THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2021
CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl.O.P.No.7815 of 2017 and
Crl.M.P.No.5646 of 2017

1.V. Pandian
2.S.Geetha
3.M.Sankar ...Petitioners/Accused 1 to 3

.Vs.

1.State by
Inspector of Police,
T-2, Ambattur Estate Police Station,
Chennai. ... 1st Respondent/Complainant

2.M. Sathya ... 2nd Respondent/Defacto Complainant

Prayer: Petition filed under Section 482 of Cr.P.C.to call for the records pertaining to C.C.No.64 of 2016 pending before the learned Judicial Magistrate at Ambattur and quash the charge sheet as illegal, incompetent and without jurisdiction by allowing the Criminal Original Petition.

For Petitioners : Mr. Sarath Chandran for
Mr. Ma.P.Thangavel

For Respondents : Mr. S. Vinoth Kumar
Government Advocate(crl.side)
[for R1]
Mr.L. Gavaskar [for R2]

O R D E R

This Criminal Original Petition has been filed to quash the Final Report filed under Sections 420, 468, 471,506(ii) I.P.C.

2. The crux of the charge against the Petitioners are as follows:

2.a. A1 is father of A2 and A3 is the husband of A2. The Accused and Defacto Complainant are relatives. Partnership firm was constituted in the name of "Thirumalai Timber Marts" and the Defacto Complainant invested Rs.2,50,000/-. The

Partnership Firm was run in the place belonged to 3rd Accused/3rd Petitioner herein. The main customer to the partnership business is Esan M.R.Top Changes Pvt. Ltd., A3 was in-charge of the partnership firm preparing Delivery Chalan, Invoice etc., However, the 1st Petitioner used the name "Sri Thirumalai Timber Marts" and received payment of Rs.5,27,801/- by issuing the bogus Delivery Chalan and utilised the amount actually meant for the partnership business. It is the further case of the prosecution that the accused utilised the cheques issued in favour of the "Thirumalai Timber Marts" for the new company formed by them viz., "Sri Thirumalai Timber Marts", and when the defacto complainant found the above fraud and enquired about the same, the accused threatened the defacto complainant and her husband, thereby they have committed the offences under Sections 420, 468,471, 506(ii) I.P.C.

3. Learned Counsel Mr. Sarath Chandran appearing for the Petitioners mainly contended that the entire prosecution is nothing but a result of dispute in a partnership business and criminal proceedings were initiated for settling the scores or pressurising the parties to settle the civil disputes. It is his contention that even as the entire materials of the prosecution taken as a proof, same do not constitute any of the offences alleged against the petitioners. Absolutely there is no material available on record to show that the accused have created false document so as to attract the offence of forgery or the offence under Sections 468 and 471 of IPC. Absolutely there is no evidence to show that the accused have deceived somebody in this case. The only grievance of the defacto complainant appears to be with regard to opening of the new partnership firm in the name of "Sri Thirumalai Timber Marts." by the accused and selling the products directly from that partnership company. Therefore, such dispute could not be construed an offence. At the most it is only a Civil nature the same cannot be given a criminal colour. Therefore, submitted that the entire prosecution is nothing but abuse of process of law and prays to quash the entire proceedings.

4. The learned counsel also relied upon the following judgments in support of his contention:

1. Mohammed Ibrahim and Others vs. State of Bihar and Another [(2009) 8 Supreme Court Cases 751]
2. V. Srinivasan and another vs. the State [2019-1-L.W.(Crl) 934]
3. Velji Raghavji Patel vs. State of Maharashtra [AIR 1965 SC 1433]

5. Whereas the learned Counsel Mr.L. Gavaskar appearing for the defacto complainant submitted that the name of the partnership firm "Thirumalai Timber Marts" has been misused and the word "Sri" has been prefixed in the Invoices issued by the Partnership firm and the amount of Rs.5,27,801/- issued to the original partnership firm was directed to the newly formed partnership firm by the accused. Therefore, it is the contention that there are materials available on record. Even before allotting the TIN number by the authorities the accused used the TIN number of the defacto complainant partnership firm in certain invoices. That itself clearly shows that there is creation of false documents. Therefore, submitted that when the prosecution is collected materials, the entire prosecution cannot be quashed. Further, it is his contention that the Certificate of Registration of "Sri Thirumalai Timber Marts" itself indicate that the firm was commenced only on 17.09.2010, whereas certificate was issued on 11.11.2010. All these facts have to be seen only at trial and the matter cannot be quashed.

6. In support of his contention the learned counsel for the defacto complainant/R2 relied upon the judgment in Kaptan Singh vs. The Stae of Uttar Pradesh and Ors. [AIR 2021 SC 3931] wherein the Apex court has held that the High Court is not required to consider the merits of the allegations in detail, which as such are required to be considered at the time of trial.

7. The learned counsel also relied in Priti Saraf and Ors. vs. State of NCT of Delhi and Ors. [AIR 2021 SC 1531] the Apex Court has also held that exercise of inherent power of the High Court is an extraordinary power which has to be exercised with great care and circumspection.

8. Heard both sides.

9.As indicated above, the crux of the prosecution case is that the accused have created false document in the name of "Thirumalai Timber Marts" wherein the defacto complainant and accused are original partners. The accused used the word "Sri" before the "Thirumalai Timber Marts" and diverted the funds therefore created false document and committed the offence. It is well settled that while exercising power under Section 482 Cr.P.C.the Court should be slow in exercising the power. However, when the entire materials collected by the prosecution do not constitute an offence or a civil dispute given a criminal colour to settle some other partnership dispute, the Court can exercise the power in order to prevent the abuse of process of law from the inception.

10. The allegations set out in the prosecution case clearly indicate that there are disputes in the partnership business between the partners. The main grievance of the defacto complainant is that the accused have opened a new partnership firm prefixing the word “Sri” before the existing partnership firm viz., “Thirumalai Timber Marts” and diverted the business of original firm and received a sum of Rs.5,27,801/- by creating false Delivery Chalan, Invoice, etc., In this regard, it is relevant to note that the Apex Court in Mohammed Ibrahim's case (supra) held as follows:

> “14. An analysis of section 464 of Penal Code shows that it divides false documents into three categories:
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> 1) The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.
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> 2) The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.
>
> 3) The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.
>
> In short, a person is said to have made a `false document', if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practicing deception, or from a person not in control of his senses.”

11. To attract the offence under Section 464 IPC, a person should have done any of the Act contemplated under Section 464. The first clause that he made or executed a document claiming to be someone else or authorised by someone else. Absolutely there is no evidence to show that the petitioner dishonestly or fraudulently made or executed a document with the intention of causing it to be believed that such document was made or executed by some other person or by the authority of some other person by whom or by whose authority he knows it was not made or executed. Here it is the case of the prosecution is that the petitioners themselves altered the document. Therefore, the first category of Section 464 IPC will not be attracted as against the petitioners herein. Similarly, to attract third category, it is not the case of the prosecution here that the petitioners have fradulently or dishonestly caused any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

12. The allegations putforth by the prosecution will not attract 3rd category also. To bring the accused in the second category namely, a person dishonestly or fraudulently, by cancellation or otherwise, altered a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person, if there is a materials then certainly the prosecution can make out a case against the accused. Though it is contended by the prosecution that the accused have altered the invoices issued by the "Thirumalai Timber Marts" as "Sri Thirumalai Timber Marts" after the invoices have been issued by the original partnership firm. It is to be noted in this regard, the main witness relied upon by the prosecution is L.W.5.

13. The court aware of its limitation going to the details about the statements recorded by the prosecution,. But at the same time prosecution materials itself indicated that particularly, L.W.5 statement when carefully seen, he has stated that he has paid amount of Rs.5,27,801/-. He stated that the very supply itself was made in the name of "Sri Thirumalai Timber Marts". Pursuant to the same they paid the amount directly in the name of "Sri Thirumalai Timber Marts." From the above, the prosecution version clearly indicate that it is not the case of prosecution that after the supply has been made in the name of "Thirumalai Timber Marts", the word "Sri" was prefixed. Whereas what has been unearthed by the investigation

indicates that the supply itself made in the changed name of new partnership by the accused. In such view of the matter, the act of the petitioner will not fall within the second category also to attract the offence of making false document under section 464 IPC and other offences. It is nowhere the case of the L.W.5 or others that the accused have played deception dishonestly from the inception to pay the amount by L.W.5. Therefore, the offence under Section 420 IPC also could not be made out. Therefore, merely because the Final Report has been filed, when the material collected by the prosectuion itself indicates that the offence has not been made out, there is no prohibition in law exercising jurisdiction under Section 482 Cr.P.C.

14. In STATE OF HARYANA AND OTHERS Vs. BHAJANLAL AND OTHERS [1992 Supp (1) Supreme Court Cases 335] the Apex Court has held as follows:

> "8. 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
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> (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 ac- cused;
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> (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 investi- gation 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;
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> (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 institu- tion 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. [305D-H; 306A-E] 8.2. In the instant case, the allegations made in the complaint, do clearly constitute a cognizable offence justi- ï7 on and this case does not call for the exercise of extraor- dinary or inherent powers of the High Court to quash the F.I.R. itself. [307B] State of West Bengal v. S.N. Basak, [1963] 2 SCR 52; distinguished.

15. From the above judgement the Apex Cout has also held that 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, the Court can exercise the power under Section 482 Cr.P.C and quash the proceedings.

16. Considering the above judgments and also well settled provisions and the entire materials collected by the prosecution itself on the face value do not constitute any offence and the matter arising out of the partnership dispute, criminal colour cannot be given to settle the dispute which are purely of civil nature. In such a view of the matter, it is the case where power under Section 482 Cr.P.C.has to be exercised. Accordingly, charge sheet filed in C.C.No.64 of 2016 pending before the learned Judicial Magistrate at Ambattur is quashed.

17. In the result Criminal Original Petition is Ordered. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ggs

To
1. The Judicial Magistrate
   Ambattur.

2. The Inspector of Police
   T-2 Ambattur Estate Police Station
   Chennai

3. The Public Prosecutor
   High Court, Madras 104.

+1 CC to Mr.Ma.P. Thangavel, Advocate sr 64936.

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PA(CO)
SP(10/06/2022)