IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.11.2021

C O R A M

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl. O.P. No.2576 of 2017
&
Crl.M.P.Nos.1827 and 1828 of 2017

1.S.Giridharan
2.S.Gauthaman
3.T.Raghavan
4.S.Muralidharan
5.C.Ganesh
6.S.Meerabai
7.Fridgehouse Retail (P) LTd.,
Represented by its Managing Director
S.Giridharan
XXX/1077A, Hospital Road,
Eranakulam, Kerala - 682 011. ...Petitioners/Accused

Versus

1.The State of Tamil Nadu,
Represented by
The Inspector of Police,
Cyber Crime Cell,
Coimbatore.

2.C.Natesh
C/o. Precision Motors
No.129, Burma Colony
Perungudi
Chennai - 600 096 ...Respondents/Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records relating to the case in C.C.No.201 of 2015 on the file of the learned Judicial Magistrate No.V, Coimbatore and quash the same.

For Petitioners	...	Ms.Aparajitha Vishwanath
For Respondents	...	Mr.S.Vinoth Kumar Government Advocate for R1
	...	Mr.K.S.Karthikraja for R2

ORDER

This Criminal Original Petition has been filed to quash the final report in C.C.No.201 of 2015 pending on the file of Judicial Magistrate V, Coimbatore for the offences under Sections 120-B, 406, 468, 471 and 420 of IPC.

2. Heard the learned counsel for the petitioners and the learned counsel appearing on the behalf of the respondents.

3. The allegation in the final report is that Accused 1 to 6 conspired together and forged the signature of the de facto complainant Natesan and witness Jaganathan and created a forged resolution dated 31.03.2010 of the partnership firm, thereby usurped the assets of the firm and the first accused created an equitable mortgage dated 05.10.2011 in respect of the certain immovable properties situated in Trichur Village, Trichur Taluk in Kerala to secure a loan from a Bank. Hence, the respondent has registered an FIR against the petitioners/ accused herein for the offences under Sections 120-B, 406, 468, 471 and 420 of IPC.

4. The learned counsel appearing for the petitioners submitted that the complaint is nothing but a motivated one, because of a family dispute between the parties. The de facto complainant and accused 1 to 6 are related to each other. There was a partnership firm in the name and style of "Natesan Brothers" which was established in the year 1985. Thereafter, on 31.03.2010, there was a resolution in the partnership firm to make it as a Private Limited company. At that time, the de facto complainant expressed his non-willingness to pass such a resolution. Therefore, the partnership firm continued to remain as dormant and others have come out of the partnership. In the meantime, the de facto complainant filed a Civil Suit in O.S.No.1421 of 2013 on the file of I Additional Subordinate Judge, Coimbatore to declare the resolution of the partnership firm as null and void. However, no orders have been passed in the said suit. Similarly, he has also filed Civil Suits in O.S.No.27 of 2014 on the file of Subordinate Judge, Thrissur and O.S.No.14 of 2014 on the file of Subordinate Judge, Ernakulam, asserting that he is the partner of the firm and sought for declaratory reliefs over the properties of the firm. However, no orders came to be passed in these suits also. Pending above suits, this case was filed before the Crime Branch, Coimbatore and the final report has been filed, without even examining the signature said to have been forged by A1 to A6. No forensic report whatsoever has been obtained. It is his further contention that when the accused, who were defendants in the suit filed before the Subordinate Judge, Ernakulam, filed an application for obtaining the specimen signature of the de facto

complainant to compare the same by the expert and the Court passed an order on 07.10.2017 stating that the de facto complainant has never present himself before the Court to give his specimen signature and drawn adverse inference against him, the entire prosecution is nothing but a motivated one and result of civil dispute.

5. The learned Government Advocate (Criminal side) submitted that though the final report has been filed, the crux of the allegations as to the forgery has not been established and no documents have been subjected to forensic examination.

6. In the light of the above submission, this Court perused the entire materials placed before this Court. Normally, Courts will be slow in exercising its jurisdiction under Section 482 Cr.P.C to interfere with the final report filed by the prosecution. At the same time, when the materials placed on the record indicate that the entire investigation is a result of motivated complaint in a civil dispute and the offences charged have been pressed into serve with motive and the materials collected by the prosecution is taken even in its face value would not constitute an offence, the Court can very well interfere with and quash the final report to prevent abuse of process of law.

7. The learned counsel appearing for the respondent de-facto complainant is also present and he is not able to bring any material to substantiate the allegations that the signature was compared and there was a evidence to conclude that there is a forgery. Further, it is not disputed that the civil suits are pending between the parties before the Subordinate Court, Coimbatore, Sub-Court, Ernakulam and Sub-Court, Thrissur as referred to above. In one of the aforementioned suit i.e., in a suit pending before Subordinate court, Ernakulam, an application was filed by the accused to direct the de facto complainant to give his specimen signature for comparison by the experts. The Court has ordered the same on 09.09.2016. Despite such order, the de facto complainant, who was the plaintiff in the above suit never appeared before the Court to give his specimen signature. Therefore, the Court by its order dated 07.10.2017 has drawn adverse inference against him and closed the petition and the suit has been posted thereafter. These facts are not in dispute. Though the prosecution in this case has filed a final report, has not made any attempt to collect original signature of the de facto complainant nor any attempt has been made to find out whether the resolution has been forged as alleged by the de facto complainant. There are no materials collected by the prosecution to substantiate the allegations of the de facto complainant. To bring down the guilt of the accused for the offence of forgery, the prosecution has to first establish

falsification of records making false documents under Section 464 of IPC. Section 464 IPC reads as follows:

'464. Making a false document

"A person is said to make a false document or false [1]electronic record-

First-Who dishonestly or fraudulently-

(a) Makes, signs, seals or executes a document or part of a document;

(b) Makes or transmits any electronic record or part of any electronic record;

(c) Affixes any digital signature on any electronic record;

(d) Makes any mark denoting the execution of a document or the authenticity of the digital signature,

With the intention of causing it to be believed that such document or part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly- Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly- Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alterations;'

8. A perusal of Section 464 IPC makes it clear that only when the false documents are made dishonestly or fraudulently in any of the circumstances narrated under Section 464 IPC, such documents are considered as false documents. Only when false documents are established, the question of proving forgery will arise. The prosecution has not made any attempt to collect any materials in this regard.

9. In the light of the facts narrated above and considering the fact that the de facto complainant himself is not interested in providing the signature before the Civil Court and adverse inference has been drawn against him as already mentioned supra, continuation of the prosecution before the trial Court is nothing but a abuse of process of law. Accordingly, as there are no materials as against the accused expect the oral testimony of the de facto complainant and he has also failed to appear before the civil Court to give his specimen signature and adverse inference has been drawn against him, the continuation of the prosecution will not serve any purpose.

10. Accordingly, this Criminal Original Petition is allowed and the case pending in C.C.No.201 of 2015 on the file of the learned Judicial Magistrate Court No.V, Coimbatore is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

gba/gpa

To

1.Judicial Magistrate - V,
Coimbatore.

2.The Inspector of Police,
Cyber Crime Cell,
Coimbatore.

3.The Public Prosecutor
Madras High Court
Chennai.

+2ccs to M/s.Abishek Jenasenan, Advocate SR. No.60332

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VSNII (CO)
PR (09/12/2021)