IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.17213 of 2021
and
Crl.M.P.Nos.9456 & 9458 of 2021

Hansraj Saxena ... Petitioner/
Accused No.4

Versus

1.State rep.by
The Inspector of Police,
Crime Branch C.I.D.,
Tiruppur. Crime No.22/2011.

2.G.Srinivasan ... Respondents /
Complainant / Defacto Complainant

PRAYER: This Criminal Original Petition has been filed under Section 482 Cr.P.C. to call for the records in C.C.No.2/2019 (Old case Spl.C.C.No.31/2018) on the file of the Hon'ble Principal District Sessions Judge at Tiruppur, quash the same in so far as the petitioner/A4 is concerned.

For Petitioner	: Mr.C.R.Malarvannan
For Respondent No.1	: Mr.A.Damodaran Additional Public Prosecutor
For Respondent No.2	: Mr.S.D.Venkateswaran

ORDER

The petitioner, who is the fourth accused in C.C.No.2/2019 (Old case Spl.C.C.No.31 of 2018) for offences under Sections 120-B, 420, 468, 471, 392, 451 and 109 IPC, pending on the file of the Principal District Sessions Judge, Tiruppur, has filed this quash petition.

2.The case of the petitioner is that on 28.07.2011, the defacto complainant/second respondent lodged a complaint to the Superintendent of Police, Tiruppur District, stating that he is in spinning mill business for the past 20 years. In the year 2008, one Subburathinam(approver) approached him at Udumalpet with a proposal of sale of paper mill viz., M/s. Zion Paper Mills Private Ltd., Kaduvettipalayam, Karumathampatti Post, Tiruppur District owned by A1 Kingsley, his wife A2 Jamila Kingsley and other Directors J.Ravi Samraj and his wife Margina/VerginaSamraj. The said Subburathinam was an expert in paper mill business, who was the South Zone Sales Executive of JMC Paper Tech (P) Ltd., Ahmedabad, Gujarat. He was well versed in erection and installation of machineries of JMC Paper Tech (P) Ltd. and he is well known in the paper mill Industries in South Zone in Coimbatore District, as such, he came in contact with the Directors of the Zion Paper Mills (P) Ltd.,. The said Zion Paper Mills (P) Ltd., obtained loan to the tune of Rs.4,66,00,000/- (Rupees Four Crores Sixty Six Lakhs only) from Union Bank, SSI Branch, Cross Cut-Road, Gandhipuram, Coimbatore. The loan was sanctioned for Zion Paper Mill, on the security on the properties of the Directors, as Collateral Security.

3.It is further stated that the said Subburathinam, expert in paper mills, induced the defacto complainant to invest in paper mill business, projected it as assured profitable business, believing his words, the defacto complainant shown interest in purchase of the Zion Paper Mill. Thereafter, a memorandum of understanding and Indemnity Bond were executed between the defacto complainant and Kingsley A1 and Jamila Kingsley A2. According to the MOU, the sale consideration for the said paper mill was arrived at Rs.12.10 crores, it was agreed by A1 & A2 and after stake holders of the Company would transfer their shares in the name of the defacto complainant, on such promise, the defacto complainant paid Rs.2 crore on the date of agreement by way of a cheque bearing serial No.551751 of ICICI Bank, Udumalpet Branch, in favour of Kingsley with proper acknowledgment, from Kingsley and Jamila Kingsley. The possession of the mill and the entire administration was handed over to the defacto complainant, on the same day along with physical possession of the entire unit and 100% of share certificate. The defacto complainant invested heavily for up-gradation of the paper mill, increased the production from 10 tonnes per day to 40 tonnes. Further, the defacto complainant paid Rs.2 crores to Union Bank of India, Coimbatore branch for clearing the loan liability. The defacto complainant again paid Rs.2.69 crores to A1 towards the sale proceeds. The balance of Rs.1.91 crores was withheld since there was some issues between the directors of Zion paper mill in transferring the shares.

4.During the month of July, 2009, A1 alongwith A3 Ayyappan, who is a henchman of A4 the petitioner herein (Chief Executive

Officer, Sun Pictures, Chennai) and A5 Anbalagan former MLA and District Secretary (South Chennai) DMK with criminal intention, entered into a criminal conspiracy to illegally misappropriate the Zion Paper Mills Private Ltd, and other properties by way of exerting pressure and threat on the life of the defacto complainant and family members. In continuation to the abovesaid conspiracy, called the defacto complainant on 29.07.2009 to be present in their office. A3 Ayyappan was in the film Distribution business in the name of "Yogesh Movie Makers" and "Yogesh Pictures". He was well acquainted with A4 the petitioner (Chief Executive Officer) in Sun Pictures Group. Hence, A3 & A4 had good contacts with A5 former MLA. The approver Subburathinam, who was having acquaintance with A1 & A2, was the personnel guarantor for the loan obtained by A1 & A2 from Union Bank of India, Coimbatore, for Zion Paper Mills Pvt., Ltd., approver was aware of the financial resources of A1 & A2 and their financial status of the defacto complainant, during March 2008, A1 expressed his idea to sell away the Mill to the defacto complainant. On 29.04.2008, A1 & A2 along with the approver made a conspiracy to cheat the defacto complainant by falsely projecting the daily production of the mill, further gave idea that production can be improved manyfold and induced the defacto complainant to enter into the deed. Further, A1 & A2 falsely represented that the said mill was producing 70 tonnes per day and A1 & A2 promised that they would hand over all the equity shares to the defacto complainant along with the movable and immovable properties of Zion Paper Mills Pvt. Ltd. In the MOU, the second part "JAYKAY" shall transfer the possession of Zion Paper Mills Private ltd., and the factory to the defacto complainant, subject to clearance of all its liabilities. The defacto complainant made the payment from the account of Pampa Spinning Mills, ICICI Bank, Udumalpet Branch on 15.05.2008 and on 07.07.2008, he paid again 1.90 crores to the account of A2 Jamila Kingsly and another 70 lacks to A1 vide cheques and RTGS. The defacto complainant came in legal possession of the said Company, machineries etc from 30.07.2009.

5.In furtherance to the conspiracy and in course of the same transaction, to the surprise of the defacto complainant, A1 & A2 to show implementation of the conditions as per MOU handed over the original share certificates of all the four Directors of the said mill and Form-32 for transferring of shares duly signed by them. Later, it came to know that A1 & A2 handed over forged share transfer forms of the other two directors viz., J.Ravi Samraj and his wife Margina Samraj. Thus, they committed the offence of cheating using forged documents.

6. The defacto complainant, later came to know about this forgery, hence withheld the payment of Rs.1.91 crores to A1 & A2. Hence, A1 & A2 could not redeem their collateral securities

from the Union Bank of India, SSI Branch, Coimbatore. Thereafter, during July 2009, A1 & A2 along with the approver Subbrathinam, conspired amongst themselves, coined the names of A3 to A5 to accused A1 & A2, gave an idea to resolve the said problem with the defacto complainant by threatening him and to get back the possession of the mill and title of Zion Paper Mills Private Ltd., without returning any amount received from the defacto complainant. Hence, A3 to A5 were also got into the conspiracy and in the course of the same, A1 to A5 planned and made the defacto complainant to come over to Chennai by giving false pretext of settling the issue with Ari Fabrics. On 21.07.2009, the defacto complainant came to the office of A3 at Pushpa Nagar, Nungampakkam Main Road, Chennai. A3 to A5 made the defacto complainant to stay, projected a false story that his associates R.Selvakumar and Venkatachalapathy were taken custody by the Coimbatore police, in connection with Crime No.27 of 2009, in that case, the police are in search of the defacto complainant. Hence, they shall make arrangements for filing anticipatory bail through their lawyers for the defacto complainant and took possession of the defacto complainant's phone, for the reason, from his phone, tower location will give lead to police to trace defacto complainant. Only after 3 or 4 days, the defacto complainant came to realize that he is cheated for obvious reason. Though it was promised that steps will be taken to obtain Anticipatory bail for him, no such steps taken. Thereby, wrongly confined the defacto complainant for 10 days at Door No.96, Pushpa Nagar Main Raod, Nungampakkam, Chennai. On 30.07.2009, A3 to A5 took the defacto complainant to the office of A5 in the presence of approver Subburathinam and A1, A3 to A5, threatened the defacto complainant with dire consequence and forced him to sign two documents prepared by them, any refusal, he and his family members will be physically harmed and thereby forced the defacto complainant to sign two documents under coercion and threat, by anti-dating those documents as 01.07.2009. The memorandum of cancellation prepared to cancel the earlier MOU dated 01.05.2008, prepared thereby the valuable securities, undertaken to be handed over as per earlier MOU was rescinded. Further, it was mentioned that A1 received only 2 crores instead of 4.69 crores. Thus, all the four accused viz., A1, A3 to A5 wrongfully confined the defacto complainant and threatened him, obtained his signatures in the created documents, for taking over possession of the "Zion Paper Mills Private Limited. The memorandum of understanding typed in Rs.100/- stamp paper bearing Sl.Nos.9396, 9397 dated 23.06.2009 are created documents. Though it was executed on 30.07.2009, it was shown as though executed on 01.07.2009. Further, the two tractors purchased by defacto complainant for paper mill business, taken possession by A1 & A2.

7.The contention of the learned counsel for the petitioner is that it was only the approver/witness, who stood as a bridge between A1 and A3 to A5. On reading of the statement of approver would show that A3 to A5 were already known to the defacto complainant much before A1 & A2 who was introduced by the approver. Further, 164 statement of approver A4 does not disclose any fact, where he is privy. It is mentioned that A4 was present in the office of A5 on 30.07.2009. Except this, there is nothing about A4. The approver initially gave a statement on 06.03.2014. Though the statement runs to several pages, further statement was recorded on 28.04.2014, no reason given why subsequent statement required. Further, from the both statements, there are no materials to show there was extortion and robbery. It is mentioned that the defacto complainant was forced to surrender the mill, since he was facing several criminal cases. The 164 statement is exculpatory in nature and the approver gives an improved version, implicating A3 as the person, who threatened defacto complainant with dire consequences. The defacto complainant to escape from the liability for repayment of loan to the bank cooked up a story against A1 & A2, in the process, he roped in A3 to A5. Further, there is inordinate delay of two years in lodging the complaint.

8.According to the prosecution, there was enmity between A4 and the defacto complainant prior to the transactions and that enmity was used to falsely implicate A4 in this case. The defacto complainant initially invested in the distribution of films produced by A4 and thereafter, he stopped. These facts have not been disclosed and the lower Court by its order dated 11.08.2015 took cognizance on the ground that the accused received money from ICICI bank at Udumalpet branch. The defacto complainant takes two stand. One is that, he was made to sign in the documents forcibly and the other is that, without knowing the contents, he signed in those documents, which are quite contrary. The defacto complainant demanding the accused to give back his mill property or the money received from him. No claim is made against the petitioner. Further, no notice or any written document produced to show that earlier there was such demand. Now, for the first time, in his oral statement, it is recorded so. From the uncontroverted statement of all the witnesses, it is seen that the petitioner not derived any benefit in the entire transaction. The defacto complainant implicated the petitioner due to political pressure and further, now realizing the mistake, come forward to withdraw the allegations made against the petitioner and petitioner is inclined to produce an affidavit to that effect.

9.The defacto complainant appeared before this Court, filed a joint compromise memo stating that he was compelled to implicate the petitioner by the then political establishment and the petitioner/A4 had nothing to do in the entire transactions.

Now, both the parties entered into an amicable settlement by way of the joint memo of compromise. Further, the genesis of the prosecution case was a private dispute between two persons, in respect of title and possession of the Zion Paper Mills Private Ltd., Coimbatore. The role of the petitioner comes much later, now the allegations against the petitioner are withdrawn by the defacto complainant confirming affidavit filed.

10.The learned counsel for the petitioner, in support of his contention, placed reliance of the Hon'ble Supreme Court in the case of Shiji and others Vs. Radhika and others reported in AIR 2012 SC 499 and Gian Singh Vs. State of Punjab and others reported in (2012) 10 SCC 303. For the principles that non compoundable offences to be compounded if it is private in nature and that the parties have arrayed at a compromise, which has its origin in the civil dispute between the parties, which dispute resolved by them and earlier the complaint was made against them on misunderstanding and misconception. Further, continuation would be only a exercise in futility serving no purpose. He further submitted that in the case of Ramawatar Vs. State of Madhya Pradesh in Crl.A.No.1393 of 2011, the Apex Court held that under Section 482 Cr.P.C. the powers of compounding are exercisable in post-conviction matters. In this case, the trial is yet to commence, charge sheet filed. Further in this case, the conspiracy and the offence had been categorised in two groups viz., A1 & A2 with the defacto complainant and subsequently, A3 to A5 along with A1. In this case, A3 to A5 are no more. The only person for the second continuous conspiracy is A4 and as regards A4, there is no other materials except A4 present along with A3 and A5. Further, the conspiracy chain is now snapped due to the subsequent developments.

11.The Additional Public Prosecutor submits that in this case, on the complaint of the defacto complainant, a case was initially registered. Subsequently, it was transferred to the file of CBCID finding the offence is of serious in nature. CBCID took up investigation and filed the final report before the trial Court. The trial Court, on perusal of the final report, found prima facie case made against the petitioner and other accused, took the same on file, issued summons and the petitioner is delaying the trial by giving one reason or other. In this case, the case registered in the year 2011 and on completion of the investigation, charge sheet filed in the year 2015. Thereafter, for one reason or other, case is kept pending. He submitted that as regards this petitioner, he participated in the second conspiracy, when A1 & A2 attempted to take back the Zion Paper Mills Private Ltd., from the defacto complainant. The role of the petitioner is that he was present with A3 & A5 on 30.07.2009, when documents were signed by defacto complainant other than that there is no other overtact against the petitioner. Now, both A3 and A5 are no more.

12.Considering the rival submissions and on perusal of the materials, it is seen that the petitioner is said to have conspired with the other accused in the transaction involving in Zion Paper Mills Private Limited. A1 & A2 along with two others viz., Ravi Samraj and Jamila Samraj, who are the Directors of the Zion Paper Mills Private Limited. The approver gave false projection of high, turn over and thereafter, deceived the defacto complainant to invest and take over the Zion Paper Mills Private Limited and its properties. A1 & A2 handed over 100% shares and documents pertaining to the transfer of share certificates to the defacto complainant. In the meanwhile, some payments made by defacto complainant to A1 & A2 and also to the bank. Defacto complainant, on coming to know that there is some dispute among the erstwhile directors of Zion Paper Mills Private Limited, defacto complainant withheld a portion of the payment. At that time, the dispute arose. Till such time, there is no role for A3 to A5. Thereafter, the name of A3 to A5 is pointed, revealed by the approver, the defacto complainant was asked to come to Chennai on a false pretext, thereafter, defacto complainant detained in the office of A3 at Pushpa Nagar. The confinement of the defacto complainant in Pushba Nagar is spoken to by LW15, who is the tenant in the property. He gives the details of the owner of the property, and he became the tenant after A3 vacated. His statement is to the effect that prior to him, one Yogesh Movie makers were having their office. The other witnesses, LW16 and LW17 are stamp vendors, both of them state nothing about the petitioner A4 and there is no other witnesses to state about the presence of the petitioner along with the other accused namely A3 & A5 when the episode is said to have taken place. Though LW1 the approver, LW2 the defacto complainant, refer about the petitioner in their 164 statement, now they have compromised the issues with the petitioner, with regard to the other transactions and happenings in the paper mill in Coimbatore, there is no whisper about the petitioner. The Charted Accountant, who prepared MOU states that it is only LW1, who gave particulars, thereafter MOU drafted. Thus, no witnesses speak about the petitioner's involvement in any of the offences. Added to it, now, the defacto complainant himself appeared confirmed the compromise entered with the petitioner and presently not willing to proceed against the petitioner.

13.In view of the same, this Court finds the compromise is made out of free will, without any compulsion and the defacto complainant wishes to drop the proceedings as against the petitioner. Hence, further continuation of the proceedings against petitioner A3/accused would be only a exercise in futility serving no useful purpose. The proceedings as against A4 alone is hereby quashed. Accordingly, the criminal original petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

sms

To

1.The Principal District Sessions Judge,
at Tiruppur.

2.State rep.by
The Inspector of Police,
Crime Branch C.I.D.,
Tiruppur. Crime No.22/2011.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.D.Venkateswaran, Advocate Sr.No.56597

CRL.O.P.No.17213 of 2021
and
Crl.M.P.Nos.9456 & 9458 of 2021

PCH(CO)
SB(01/03/2022)