BEFORE THE MADURAI BENGH OF MADRAS HIGH COURT
DATED: 06.04.2022
CORAM
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN
Crl.O.P.(MD)No.697 of 2022
and
Crl.M.P(MD)No.514 of 2022

1.Guruvareddy
2.Balagur
3.Indira Gandhi ... Petitioners/Accused Nos.1 to 3

Vs.

1.The State represented by,
The Inspector of Police,
District Crime Branch
Madurai.
(Crime No.35 of 2021). ... 1st Respondent/Complainant

2.Radhakrishnan ... 2nd Respondent/ Defacto complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the FIR in Crime No.35 of 2021 on the file of the Inspector of Police, District Crime Branch, Madurai and quash the same.

For Petitioner : Mr.C.Emalias for Mr.A.Robinson

For R - 1 : Mr.B.Thanga Aravindh Government Advocate (Crl. Side)

For R - 2 : Mr.S.Vellaichamy

ORDER

This Criminal Original Petition has been filed to quash the FIR registered in Crime No.35 of 2021 for the offences under Sections 120(b), 406 and 420 of I.P.C on the file of the first respondent.

2.The second respondent lodged a complaint alleging that he wish to purchase a property situated at Tiruppur for the total sale consideration of Rs.1 crore and approached one Jeyalakshmi and Balamurali and availed a loan for a sum of Rs.1 crore, for which he had executed a sale deed in favour of the said Jeyalakshmi and Balamurali with an understanding that the property in which the sale deed was executed shall be re-conveyed in favour of the second respondent as and when the loan amount is settled. Accordingly, the sale deed was executed and registered vide Document No.1474 of 2016 in favour of the said Jeyalakshmi and Balamurali on 29.08.2016 in respect of the property comprised in Survey No.14/2B2A admeasuring 3.40 acres out of which an extent of 1.70 acres land belonged to the second respondent. Further, alleged that within a period of one year, the said Jeyalakshmi and Balamurali demanded refund of the said amount together with interest to the tune of Rs.1.70 crores. In order to settle the loan amount, the second respondent approached the first petitioner and he also agreed to execute another deed and availed loan to the tune of Rs.1.70 crores. In the said arrangement, the said Jeyalakshmi and Balamurali had executed reconveyance sale deed in favour of the third petitioner vide Document No.1386 of 2017, dated 22.09.2017. Further, the second respondent also availed loan to the tune of Rs.30 lakhs from the first petitioner for which the second respondent executed another sale deed in respect of the property comprised in Survey No.120/3 to an extent of 65 cents, Survey No.9/2A to an extent of 1A 19 cents, Survey No.10/1 to an extent of 77 cents, Survey No.10/5B 1B to an extent of 33 cents, Survey No.11/1 to an extent of 94 cents, Survey No.12/1 to an extent of 77 cents and Survey No.16/1A to an extent of 87 cents totally 5 acres 27 cents by the registered sale deed, dated 23.01.2017. Further, alleged that the sister's son of the second respondent borrowed another sum of Rs.60 lakhs from the first petitioner and he executed separate sale deed in respect of the some other property belonged to him. In turn, the third petitioner executed settlement deed in respect of the property comprised in Survey No.14/ 2B2A in favour of the second petitioner vide Document No.713 of 2020, dated 11.05.2020.

3.It is also seen that the petitioners have established a petrol bunk in the said property. The second respondent through his son and daughter filed two suits in respect of the very same property for partition and declaration to declare that the sale deeds executed in favour of the second petitioner and the third petitioner are null and void. Thereafter, when the second respondent approached the petitioners and agreed to repay the loan amount which was borrowed by them on the basis of the understanding, the petitioners refused to reconvey the property in favour of the second respondent. The entire transaction was taken place during the year 2017. The said sale deeds were all duly executed by the said Jeyalakshmi and Balamurali in favour of the third petitioner and even before execution of the sale deed, the revenue records were mutated in the name of the vendors namely Jeyalakshmi and Balamurali. In fact, joint patta was issued in favour of them jointly along with the property of the second respondent in respect of other remaining properties. After execution of sale deeds in favour of the petitioners, all the revenue records were mutated and patta was also issued in their favour.

4.It is also seen that already the second respondent lodged complaint with similar set of allegations to the Inspector General of Police, South Zone, Madurai and the same has been forwarded to the Inspector of Police, Vadipatti Police Station. On receipt of the same, the Inspector of Police, Vadipatti Police Station issued summons on 30.06.2021 to the petitioners and the second respondent for enquiry on 05.07.2021. Both were appeared for enquiry and after detailed enquiry found that the entire dispute is money transaction and the execution of sale deeds etc., which is entirely civil matter and as such, directed the parties concerned to approach the competent civil Court for appropriate relief and closed the complaint. Thus, a civil dispute has been given criminal colour and the first respondent registered the present F.I.R, that too, on the direction of the higher officials. That apart, the petitioners have already constructed a pertol bunk in the said property and having been developed animosity and to grab much more money from the petitioners with oblique motive, the present F.I.R has been filed as against the petitioners.

5.Admittedly, the second respondent received huge sum and thereafter executed sale deed in favour of the said Jeyalakshmi and Balamurali. In turn, the said Jeyalakshmi and Balamurali sold out the property in favour of the third petitioner.

6.Though the learned counsel appearing for the second respondent submitted that the sale deeds were executed of threat and coercion at the time of borrowal of loan, immediately after execution of sale deed, the second respondent did not take any steps to lodge complaint on the allegation that he was coerced and compelled to execute those sale deeds. After execution of sale deeds, only in the year 2021, the second respondent lodged the complaint and in fact, the first complaint was duly enquired and closed as all the allegations are civil in nature.

7.Further, though the second respondent alleged that at the time of borrowal of loan for security purpose those sale deeds were executed and agreed to reconvey the property whenever the loan amount returned to them, there is no recital to that extent in the sale deeds. It shows that after execution of sale deed, due to exclamation of price of the property, the complaint has been now lodged against the petitioners. That apart, the portion of the property directly purchased from the second respondent and major extent of the property was purchased from the said Jeyalakshmi and Balamurali.

8.The case of the second respondent is that the said Jeyalakshmi and Balamurali while lending loan, for security purpose, executed the sale deed in their favour and agreed to reconvey the said property on repayment of entire loan amount. Even then, there is no allegation as against them and no F.I.R has been registered against them. The son of the second respondent already filed a suit in O.S.No.167 of 2021 on the file of the First Additional District Court, Madurai for partition in respect of very same property along with other property. The daughter of the second respondent also filed another suit in O.S.No.234 of 2021 on the file of the IV Additional District Court, Madurai for declaration declaring that the above sale deeds executed in favour of the second petitioner and third petitioner as null and void and also seeking for injunction restraining the petitioners from operating the petrol bunk. After the suits, the present complaint has been lodged by the second respondent.

9.Heard the learned counsel appearing for the petitioners, the learned Government Advocate (Criminal Side) appearing for the first respondent and the learned counsel appearing for the second respondent and perused the entire materials available on record.

10.The Honourable Supreme Court of India in the case of ***M/s. Indian Oil Corporation Vs. NEPC India Limited and others [(2006) 6 SCC 736]***, held that the civil liability cannot be converted into criminal liability and held and as under while on this issue, it is necessary to take notice of a growing tendency in business circle to convert purely civil dispute in criminal case. This is obviously on account of prevalent impression that civil law remedies are time consuming and do not adequately protect the interest of lender/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claim which do not involve any criminal offence by applying pressure through criminal prosecution should be deprecated and dishonoured.

11.In the case of ***G.Sagar Suri Vs. State of Uttar Pradesh [2000 (2) SCC 636]***, the Honourable Supreme Court of India held as follows:-

> "It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence, criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal Court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

12.It is seen from the F.I.R that there is absolutely no piece of material has been found that the petitioners committed the offences under Sections 120(b), 406 and 420 of I.P.C., Where the ingredients required to constitute a criminal offence are not made out from a bare reading of the complaint/F.I.R, the continuation of the proceeding will constitute an abuse of the process of the Court.

13.In order to ascertain the veracity and contentions made by the parties herein, it is imperative to examine whether the relevant ingredients of offences which the petitioners herein were facing with are *prima facie* made out. The relevant provisions of Sections 405, 406 and 420 of I.P.C read as follows:-

> "405. Criminal breach of trust—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".
> [Explanation [1].—A person, being an employer [of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not] who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]
> [Explanation 2.—A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]
> 406. Punishment for criminal breach of trust—Whoever commits criminal breach of trust shall be punished with

imprisonment of either description for a term which may extend to three years, or with fine, or with both.

420. Cheating and dishonestly inducing delivery of property— Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

14.In the present case, the F.I.R levelled against the petitioners herein is that one which involves commission of offences of criminal breach of trust and cheating. While a criminal breach of trust as postulated under Section 405 of I.P.C entails misappropriation or conversion of another's property for one's own use, with a dishonest intention, cheating that too on the other hand as an offence defined under Section 415 of I.P.C involves an ingredient of having a dishonest or fraudulent intention which is aimed at inducing the other party to deliver any property to a specific person. Both the Sections clearly prescribed 'dishonest intention' as a pre-condition for even prima facie establishing the commission of said offences. Whereas, as stated supra, the petitioners duly purchased the property from the said Jeyalakshmi and Balamurali and the second respondent by the registered sale deeds in the year 2017. After a period of three years, the son and daughter of the second respondent filed suits for partition and declaration declaring that the sale deeds executed in favour of the petitioners as null and void and are pending. After having been instituted civil suits, the present complaint lodged against the petitioners and tried to give criminal colour.

15.It is relevant to rely upon the land mark Judgment of the Honourable Supreme Court of India in the case of ***State of Haryana and others Vs. Bhajanlal and others*** reported in ***1992 Supp (1) SCC 335***, in which, the Honourable Supreme Court of India has laid down the following categories of instances wherein inherent powers can be exercised in order to secure the ends of justice as follows:-

“*(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;*

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence,

justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

16.Therefore the registration of the present impugned F.I.R against the petitioners is illegal and arbitrary and it does not disclose any cognizable offence. Hence, it is liable to be quashed. Accordingly, this Criminal Original Petition stands allowed and as a sequel, the FIR in Crime No.35 of 2021 on the file of the first respondent is quashed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ps

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 Inspector of Police,
District Crime Branch
Madurai.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+5 CC to M/s.A. ROBINSON, Advocate (SR-17246[F] dated 07/04/2022)

Crl.O.P(MD)No.697 of 2022
06.04.2022

RK(26/04/2022) 8P 8C