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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.04.2022

PRONOUNCED ON : 20.04.2022

CORAM:

THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Original Petition No.19276 of 2019
and

Crl.M.P.No.9861 of 2019

1. M/s.S.S.Lorry Transport,
Swastic Builders,
Engineering Contractors,
320, Nehruji Street,
Nadarmedu,
Erode - 2.

2. C.Subramaniam,
S/o.Chinnappa Gounder,
Swastic Builders,
Engineering Contractors,
320, Nehruji Street,
Nadarmedu,
Erode - 2.

... Petitioners/A2 and A3

Versus

M.C.Subramaniam

... Respondent/Complainant

Prayer: Criminal Original petition filed under Section 482 of the Code of Criminal Procedure, seeking to call for the records pertaining to C.C.No.128 of 2010 on the file of the learned Judicial Magistrate Court No.II, Erode and quash the same against the Petitioners by allowing this Criminal Original Petition.

For Petitioners : Mr.R.Prabakar

For Respondent/Complainant : Mr.R.Radha Pandian

ORDER

This Criminal Original Petition had been filed to call for the records pertaining to C.C.No.128 of 2010 on the file of the learned Judicial Magistrate Court No.II, Erode and quash the same as against the Petitioners.



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2.The learned Counsel for the Petitioner submitted that the case arise out of the Private Complaint filed by the Respondent/Complainant/Complainant before the Court of the learned Judicial Magistrate, Erode.

3.The learned Counsel for the Petitioner had invited the attention of this Court to Page No.1 of the typed set which is the complaint. In the complaint, First Accused is the Company, Second Accused is M/s.S.S.Lorry Transport/First Petitioner herein, Third Accused is the Partner of the Second Accused/Second Petitioner herein. Fourth Accused is the Son of Respondent/Complainant herein, 5th Accused is the daughter-in-law of the Respondent/Complainant herein and wife of A-4. 6th Accused is the Son of A-3. 7th Accused is the Manager of A-1 and 8th and 9th Accused are Auction Purchaser of respective Lorries. As per the complaint, the complainant had obtained the loan from the first Accused Company. The second Accused had entered into the sale agreement. The amounts were paid initially to the Accused Company and subsequently, they failed to pay the dues. Therefore, the first Accused had conducted an Auction, in which, the vehicle was purchased by A-8 and A-9. Since the complainant was engaged in the civil contract at Ramnad, he was unable to know about the dealings. Therefore, he impleaded his Son and daughter-in-law and her father who are arrayed as Accused in the complaint. Further, there was a civil dispute before the Civil Court wherein decree was granted against the Respondent/Complainant for which the appeal was filed by the second Respondent/Complainant. The Appeal was pending and it was withdrawn stating that the matter had been settled out of Court between A-1 and the Respondent/Complainant. Now the Accused 2 and 3 had approached this Court to quash the Private Complaint.

4.The learned counsel for the Petitioner submits that only to harass the petitioners, this complaint had been filed and he relied on the typed sets of papers furnished along with this Petition.

5.He invited attention of this Court to Page No.18 of the typed sets of papers and sought indulgence of this Court to exercise discretion under Section 482 of Cr.P.C., to quash the complaint.

6.The learned counsel for the Respondent/Complainant submitted his arguments. He had vehemently opposed the line of the argument by the learned counsel for the Petitioner/Accused. He had invited the attention of this Court to Page No.7 of the complaint and stated that what had been submitted by the learned counsel for the Petitioner herein cannot be considered under



Section 482 of Cr.P.C., It is for the trial Court to consider during trial, not for this Court and seeks to dismiss the Petition.

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7.The Petitioners are Accused 2 and Accused No.3. It is the contention of the learned Counsel for the Petitioners that already in CrI.O.P.No.18959 of 2010 the complaint was quashed against A4 to A6. Subsequently, the First Accused - M/s.Sakthi Finance Limited and the Seventh Accused - Arumugam, Branch Manager of M/s.Sakthi Finance Limited had moved CrI.O.P.No.26583 of 2012 seeking to quash the complaint against them. As per order dated 29.07.2013 in CrI.O.P.No.26583 of 2012 the proceedings pending in C.C.No.128 of 2010 on the file of the learned Judicial Magistrate No.II, Erode against the Accused Nos. 1 and 7 were quashed. In continuation of the same, this Petition had been filed by Accused No.2 and Accused No.3 seeking to quash the complaint in C.C.No.128 of 2010 on the file of the learned Judicial Magistrate No.II, Erode. Further, the learned Counsel for the Petitioners submitted that the Complainant had filed Appeal Suit No.876 of 2012 against the judgment and decree in O.S.No.66 of 2003 on the file of the learned Additional District Judge (Fast Track Court No.1), Coimbatore (Originally in O.S.No.1328/2001 on the file of the learned Sub Judge, Coimbatore). This appeal was not pressed by the Appellant/Complainant/Respondent herein, as per memo filed by the learned Counsel for the Appellant as per judgment dated 18.09.2019 in A.S.No.876 of 2012. Also, another appeal suit in A.S.No.566 of 2013 filed by the Respondent/Complainant/Complainant against the judgment and decree in O.S.No.76 of 2003 dated 31.01.2005 was also dismissed as withdrawn on filing of a memo by the learned Counsel for the Respondent/Complainant/Complainant before the High Court in A.S.No.566 of 2013.

8.In support of his contention, the learned Counsel for the Petitioners placed reliance on the following rulings:-

- i. The Commissioner of Police and Others -vs- Devender Anand and Others [CrI.A.No.834 of 2017]
- ii.Randheer Singh -vs- The State of UP [CrI.A.No.932 of 2021]
- iii.Mitesh Kumar J.Sha -vs- The State of Karnataka and Others [CrI.A.No.1285 of 2021]
- iv.Syed Yaseer Ibrahim -vs- State of UP and Another [CrI.A.No.295 of 2022]



9. The learned Counsel for the Petitioner invited the attention of this Court to paragraph Nos.3 to 5 of the order passed by this Court in Crl.O.P.No.26583 of 2012 dated 29.07.2013 which read as under:

"3. The case of the Respondent/De-facto Complainant in his complaint, is that he purchased two lorries on 10.06.1996 under hire purchase agreements. Due to financial constraint and other circumstances, the Respondent/Complainant could not repay the instalments to the finance company as per the terms of the agreement. Thereafter, the company sold away these two lorries to the third accused under a deed dated 3.4.1997. These petitioners and other accused colluded with the third accused and purchased the lorries under the sale agreement. Though as per agreement, the other accused had to pay the instalments to the finance company, they did not do so. In the result, one of the lorries was taken from the possession of the fourth accused and other from the possession of the sixth accused. Thus, according to the Respondent/De-facto Complainant, all these accused had acted in collusion. The act of these accused in failing to pay the instalments to the company resulted in the seizure of the vehicles by the said company, which according to the Respondent/De-facto Complainant, amounts to the offences mentioned above.

4. This Court, in Crl.O.P.No.18959 of 2010, filed by Accused Nos.4 to 6, by an order dated 25.06.2012, quashed the complaint filed by the Respondent/De-facto Complainant, by observing as follows:-

7. ... For the act of the third accused, these petitioners cannot be held vicariously liable for punishment. Apart from that, mere failure to pay the instalments as agreed upon, would not make out an offence of cheating. The offence of cheating requires that at its very inception, there should have been an act of deception played by the accused, upon which, the person deceived should have acted upon. Here, in this case, absolutely no such material is available on record and not even any allegation is made in the complaint. Thus, so far as these petitioners are concerned, this proceeding is liable to be quashed.



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5.From the reading of the said order, it is clear that this Court has come to the conclusion that no material is available on record and not even any allegation is made in the complaint as against the accused persons. The observations made in the earlier OP by this Court are squarely applicable to the petitioners/A1 and A7 also, who are the petitioners herein. Moreover, in my considered opinion, the allegations made in the complaint do not constitute any cognizable offence as against these petitioners. Therefore, on that ground also, the proceedings pending in C.C.No.128 of 2010 on the file of the learned Judicial Magistrate No.II, Erode, against these petitioners are liable to be quashed and accordingly, quashed and the criminal original petition is allowed. Consequently, connected miscellaneous petitions are closed."

10.Also, the learned Counsel for the Petitioners relied upon the order passed by this Court dated 25.06.2012 in CrI.O.P.No.18959 of 2010 where by the proceedings against the Accused 4 to 5 in C.C.No.128 of 2010 were quashed. The relevant portion is extracted as under:

"7. ... However, a perusal of the above document dated 03.04.1997 would go to show that the same has got no reference at all even to the second accused. Similarly it has got no reference to the rest of the accused. This agreement was entered into between the third accused and the complainant. If the first Respondent/Complainant/complainant has got any grievance, he can only redress the same as against the third accused. So far as these petitioners who are the accused 4, 5 and 6 absolutely there is no material available on record. For the act of the third accused, these petitioners cannot be held vicariously liable for punishment. Apart from that, mere failure to pay the instalments as agreed upon, would not make out an offence of cheating."

11.In the light of the above, the rulings relied upon by the learned Counsel for the Petitioners is found justified. That the civil suit pending between the Respondent/Complainant and the first Accused, Second Accused and Fourth Accused in A.S.No.566 of 2013 and in A.S.No.876 of 2012 had been dismissed as withdrawn. Therefore, when the Civil litigation had been settled between the Petitioners and the Respondent/Complainant, the proceeding in C.C.No.128 of 2010 is nothing but an abuse of process of the Court as held in the above rulings cited by the learned Counsel for the Petitioners.

12.In the light of the order passed in CrI.O.P.No.18959 of



2010 against Accused Nos.4, 5 and 6 to quash the complaint in C.C.No.128 of 2010 on the file of the learned Judicial Magistrate No.II, Erode in continuation of the same the C.C.No.128 of 2010 was quashed as per the order dated 29.07.2013 passed in Crl.O.P.No.26583 of 2012 against the A1 and A7. Subsequently, the appeal in A.S.No.566 of 2013 and A.S.No.876 of 2012 on the file of this High Court were dismissed as per judgement dated 16.09.2019 and 18.09.2019 based on the memo filed seeking withdrawal of the suits. Therefore, the dispute between the parties herein had been settled.

13.In the light of the above, if the proceedings in C.C.No.128 of 2010 against the Petitioners/A2 and A3 are not quashed it amounts to abuse of process of Court. Therefore, it is a fit case to exercise discretion under Section 482 of Cr.P.C. as pointed out in the judgment of the Hon'ble Supreme Court in State of Haryana and others -vs- Bhajan Lal and others reported in 1992 SCC (Cri) 426 wherein guidelines had been issued to the High Courts to use the power under Section 482 of Cr.P.C. sparingly only when the facts contradicting the principle of abuse of process of Court.

In the light of the above discussion, the arguments of the learned Counsel for the Respondent/Complainant is rejected and this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

SRM

To:

1. The Judicial Magistrate Court No.II,
Erode.
2. The Public Prosecutor,
High Court, Chennai.

+1cc to Mr.R.Prabakar, Advocate, S.R.No.27343

Crl.O.P.No.19276 of 2019

CA(CO)
SU(16/05/2022)