



*Crl.M.P.No.10386 of 2022
in Crl.O.P.No.29113 of 2010*

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M.NIRMAL KUMAR, J.

The petitioner/respondent in Crl.O.P.No.29113 of 2010 filed this petition to recall the order passed in Crl.O.P.No.29113 of 2010 dated 05.10.2017.

2.The petitioner herein filed a private complaint against the respondents 1 and 2 before the learned Judicial Magistrate No.I, Poonamallee in C.C.No.279 of 2010 for criminal conspiracy, breach of trust and wrongful loss to the tune of around Rs.6 Crores. Originally a complaint was filed and a case in Crime No.34 of 2009 was filed by the Central Crime Branch, Chennai Sub-Urban Police, St.Thomas Mount. Thereafter, the case was closed as mistake of fact on 30.07.2009. Aggrieved against the same, the petitioner filed a protest petition and later the case was taken as a private complaint in C.C.No.279 of 2010. On receipt of the summons, the respondents filed a quash petition in Crl.O.P.No.29113 of 2010. The



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petitioner engaged the services of the erstwhile counsel, who entered appearance in the above case and appeared for the petitioner on several hearings. Thereafter, vide letter dated 02.08.2014, the erstwhile counsel returned all the case bundles of the petitioner due to personal inconvenience on his side. The petitioner thereafter engaged another counsel on behalf of her. However, for the reasons best known, the petitioner's counsel seems to have filed change of vakalat and also failed to appear before this Court. Later the petitioner came to know that the case was listed on 10.03.2017, 27.03.2017, 06.04.2017 and 11.04.2017 before this Court and the case was reserved for orders on 11.04.2017. Finally, the quash petition filed by the respondents was allowed by order dated 05.10.2017.

3.The petitioner being a cancer patient suffering at the third stage of cancer was taking treatment as inpatient and out patient regularly from the year 2004 onwards. Due to her sickness and impediment, she taken faith on the first respondent, signed and handed over blank cheques with him for smooth functioning and operation of the business. Taking advantage of the



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petitioner's sickness and also confidence reposed on the first respondent, the second respondent, who is none other than the wife of the first respondent having 50% share in the business, colluded together used the cheques of the petitioner Company and misappropriated huge sums of money. They started Companies in the name of Apparel Support Inc., Rainbow Dye Chem, Royal Fashion Wash and Jusseffex. All these companies needs large space, huge quantity of water, chemicals and water to be placed for carrying out cleaning, bleaching, washing and dying the clothes. The respondents also got into the export business with the money, materials and expertise of the petitioner's Company, namely, Washeffex. The ledger and bank account would confirm the same. These facts were not apprised when the quash petition was decided. Hence, this petition is filed.

4.Mr.Mohamed Riyaz, learned counsel appearing for the respondents submitted that the petitioner is a partner in Washeffex with 25% share, the other partner is the second respondent with 50% share and one Mrs.Devina Hemdev with balance 25% share. The partners are only name sake partners and the petitioner is the person with technical



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knowledge who was the backbone for the entire business, running from pillar to post for development of the business. He would submit that the petitioner was enjoying the fruits of the first respondent's hard work and sweat. Thereafter, for some reason there was some misunderstanding since the petitioner started demanding more money without knowing the reality and her greed of money made the business to collapse. Further the petitioner went to the extent of lodging complaint against her own partners and she being only a minor shareholder making allegations against the major shareholders. The Central Crime Branch Police initially investigated, found the petitioner's complaint to be not proper, civil in nature and closed the same. Thereafter, petitioner filed the protest petition and later it was taken as a private complaint. Aggrieved against the same, the respondents filed the quash petition before this Court and the case was kept pending for a long time. The alleged occurrence according to the petitioner took place in the year 2004 to 2008, the case was closed as mistake of fact in the year 2009, thereafter on the protest petition, private complaint was taken on file in the year 2010 and the quash petition was allowed in the year 2017. All these years, the respondents undergone sufferings and turmoil of facing a



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criminal case. There is also a civil dispute which was filed by some of the suppliers of Washeffex in which the petitioner as well as the second respondent and the other partner are facing the suit as defendants. To escape from the civil suit, the petitioner is taking such a stand and blaming the other partners. The petitioner being the sole cause for the loss of business now projecting the same as cheating and misappropriation. Further, the petitioner is taking treatment from the year 2004 and this case was disposed in the year 2017. He further submitted that the petitioner's prayer is barred under Section 362 Cr.P.C. Hence, he prayed for dismissal of this petition.

5.On the submissions and perusal of the materials, this Court finds that the petitioner's prayer for recall of the order cannot be entertained, firstly for the reason that the impugned order was passed on merits though in the absence of the petitioner and the petitioner's contentions were considered, secondly for the reason for delay of four years and lastly, it is not in dispute that the petitioner and the second respondent are partners, in fact, the second respondent is the major shareholder. It is a dispute among



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the partner in running the business for whatever reason it may be. The complaint in predominantly with civil flavour. This court dismissed the petition of the petitioner on merits, despite her absence. The reason given by this Court are reasonable, further now with a delay of four years filing this petition to recall the earlier order is not proper. Section 362 Cr.P.C. is a bar. In view of the above, the petition cannot be entertained.

6.In view of the above, this Court is not inclined to entertain this petition. Accordingly, this petition stands dismissed.

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