IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.12.2021

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No.26121, 25903 and 25904 of 2017
&
Crl.M.P.Nos.14939, 14940, 15018 of 2017
& Crl.M.P.Nos.85 and 86 of 2018

1. R.Duraisamy
2. Dhanalakshmi .... Petitioners in Crl.O.P.No.25903/2017/ A1 & A2

S.Ramaraj
S/o.Sambasivam .... Petitioner in Crl.O.P.No.25904 / 2017/A5

1. B.Shanmugavadivel
Sunrise Knitting Mills Pvt. Ltd.,
Kullavayal Thottam,
Kullengoundanpudur,
Andipalayam Post,
Tiruppur 641 687.

2. Mahesh
S/o. Krishnamurthy

3. Kannan
S/o. Krishnamurthy .... Petitioners in Crl.O.P.No.26121/2017/ A3, A4 & A6

Versus

1. The State by Inspector of Police,
Central Crime Branch,
Tiruppur City.(Crime No.26 of 2017)

2. Vengatachalam.M .... Respondents in all Crl.O.Ps.

COMMON PRAYER : Criminal Original Petitions filed under Section 482 of Cr.P.C. to call for records in Crime No.26 of 2017 dated 20.11.2017 on the file of the Inspector of Police, CCB, Tiruppur City, Tiruppur and quash the same.

For Petitioners ... Mr.J.Franklin
in Crl.O.P.No. 26121/2017

Mr.Sunder Mohan
in Crl.O.P.Nos.25903 & 25904 of 2017

For Respondents... Mr.S.Vinoth Kumar
Govt. Advocate (Crl.side)for R1
in all OPs
Mr.S.Sathiyanarayanan for R2
in all OPs

O R D E R

Crl.O.P.No.25903 of 2017 has been filed by accused 1 and 2, Crl.O.No.25904 of 2017 has been filed by accused No.5 and Crl.O.P.No.26121 of 2017 has been filed by accused 3, 4 and 6 to quash the First Information Report in Crime No.26 of 2017 pending on the file of the respondent police.

2. The accused 1 and 2, who are husband and wife, are partners and accused 3 and 4 are their sons-in law and accused 5 and 6 are employees of the firm known as Sunrise Knitting Mills. The shorts facts of the case is that originally a partnership firm, by name “Sunrise Knitting Mills” was constituted in the year 2007, by the De facto complainant along with his three friends Shanmugam, Santhamani and Dhanalakshmi contributing 25% share each. Subsequently, Santhamani has resigned and in her place one Duraisamy, Son of Ramasamy Gounder was inducted as a partner. After such induction, A1 and A2 was holding 40% of the share in the firm. After the death of one of the partners, namely Shanmugam, his son-in-law, namely Sivaraman was also inducted as a partner. The first accused Duraisamy was given incharge to look into the affairs of the firm and from the inception, the firm was running profitably till 2016. The annual turn over was Rs.150 Crores. At the relevant point of time, by mortgaging or pledging or hypothecating the properties of the firm as well as individual partners, a sum of Rs.34 Crores was borrowed from Indian Overseas Bank. From 2016 onwards, the first accused Duraisamy started taking decision on his own without consulting other partners and has not furnished proper accounts of the firm. Accordingly, the first accused with other accused conspired in the year 2015 and misappropriated the properties of the firm worth several crores and fraudulently started a new company by name Sunrise Knitting Mills Pvt. Ltd., on 16.12.2015 wherein accused 3 and 4 were directors. Thereafter, the business transaction of the firm was diverted to the company, besides company's property was also leased out to accused 3 and 4 for lesser amount thereby caused loss to the Company and all the assets of the Company worth

about Rs.50 Crores was also misappropriated, thereby they committed offences punishable under Sections 120B, 420, 467, 468 and 471 of IPC.

3. It is the contention of the learned counsel appearing for the petitioners that the entire First Information Report is an abuse of process of law and the dispute in a partnership firm has been given a criminal colour. It is the further contention of learned counsel that this First Information Report itself filed on the basis of the direction of this Court in a petition filed under Section 482 Cr.P.C and prior to filing of this complaint, the dispute was referred to Arbitration wherein also similar allegations of fraudulent activities has been raised. Learned Arbitrator, a retired judge of this Court has given a finding to the effect that allegation of the de facto complainant and others has not been established and finally passed an award for dissolution of the firm and the manner in which the immovable properties of the firm has to be diveded among partners. When the entire dispute relating to the affairs of the firm has already culminated into an award, suppressing the aforesaid arbitration award and to overcome the award, using the police machinery the present complaint has been filed before the police authorities and the same is nothing but an abuse of process of law and prays for quashing the complaint.

4. Per contra, learned counsel appearing for the respondent vehemently contended that the Arbitrator has not given any finding regarding the misappropriation of the assets of the firm and the immovable properties have been sold to the son-in-laws and there are huge misappropriation of the firm's assets, besides there is also allegation of the forged bills and therefore, this case requires investigation and opposed for quashing the FIR.

5. I perused the entire materials available on record. This Court is aware of the fact that when prima facie allegations are made in the FIR, the same requires deep investigation. Normally, this Court will not interfere with the investigation exercising power under Section 482 Cr.P.C., but, at the same time, when it is established that the entire FIR is a result of civil dispute and given a colour of criminality, the Court will not hesitate to interfere with such FIR.

6. As narrated above, the crux of the allegation in the FIR is with regard to transfer of assets to the company owned by accused 3 and 4 and the properties have been fraudulently sold to Sunrise Knitting Mills Pvt. Ltd.,, The FIR itself indicates that the entire management of the firm was in the hands of first accused and the firm was running profitably till 2016. Only thereafter, it appears that the dispute arose among the partners. It is relevant to note that the de facto

complainant and other partners have invoked arbitration in this matter, which culminated into an award dated 27.10.2017 made in A.O.P.No.421 of 2016 prior to the filing of the FIR. The crux of the partners' case before the Arbitrator is that the respondents, namely the accused 1 and 2 have misappropriated the funds of the firm, the properties of the firm were leased out to son-in-laws (A3 and A4) and suits are also pending before the Court and such misappropriation caused huge loss to the firm and foreign orders meant for the firm has been diverted to the company owned by A3 and A4. After considering the evidence on both sides, the learned Arbitrator, a retired judge of this Court, passed an award and while considering Point Nos.3 and 4 has held that though the properties of the firm were leased out to the Company, whether the quantum of lease amount is sufficient or not cannot be decided at present and the same will be taken in to account by the Auditor. Similarly, the learned Arbitrator recorded a finding that no semblance of evidence for diverting the business of the firm to the company and recorded a finding that merely because one of the partners of the firm has helped son-in-laws in the different business, it cannot be said that there was cheating and funds were diverted. Similarly, it is also recorded that there is no evidence to show that foreign orders were cancelled such finding recorded in the arbitration award based on facts.

7. Almost similar allegations contained in the FIR have been made in the Arbitration OP. It is also stated before this Court that the award passed in the year 2017 has not been challenged by the de facto complainant and other partners and ultimately, the learned Arbitrator passed the final award, which reads as follows:

> “a) That M/s. Sunrise Knitting Mills, partnership firm is ordered to be dissolved.
>
> b) That account of Sunrise Knitting Mills, shall be taken from the date of re-constitution of partnership, namely, 12.03.2012, till the actual date of accounting, taking into consideration all the relevant materials, including liability, if any.
>
> c) M/s.A.Loganathan & T.Venketasen, Chartered Accountants who are having their office at Sabari Towers, No 28(1)/20A KKR Layout, Main Street, Mangalam Road, Tirupur – 641 604, are appointed as Auditors for the purpose of taking the account are stated above.
>
> d) That the Auditors shall suggest the allotment of share of profits and loss, as the case may be, according to the share of the parties, regarding the business income;
>
> e) That, Auditors shall, further divide the immovable properties namely Item Nos. 1 to 9 described in the claim statement, paragraph No.17 by metes and bounds, according to the share namely 60% to the

claimants, 40% to the respondents (10+30) by taking into account the value of the properties and other relevant matters suggesting the share as said above.

f) The parties are directed to give the Auditors all relevant information or, to produce or to provide access to any related/relevant, documents, goods or other property for their inspection;

g) The Auditors after taking account and dividing the immovable properties as stated above shall file a detailed report for accounting and division of properties within two months from the date of receipt of copy of the order.

h) The fee payable to the Auditors, at their request as fixed by them shall be paid by both the parties, in equal share

i) That on filing the report by the Auditors as said above the parties shall file an application before the Arbitrator for appropriate order.

j) That the rest of the claim of claimants and counter claims are dismissed without cost.

k) That the parties shall bear their respective costs, since each of them succeeded, partially.

l) That the Arbitral tribunal shall have a lien on the arbitral award for the UN paid cost of the arbitration."

8. Therefore, when the civil dispute has already ended in an award for dissolution of the firm and the mode of division of immovable properties has also been set out in the award, once again the same allegation cannot be pressed into service in the form of FIR that there was forgery and misappropriation of funds. It is relevant to refer to judgment of the Apex Court in Velji Raghavi Patel Vs. State of Maharashtra reported in AIR 1965 SC 1433 wherein in paragraph 9 the Apex Court has held that a partner has undefined ownership along with other partners over all the assets of the partnership, if he chooses to use any of them for his own purposes he may be accountable civilly to the other partners, but that will not amount to any misappropriation. For better appreciation, the entire paragraph 9 is extracted hereunder:

"9. Mr Chatterjee finally contends that the act of the appellant will at least amount to dishonest misappropriation of property even though it may not amount to criminal breach of trust and, therefore, his conviction could be altered from one under Section 409 to that under Section 403. Section 403 runs thus:

"Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term, which may extend to two years, or with fine, or with both."

> It is obvious that an owner of property, in whichever way he uses his property and with whatever intention will not be liable for misappropriation and that would be so even if he is not the exclusive owner thereof. As already stated, a partner has, undefined ownership along with the other partners over all the assets of the partnership. If he chooses to use any of them for his own purposes he may be accountable civilly to the other partners. But he does not thereby commit any misappropriation. Mr. Chatterjee's alternative contention must be rejected."

9. Following the above judgment of the Apex Court, this Court in Crl.O.P.No.29176 of 2017 has held that the dispute in a partnership firm cannot be given a criminal colour. Admittedly, in this case, the entire allegations pressed into service in the FIR is also decided in the arbitration. Therefore, by using the police machinery, once again, the defacto complainant cannot reopen the dispute, which has already culminated in an arbitration award. If such thing is allowed, it will amount to undue the award legally passed by the Arbitrator in a civil dispute. The very allegation in the FIR itself indicates that as the firm was running profitably for several years, there was no dispute whatsoever arose between the parties. Only when the income of the firm was reduced after 2016, there arose all the dispute. Now the entire allegation in the FIR has been made as if all the properties have been diverted and sold. It is relevant to note that the award itself is passed prior to the lodging of the FIR and the mode of division of the immovable properties has also been set out in the award. In such view of the matter, as the civil dispute is intended to be given a criminal colour, this Court is of the view that continuation of investigation against the petitioners is an abuse of process of law.

10. Accordingly, these Criminal Original Petitions are allowed and the FIR in Crime No.26 of 2017 is quashed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

//True copy//

Sub Assistant Registrar

gpa

To

1. The Inspector of Police
   CCB, Tiruppur City
   Tiruppur

2. The Public Prosecutor
   Madras High Court
   Chennai

+1cc to Mr.Sunder Mohan, Advocate SR.No.672537

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Crl.M.P.Nos.14939, 14940, 15018 of 2017
& Crl.M.P.Nos.85 and 86 of 2018

VSN II(CO)
GMY(04/02/2022)