



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 27.01.2021

DATE ON WHICH PRONOUNCED : 22.02.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.7958 of 2017

and

Crl.MP(MD)No.5417 of 2017

1.Nataraja Rediyar

2.K.Lingasamy

... Petitioner/Accused Nos.2 & 3

Vs.

K.Muthu

... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in C.C.No.43 of 2015 on the file of the Judicial Magistrate, No.I, Tuticorin, now transferred to Judicial Magistrate No.III, Tuticorin in C.C.No.1015 of 2017 on the file of the learned Judicial Magistrate III, Tuticorin and quash the same.

For Petitioners : Mr.KA.Raamakrishnan

For Respondent : Mr.A.Thiruvadi Kumar

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.43 of 2015 on the file of the judicial Magistrate, No.I, Tuticorin, now, transferred to Judicial Magistrate No.III, Tuticorin in C.C.No.1015 of 2017, on the file of the learned Judicial Magistrate III, Tuticorin, so far as the petitioners are concerned.

2.The brief facts of the case is as follows:-

(i) The respondent and his brother namely Senraj, were jointly enjoying the property comprised in S.No.116/2 situated in Silukanpatti Village, Pudukkottai. On 02.11.2012, the said Senraj, sold the above said property by including the name of the



complainant to one Balamurugan, Chemicals Pvt Ltd through a registered sale deed. The defacto complainant filed a complaint before the Pudukkottai Police Station, Tuticorin and there was no action. So, he filed a private complaint before the learned Judicial Magistrate, Tuticorin in Cr.MP.No.977/2013 under Section 156 (3) Cr.P.C for a direction. But, it was dismissed on 18.02.2013, holding that it is a civil dispute and thereafter, the respondent filed a revision before this Court, in Crl.RC.No.240/2013. It was also dismissed on 11.01.2014. But, however, liberty was given to file a private complaint.

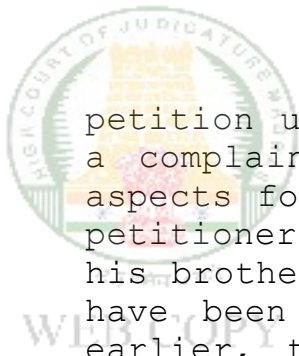
(ii) In pursuant to the same, the respondent filed a private complaint before the learned Judicial Magistrate No.I, Tuticorin and the same was taken cognizance in C.C.No.43 of 2015, for the punishable offences under Sections 417, 419, 420, 468, 471, 120 (b) and 506 (i) IPC and later, it was transferred to learned Judicial Magistrate III, Tuticorin, and renumbered as C.C.No.1015 of 2017.

(iii).In this case, the petitioners are arrayed as accused Nos. 2 and 3 respectively. Seeking quashment of the charge sheet, this criminal original petition is filed.

3. As narrated in the preamble portion, it is seen that there is a dispute between two brothers regarding the property comprised in S.No.116/2 situated in Silukanpatti Village. According to the defacto complainant, his own brother namely, Senraj sold the property to the first accused by including his name by forging and impersonation. For that purpose, according to the defacto complainant, these petitioners were also colluding, abetting and entered into a conspiracy.

4. During the arguments, much argument was advanced on the point whether the present complaint is the second complaint filed by the complainant on the very same set of facts, with that of the petition filed by him under Section 156 (3) of the Cr.P.C, which ended in dismissal and also confirmed by this Court in Cr.RC (MD)No.240 of 2013. As mentioned in the preamble portion, liberty was granted to the defacto complainant to file a private complaint if so advised. According to him, since liberty was granted to him, he filed a private complaint, which is legal.

5. According to the learned counsel for the petitioner, this has to be construed only as a second complaint, which is not maintainable unless and until new set of facts and materials are placed before the Court. According to him, this complaint is a verbatim reproduction of the earlier petition filed under Section 156 (3) of Cr.PC and so, it has to be construed as a second complaint, and for that purpose, he would also say that the



petition under Section 156 (3) of Cr.PC must also be construed as a complaint and not an information. But I am going into those aspects for deciding this petition, for the simple reason that the petitioners are the third parties, not only to the complainant and his brother, but, as well as to the property, which was alleged to have been sold by the first accused in the case. As mentioned earlier, the only allegation that has been made by the defacto complainant against the petitioners is that they are party to the conspiracy. Perusal of the complaint shows that specific allegations that has been levelled against the petitioners are that these petitioners and other accused before the Court, acted in collusion with the first accused in order to cheat him. In the sworn statement also, he repeated the same allegation.

6. According to the learned counsel for the petitioner, these allegations do not attract the ingredients under Section 120 (b) of IPC. In the absence of any *prima facie* materials before the Trial Court, the complaint is liable to be quashed.

7. Per contra, it is the contention on the part of the respondent that it is only a matter of evidence since it is a warrant procedure, the petitioners will be given an opportunity to cross examine the witnesses even before framing of charges. So, at that time, they can very well raise those defence, which are available to them and this is a very nascent stage of the enquiry and so, the Court cannot expect the offence to be either set out in the complaint or in the sworn statement. Evidence with regard to the conspiracy can be let in only during the course of recording the evidence, before framing of charge. So, the point, which the counsel for the respondent wish to bring home is that only at the time of framing the charges, the involvement of the petitioners can be found out and this is not the stage. No doubt, that the petitioners can be given chance to cross examine the witnesses before framing of charge. But, the fact remains that basic ingredients as well as the materials must be placed along with the complaint. The Trial Court after recording the sworn statement of the defacto complainant, chose, not to record the statement of the further witnesses. But, took cognizance of the offence and chose to issue summons to the accused persons.

8. Para 4 of the complaint reads as under:-

"On 01.11.2012, the first accused, without knowledge of the complainant, sold the property in S.No.116/2, Patta No.94, to the 7th accused before the 8th accused. The first accused included the name of the petitioner and cheated him. Accused Nos.5 and 6 signed as witnesses in the document. Accused Nos.2 to 8 colluded with the first accused for cheating. The



8th accused registered the document in the name of the first accused without any document in collusion with the accused Nos.1 to 7."

- This is the allegation made by the complaint, against these petitioners and others. The second allegation is that on 25.12.2012, the second accused and other accused threatened him that they will kill him.

9. The learned counsel for the petitioners would rely upon the following judgments:-

- i) **Ramesh Rajagopal Vs Devi Polymers Private Limited (2016) 6 SCC 310**
- ii) **L.Murali & Another Vs State Rep, by the Inspector of Police, Karur and Another CDJ 2018 MHC 7110**
- iii) **P.Venkatesh & Others Vs State Rep by the Inspector of Police, Central Crime Branch, Egmore, Chennai and Another**
- iv) **S.W.Palanitkar and Others Vs State of Bihar and Another 2001 (4) Suppl. SCR 397 (Appeal (Crl.) 1072 of 2001.**

10. In the above judgments, the following principles have been laid down:-

"In all the cases the principle that the accused must be relieved from the prosecution, even if the allegations are taken at their face value and accepted in prosecution and accepted in their entirety do not constitute any offence."

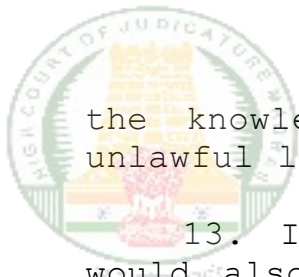
11. With regard to cheating, the following principle has been enunciated:-

"14.An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:

"(i) deception of a person either by making a false or misleading representation or by other action or omission;

(ii) fraudulently or dishonestly inducing any person to deliver any property; or to consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit."

12. According to the learned counsel for the respondent, the entire occurrence took place as an off shoot of a larger conspiracy, which can be proved only during the trial and direct evidence cannot be made available and it has to be gathered only from available circumstances. The petitioners are relatives to the



the knowledge, they colluded with the first accused to cause unlawful loss.

13. In the light of the rival submissions, the respondent would also rely upon the decision of the Hon'ble Supreme Court rendered in **Skoda Auto Volkswagen India Pvt., Ltd., Vs State of Uttar Pradesh in SLP Crl.4931 of 2021**. In the above said judgment, it has been observed that it is not permissible to make an enquiry as to the reliability or otherwise of the allegations made in the First Information Report or in the complaint. It is further observed that the proceedings ought not to be scuttled at initial stage and quashing of the complaint and FIR, should be an exception and rarity.

14. According to the learned counsel for the respondent, this Court must adopt the procedure that has been stated by the Hon'ble Supreme Court (cited supra). It is no doubt, this is a basic principle with regard to the quashment of either First Information Report or complaint. It will amount to killing the unborn child. This is the basic principle that must be kept in mind. But, it also a basic principle that materials must be placed before the Court for proceeding. In the case of **R.B.Kapoor Vs State of Uttar Pradesh AIR 1960 SC 866**, it has been observed that when the allegation in the First Information Report or in the complaint taken in their face value and accepted in their entirety do not constitute the offence as alleged, the powers under Section 482 of Cr.P.C can be exercised. This is one of the three grounds mentioned by the Hon'ble Supreme Court. The petitioners want to rely upon this ground to make a case for quashment.

15. As I mentioned earlier, bald allegation, without any further particulars has been made by the respondent in the private complaint, in what way the petitioners conspired or colluded or abetted the commission of the alleged offences by his brother namely, the first accused is not mentioned. No materials were also placed before the Trial Court. So, I am of the considered view that the continuation of the proceedings against these petitioners will amount to abuse of process of the Court. In the facts and circumstances of the case, I am of the considered view that this is the fittest case warranting interference of this Court by exercising the power under Section 482 Cr.P.C to quash the complaint against the petitioners.

16. In the result, this Criminal Original Petition is allowed and the complaint filed by the respondent against these petitioners is quashed. The trial may proceed against the rest of the accused as per law without being influenced in anyway by any of the observations of this Court. It is also made clear that the observations made for the limited purpose of disposing this



WEB COPY

Crl.O.P.(MD)No.7958 of 2017

petition.
closed.

Consequently, connected miscellaneous petition is

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

dss

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Judicial Magistrate No.I,
Tuticorin.

2.The Judicial Magistrate III,
Tuticorin.

+1 CC to MR.KA.RAAMA KRISHNAN, Advocate (SR-6610[F] dated
23/02/2021)

Crl.O.P. (MD) No.7958 of 2017
and
Crl.MP (MD) No.5417 of 2017
22.02.2021

KM (16.03.2021) 6P 4C