



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.21272 of 2018 & 1415 of 2021
and
Crl.M.P.Nos.11556 of 2018 & 838 of 2021

Crl.O.P.No.21272 of 2018

M.Kalaiselvi

...Petitioner

Vs.

1. State rep.by the Inspector of Police
C.C.B. Tiruppur City Police Station,
Tiruppur,
Tiruppur District.

2. Umarani

...Respondents

Crl.O.P.No.1415 of 2021

1.S.Rushiyandramani

2.P.Selvaraj

...Petitioners

Vs.

1. The State rep.by its
The Inspector of Police
District Crime Branch,
(Tiruppur City)
Tiruppur District.

2. S.Umarani

...Respondents

Prayer in Crl.O.P.No.21272 of 2018: Criminal Original Petition has been filed under Section 482 Cr.P.C. to call for the records pertaining to the Crime No.17 of 2018 on the file of the respondent police, C.C.B. Tiruppur City Police Station, Tiruppur, Tiruppur District and quash the FIR as against the petitioner/Accused 2.

Prayer in Crl.O.P.No.1415 of 2021: Criminal Original Petition has been filed under Section 482 Cr.P.C. to call for the records



connected to the FIR in Crime No.17 of 2018 dated 25.06.2018 on the file of the Inspector of Police, District Crime Branch, Tiruppur City, Tiruppur and quash the same.

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For Petitioner in : Mr.J.Franklin
Crl.O.P.No.21272/2018

For Petitioner in : Mr.K.Rajendra Prasad
Crl.O.P.No.1415/2021

For Respondent No.1 in : Mr.A.Damodaran
both the Crl.O.Ps. Additional Public Prosecutor

For Respondent No.2 in : Mr.P.Govindarajan
Crl.O.P.No.21272/2018

For Respondent No.2 in : Mr.R.Bharathkumar
Crl.O.P.No.1415/2021

C O M M O N O R D E R

As the subject matter of the case, crime number and parties are one and the same, this Court passed the common order in these matters.

2.The petitioner is A2 in Crl.O.P.No.21272 of 2018 and in Crl.O.P.No.1415 of 2021, the petitioners are A4 & A3 in Crime No. 17 of 2018.

3.The gist of the case is that on 25.06.2018, the respondent police registered a case in Crime No.17 of 2018 for offences under Sections 120B, 406, 420, 294(b), and 506(i) IPC against one Malligarjun A1, Kalaiselvi A2, Selvaraj A3, Rushiyandramani A4. The defacto complainant's husband viz., Santhanam was earlier working partnership along with the accused in SANMORS TEXTILE PORCESS. He invested around Rs.60 lakhs and further, he mortgaged his property valued around Rs.1.5 crores with IDBI Bank, Tirupur, as security purpose for availed loan for the partnership business. Unfortunately, her husband died on 27.12.2010. Thereafter, the petitioners herein not paid the agreed 30% of the profit of the partnership firm to the defacto complainant. Further, on 31.12.2010 partnership firm was reconstituted and thereafter, the defacto complaint was made as a partner. Believing A1 and A3, the defacto complainant signed various documents, which were later found to be misused and the accused misappropriated the company properties. In fact, the Machinerries valued around Rs.4.50 crores were moved out from the factory and now, placed at Kerala and what is the business done in Kerala, the defacto complainant is not aware of the same. The



petitioners cheated and misappropriated the funds of the partnership firm. Added to it, on 06.04.2018 all the four accused entered into the defacto complainant's house, abused and attempted to assault her. Further, used derogative words and threatened her not to make any claim in the partnership firm business. Hence, she lodged a complaint.

4.The contention of the petitioners is that after the demise of the defacto complainant's husband, the company was reconstituted on 31.12.2010 and it was agreed that proper accounts would be submitted and the loss and profit would be appropriately shared between them. If there is any dispute, the parties would approach an Arbitrator. Further, if any modification or alteration is required, the same can be made by executing a supplementary deed. This being the case, the defacto complainant so far not even made any representation about non-payment of her profit, misappropriation of the company's machineries sending to Kerala. On the other hand, she attempted to use the criminal complaint to accomplish and to enrich and settle disputes on her own terms. Further submitted that the defacto complainant, on 24.05.2018 appeared before the State Bank of India, Puducherry, given a letter with regard to the smooth functioning of the business in accordance with the partnership deed. The partners in M/s.Veena Texhem Industries are the same partners in the SANMORS TEXTILE PORCESS and he further submitted that M/s.Veena Texhem Industries is situated at Puducherry and SANMORS TEXTILE PORCESS is situated at Tirupur, which is carrying out the dyeing and other related activities in Tirupur. Both the partnership firm are one and the same except for using the name for convenience and benefit of the trade. He further submitted that had there been any incident on 06.04.2018, the defacto complainant would not have accompanied some of the accused and given a letter to the State Bank of India. Thus, the origin of the case itself, doubtful made with an ulterior motive, motivated and hence, it has to be quashed.

5.The counsel for the petitioners relied upon the decision of this Court and further submitted that the Apex Court in the case of Velji Raghavji Patel Vs. The State of Maharashtra reported in AIR 1965 Supreme Court 1433 held that in a partnership dispute, there cannot be misappropriation and the accountability of the assets can be ascertained by invoking civil jurisdiction. In that case, it is an undefined partnership, which is not the case, as there is written partnership deed, which is not in dispute.

6.The learned counsel for the Defacto complainant submitted that in this case, SANMORS TEXTILE PORCESS and M/s.Veena Texhem Industries are two independent and different firms. The petitioners are attempting to take advantage of the relationship with M/s.Veena Texhem Industries and thereby covering up the



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misappropriation and cheating committed. Further, submitted that the defacto complainant's property valued around Rs.4.5. crores is still mortgaged with IDBI Bank. The petitioners have not taken any steps to repay the bank, discharge the mortgage and release the property. On the other hand, there has been misappropriation, siphoning of the funds and taking advantage of the widowed lady, signatures were obtained in several papers and using the same, shifted machineries valued around Rs.4.5.crores from Tirupur to Kerala, on false representation that the place at Kannanur would be more conducive and beneficial. Believing the same, received concurrence removed the machineries and now defacto complainant reliably understands that the machineries are not available in Kannanur and are misappropriated. At the stage of FIR, the petitioners approached this Court and obtained stay, due to which, investigation stalled. Only full-fledged investigation can confirm the contention of the petitioners. Further, submitted that the petitioners so far not invoked Arbitration clause and took no steps for preparing supplementary partnership deed or written to the defacto complainant for modification or addition in the partnership deed.

7.The learned Additional Public Prosecutor submitted that in this case, on the complaint of the defacto complainant/second respondent, FIR was registered on 25.06.2018. Immediately on 20.08.2018, the parties approached this Court filed quash application and obtained stay, due to which, the investigation got stalled. The contention of the petitioners will be verified during investigation. If the contention of the petitioners is substantiated with materials, appropriate steps would be taken. In any event, final report would be filed before the concerned court, within a stipulated period.

8.Considering the submissions and on perusal of the records, it is seen that the petitioners A1, A2, A4 are partners in the partnership firm, who were doing business along with late Santhanam, the defacto complainant's husband. Unfortunately, the defacto complainant's husband suddenly passed away on 27.12.2010. Thereafter, the defacto complainant made as partner on 31.12.2010. It is not in dispute that the entire business is carried on by A1 & A3. As A2 and A4 being the wives on A1 and A3, A2 & A4 though they are partners, A2 & A4 ladies, they were made as partners for sentimental and other reasons and they never took active role in the partnership firm. There are no specific averments and no overtact against them.

9.In view of the same, this Court is inclined to quash the proceedings as against A2 and A4 alone. With regard to A1 and A3, the respondent police to continue with investigation and to file final report. Finding that the case is pending from the year 2018, the respondent to complete the investigation and file a final report within a period of six months from the date of receipt of a copy of this order. Accordingly, the criminal



original petition in CrI.O.P.No.21272 of 2018 is allowed and CrI.O.P.No.1415 of 2021 is partly allowed. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

sms

To

1. The Inspector of Police
C.C.B. Tiruppur City Police Station,
Tiruppur, Tiruppur District.
2. The Inspector of Police
District Crime Branch, (Tiruppur City)
Tiruppur District.
3. The Public Prosecutor
High Court, Madras.

+1cc to M/s.R.Bharathkumar, Advocate, S.R.No.23691

+1cc to Mr.K.Rajendraprasad, Advocate, S.R.No.23153

CrI.O.P.Nos.21272 of 2018 & 1415 of 2021
and
CrI.M.P.Nos.11556 of 2018 & 838 of 2021

AD(CO)
RGA(04/05/2022)