed when there is recovery to be made by the solicitor. In this case, no such procedure is followed.

16.In support of his submissions, the learned counsel for the complainant relied on the following decisions:-

17.In the case of Mobarik Ali Ahmed Versus The State of Bombay reported in AIR 1957 SC 857, Section 2, 3, 4 of Cr.P.C have been dealt with in detail and held that “the use of the phrase 'every person in Section 2 as contrasted with the use of the phrase 'any person' in Section 3 as well as Section 4(2) of the code is indicative of the idea that to the extent that the guilt for an offence committed within India can be attributed to a person, every such person without exception is liable for punishment under the Code.”

18.In the case of Lee Kun Hee & Ors. Versus State of Uttar Pradesh reported in [2012] 4 SCR 287, the Hon'ble Apex Court had held that “two phrases of Section 179 Cr.P.C., 'anything which has been done' with reference to the offence and 'consequence which has ensued' substantially enlarge and magnify the scope of jurisdiction contemplated under Section 179 of Cr.P.C.,” and further held that “Section 182 Cr.P.C., can be invoked to determine jurisdiction and dealt the case where the offence has been committed in abroad.”

19.In the case of Ajay Agarwal Versus Union of India & Ors. reported in 1993 (3) SC 203, it had held that when part of offence taken place in India, Section 188 gets attracted.

20.In the case of A.V.Mohan Rao & Anr. Versus M.Kishan Rao and Anr. reported in 2002 (5) SC 180, the Hon'ble Apex Court had held with regard to Section 4 and 188 of Cr.P.C.,

21.In the case of Muralikrishna Versus State (S.I of Police), W-23, All Women Police Station, Royapettah, Chennai and another in Crl.O.P.No.13724 of 2013, dated 13.12.2013 it had held that with due respect to the learned Judge in view of the clear cut language employed in the proviso to Section 188 of Cr.P.C., with regard to extra-territorial offences, there is no prohibition for taking cognizance. The requirement for obtaining previous sanction of the Central Government arises only for conducting the trial.

22.This Court considered the rival submissions and perused the materials available on record.

23.It is not in dispute that the complainant is a Forumula 1 racing car sportsman and he completed his first year Formula 1 Championship in the year 2005. There was some dispute between the complainant and sports team by name Midland Formula 1 Marketing Limited and Dartry Limited with regard to the payment of commission arising out of the sponsorship of the complainant. Due to this dispute, two claim suits were filed before the High Court of Queens Bench in London England Claim No.2006 Folio 1264 and Claim No.H206X00979, wherein Midland F1 Marketing Limited claimed an amount of £6,75,000/- in their Claim Petition and Dartry Limited claimed £31,250/-, in their Claim Petition against the complainant. The 1st accused, the law firm and the 2nd accused its partner were authorized to defend the complainant before the Courts in England. Since the complainant was busy participating in car racing in various countries, the complainant felt instead of having a prolonged time consuming litigation it would be better to resolve the matter by out of Court compromise. Hence, he decided to settle the issue with the claimants out of Court in the two claim petitions. The complainant paid a sum of £2,25,000/- and compromised the issue with Midland Forumula I Marketing Limited and Dartry's Limited. The complainant paid a sum of £60,250/- as legal fee to the accused. Later, the complainant received 10 unsigned bills from the accused for the period from July 2006 to September 2007. Due to the busy schedule of the complainant, he was unable to raise objection and question the same immediately. Taking advantage of the same, the accused filed a suit before the Eastbourne County Court in England in Claim No.83101925 and obtained exparte judgment. Since the exparte judgment could not be executed in India, again in the year 2010 the accused filed a petition for setting aside the exparte judgment and filed a petition for summary judgment before the Eastbourne County Court in England. The accused obtained the summary judgment on merits on 13.04.2010. Thereafter, the accused initiated steps against the complainant to recover the money. The complainant attended the Court hearing through his counsel and no appeal was filed by the complainant to set aside the judgment passed by the Eastbourne County Court on 13.04.2010. The complainant in pursuant to the order dated 13.04.2010, was making payment of 200 pounds per month from October 2013 to March 2020, which is not in dispute. In fact the complainant appeared through his counsel one Mayo Wynne Baxter and participated in the proceedings initiated by the accused before the Eastbourne County Court. Further, the complainant had also given authority to his Chartered Accountant, to satisfy the judgment debt in whole or in part as soon as reasonably practicable, provided such sums can be released. Pursuant to it, the payments were regularly made.

24.From the letter of HM Courts & Tribunals Service Eastbourne County Court dated 09.08.2013, it is mentioned that the complainant was represented by his solicitor on 17.07.2013 when an order was made including timescale for the hearing and for questioning. On 17.07.2013, the complainant has signed the statements, submitted his bank particulars and also agreed to make monthly payment of 200 pounds. While this being so, now the complainant making a 'U' turn, objecting for the ten unsigned bills claiming it to be forged documents and was forced to make payment on these forged bills cannot be countenanced. The complainant appeared before the Eastbourne County Court in Claim No.85701925 initiated by the accused and participated in the proceedings and filed his response submitting himself to its jurisdiction and started making payments. It is admitted by the complainant that he received ten unsigned forged bills from July 2006 to September 2007. On perusal of these bills and invoices, it is seen that the bills are not signed. In the complaint, there is no mention how these unsigned bills were received and what was the mode.

25.The points raised by the learned counsel for the complainant with regard to the Solicitors Act, 1974 is not applicable to this case. Admittedly, the complainant participated in the Eastbourne County Court England and was making payments from October 2013 to March 2020. This being the case, the complainant cannot now make a turn around and make allegations that the invoices are forged. If the complainant is aggrieved, he ought to have filed an appeal before the England Court and not a criminal complaint in India.

26.In view of the above, this Court comes to the conclusion that the complaint even if taken on face value and accepted in its entirety, no prima facie case is made out against the accused. The complaint against the petitioners is maliciously instituted to escape from the liability in paying the professional fees to the accused. Hence, the continuation of the criminal proceedings would amount to abuse of process of law and miscarriage of justice.

27.In the result, this Criminal Original Petition is allowed and the proceedings in C.C.No.188 of 2014 pending on the file of the Judicial Magistrate Court No.III, Coimbatore is hereby quashed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

vv2

To

The Judicial Magistrate Court No.III,
Coimbatore.

+1cc to Mr.G.Vijay Anand, Advocate, S.R.No.40197

+1cc to Mr.Chethan Sagar, Advocate, S.R.No.40167

Crl.O.P.No.15163 of 2014

PVS(CO)
RLP(21/09/2021)