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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.03.2022

Pronounced on : 06.04.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD)Nos.1538 & 9326 of 2021

and

Crl.M.P(MD)Nos.730 & 2223 of 2021 and

4780 & 4781 of 2021

1.Crl.O.P(MD)No.1538 of 2021:-

J.John Kennedy ... Petitioner/2nd Accused

Vs.

Samuel Jebakumar ... Respondent/ Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pursuant to C.C.No.231 of 2020 on the file of the learned Judicial Magistrate No.I, Kovilpatti and quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.S.R.Rajogopal
for Mr.N.Marappan
For Respondent : Mr.G.Karuppasamy Pandian

2.Crl.O.P(MD)No.9326 of 2021:-

N.Radhakrishnan ... Petitioner/1st Accused

Vs.

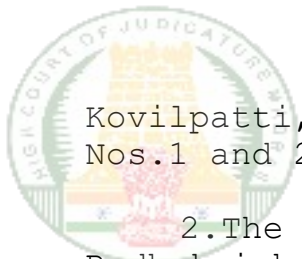
Samuel Jebakumar ... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in relation to the complaint filed by the respondent in C.C.No.39 of 2020 pending on the file of the Fast Track Court, Kovilpatti, Thoothukudi District and quash the same.

For Petitioner : Mr.S.R.Rajogopal
for Mr.A.S.Vaigunth
For Respondent : Mr.G.Karuppasamy Pandian

COMMON ORDER

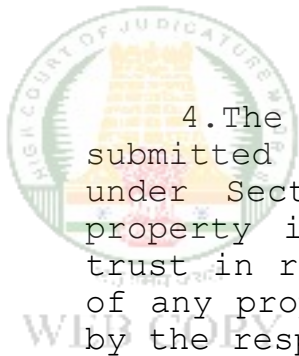
These Criminal Original Petitions have been filed to quash the proceedings in C.C.No.231 of 2020 on the file of the learned Judicial Magistrate No.I, Kovilpatti and C.C.No.39 of 2020 pending on the file of the Fast Track Court at Magisterial Level,



Kovilpatti, Thoothukudi District as against the petitioners/Accused Nos.1 and 2.

2.The respondent lodged a complaint as against the petitioner-Radhakrishnan in Crl.O.P(MD)No.9326 of 2021 on the file of the District Crime Branch, Thoothukudi and the same has been registered in Crime No.29 of 2018 for the offences under Sections 420, 409 and 506(i) of I.P.C. After completion of investigation, the Inspector of Police, District Crime Branch, Thoothukudi closed the F.I.R as 'mistake of fact' before the learned Judicial Magistrate No.III, Thoothukudi. On receipt of the referred charge-sheet notice, the respondent filed a protest petition and the same was also dismissed by an order dated 14.05.2019. Aggrieved by the same, the respondent filed a revision before this Court in Crl.R.C(MD)No.426 of 2019. By an order, dated 27.11.2019, though this Court dismissed the revision and confirmed the order passed by the learned Judicial Magistrate No.III, Thoothukudi in the protest petition, observed that dismissal of protest petition is not a bar for the Magistrate to deal with the private complaint. It is always open to the Magistrate to entertain the private complaint if the petitioner satisfies the Magistrate about the truthfulness or validity of the complaint. The dismissal of the revision petition or the protest petition is not a bar for the petitioner to approach the Magistrate concerned to file a private complaint under Section 200 of Cr.P.C. Accordingly, the respondent filed a private complaint and after examining the complainant and other supporting witnesses, the trial Court have taken cognizance for the offences under Sections 120(B), 420, 403, 406 and 506(ii) of I.P.C as against the petitioner-Radhakrishnan/Accused No.1 and also added the petitioner-J.John Kennedy/Accused No.2 in Crl.O.P(MD)No.1538 of 2021 and other two accused.

3.The learned counsel appearing for the petitioners would submit that the trial Court failed to note that assuming but not admitting that the complainant could institute fresh complaint, the averments and allegations are verbatim the same and the same would amount to double jeopardy and thus ought not to have taken cognizance on the private complaint lodged by the respondent herein. On a mere reading of the entire complaint it discloses only civil dispute and it has been given a criminal colour. The ingredients of the offences under Sections 120(B), 420, 403, 406 and 506(ii) of I.P.C are not made out as against the petitioners. The main ingredients to attract the offence under Section 420 of I.P.C are that deception of any person; fraudulently or dishonestly inducing any person to deliver any property or to consent that any person shall retain any property and finally intentionally including that person to do or omit to do anything which he would not do or omit. On a perusal of the entire complaint, these ingredients are missing and as such the offence under Section 420 of I.P.C is not at all attracted as against the petitioners.



4.The learned counsel appearing for the petitioners further submitted that the essential ingredients to attract the offence under Section 406 of I.P.C are that the accused was entrusted property in any manner and that the accused committed breach of trust in respect of that property. However, there is no entrustment of any property by the respondent and the entire materials produced by the respondent would not disclose that the petitioners had domain over any property at any time. Therefore, no prima facie case is made out as against the petitioners to attract the offence under Section 406 of I.P.C.

5.The learned counsel appearing for the petitioners further submitted that the essential ingredients to attract the offence under Section 403 of I.P.C are that the accused misappropriated some movable property of another and dishonest intention causing wrongful gain. The dishonest intention to misappropriate is a crucial fact to be proved to bring home the charge of criminal breach of trust. There is no misappropriation of any movable and there is no wrongful gain enjoyed by the petitioners. Therefore, the respondent failed to satisfy the ingredients of Section 403 of I.P.C. The present complaint is nothing but counter blast to escape from the clutches of the prosecution initiated by the petitioners as against the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act in C.C.Nos.38 to 41 of 2018 on the file of the Fast Track Court at Magisterial Level, Kovilpatti, Thoothukudi District.

6.Per contra, the learned counsel appearing for the respondent would submit that the respondent along with his wife filed a petition in Crl.O.P(MD)No.12505 of 2020 and already this Court by an order dated 20.11.2020 transferred the entire proceedings in C.C.No.231 of 2020 from the file of the learned Judicial Magistrate No.I, Kovilpatti, Thoothukudi District to the file of the Fast Track Court at Magisterial Level, Kovilpatti, Thoothukudi District and ordered for joint trial in C.C.Nos.36 to 41 of 2018 and 231 of 2020. Thereafter, the entire proceedings in C.C.No.231 of 2020 has been transferred to the file of the Fast Track Court at Magisterial Level, Kovilpatti and re-numbered as C.C.No.39 of 2020 and it is pending for trial along with other C.C numbers which are filed by the petitioners against the respondent herein. Suppressing the above fact, the petitioners filed these petitions to quash the entire proceedings. Therefore, it is not at all maintainable when this Court already ordered for joint trial along with other complaints initiated for the offence punishable under Section 138 of the Negotiable Instruments Act. He further submitted that there are averments and allegations to attract the offences and as such, the trial Court rightly had taken cognizance and issued summons and prayed for dismissal of the quash petitions.

7.Heard the learned counsel appearing for the petitioners and
<https://hccases.courts.gov.in/cases> learned counsel appearing for the respondent and perused the

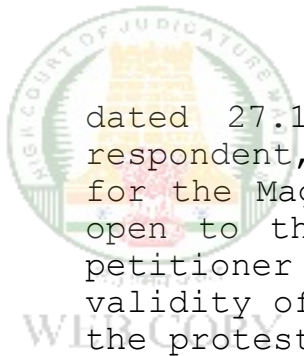


materials available on record.

8.The first objection raised by the respondent is that when this Court ordered for joint trial along with other Calendar Cases in C.C.Nos.36 to 41 of 2018 arising out of the offence punishable under Section 138 of the Negotiable Instruments Act, whether the petitioners can file quash petitions to quash the entire proceedings in C.C.No.39 of 2020 (previously C.C.No.231 of 2020).

9.On the complaints lodged by the petitioners as against the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act in C.C.Nos.36 to 41 of 2018 are pending on the file of the Fast Track Court at Magisterial Level, Kovilpatti, Thoothukudi. On the private complaint lodged by the respondent, the same has been taken cognizance in C.C.No.231 of 2020 on the file of the learned Judicial Magistrate No.I, Thoothukudi as against the petitioners for the offences under Sections 120(B), 420, 403, 406 and 506(ii) of I.P.C. Thereafter, the respondent filed a petition before this Court in Crl.O.P(MD)No.12505 of 2020 for joint trial in respect of all the cases together. This Court by an order dated 20.11.2020, ordered for joint trial and accordingly, directed to withdraw C.C.No.231 of 2020 from the file of the learned Judicial Magistrate No.I, Kovilpatti and transferred to the file of the Fast Track Court at Magisterial Level, Kovilpatti, Thoothukudi District for joint trial along with C.C.Nos.38 to 41 of 2018 and the trial Court is directed to complete the trial within a period of two months. Though the petitioners are parties to the said petition, only on the instigation of the respondent, the above order has been passed by this Court and as such, there is no impediment for the petitioners to approach this Court to quash the entire proceedings in C.C.No.39 of 2020, namely after transfer of CC.No.231 of 2020, which was re-numbered as C.C.No.39 of 2020 on the file of the Fast Track Court at Magisterial Level, Kovilpatti, Thoothukudi District. Therefore, the petitioners can very well maintain these petitions to quash the entire proceedings in C.C.No.39 of 2020.

10.The respondent lodged complaint before the Inspector of Police, District Crime Branch, Thoothukudi and it was not considered for registration of any F.I.R. Therefore, the respondent was constrained to file a petition seeking direction under Section 156 (3) of Cr.P.C in Cr.M.P.No.4273 of 2018 on the file of the learned Judicial Magistrate No.III, Thoothukudi. The learned Magistrate issued directions under Section 156(3) of Cr.P.C. Accordingly, the District Crime Branch, Thoothukudi District registered the F.I.R in Crime No.29 of 2018 for the offences under Sections 420, 409 and 506(i) of I.P.C as against the petitioner/Radhakrishnan in Crl.O.P(MD)No.9326 of 2021. However, the Investigating Agency, after completion of investigation, closed the F.I.R as 'mistake of fact'. Aggrieved by the same, the respondent filed a protest petition and the same was also dismissed. Again it was challenged before this Court in Crl.O.P(MD)No.426 of 2019. Though this Court, by an order,



dated 27.11.2019, dismissed the revision petition filed by the respondent, observed that dismissal of protest petition is not a bar for the Magistrate to deal with the private complaint. It is always open to the Magistrate to entertain the private complaint if the petitioner satisfies the Magistrate about the truthfulness or validity of the complaint. The dismissal of the revision petition or the protest petition is not a bar for the petitioner to approach the Magistrate concerned to file a private complaint under Section 200 of Cr.P.C. Accordingly, the respondent filed a private complaint and after considering the oral and material evidence, the trial Court has taken cognizance for the offences under Sections 120(B), 420, 403, 406 and 506(ii) of I.P.C as against the petitioner-Radhakrishnan/Accused No.1 and also added the petitioner-J.John Kennedy/Accused No.2 in Crl.O.P(MD)No.1538 of 2021 and other two accused and issued summons to the petitioners.

11.The crux of the complaint is that the respondent entered into business transaction with the petitioner/Radhakrishnan in Crl.O.P(MD)No.9326 of 2021 with regard to export of match boxes outside India. During the course of business deal, certain consignments were handed over to the respondent by the petitioner/Radhakrishnan to be exported to African Countries. The petitioner/Radhakrishnan had introduced a foreign buyer to him and accordingly, the respondent exported the goods to the African Country. However, it was not taken delivery at the receiving point and as such, the respondent was not paid due to the export of the consignments by the buyer and therefore, the respondent suffered business loss. The wife of the respondent was running a proprietor concern in her name and the respondent being the husband of the proprietor was in-charge of day-to-day administration of the concern and all the negotiations have been done by the respondent himself. The petitioners herein along with others have colluded and cheated the respondent. On a perusal of the complaint, there are ingredients to attract the offence under Section 120(B) of I.P.C and other offences as against the petitioners. Therefore, the Court below has rightly taken cognizance for the offences under Sections 120(B), 420, 403, 406 and 506(ii) of I.P.C as against the petitioners.

12.It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.579 of 2019*** dated ***02.04.2019*** in the case of ***Devendra Prasad Singh Vs. State of Bihar & Anr.***, in which the Honourable Supreme Court of India held as follows:-

" 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies



in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13.In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

13.Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in **Crl.A.No.1572 of 2019** dated 17.10.2019 in the case of **Central Bureau of Investigation Vs. Arvind Khanna**, wherein, it has been held as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20.In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

14.Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the



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Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioners cannot be considered by this Court under Section 482 Cr.P.C.

15. In view of the above discussions, this Court is not inclined to quash the proceedings in C.C.No.39 of 2020 (previously C.C.No.231 of 2020) pending on the file of the Fast Track Court at Magisterial Level, Kovilpatti, Thoothukudi District. The petitioners are at liberty to raise all the grounds before the trial Court. The trial Court is directed to complete the trial within a period of six months from the date of receipt of copy of this order.

16. Accordingly, these Criminal Original Petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

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Sub Assistant Registrar(CS)

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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,
Kovilpatti, Thoothukudi District

2.The Fast Track Court, (Magistrate Level)
Kovilpatti,
Thoothukudi District.

+1CC to Mr.A.S.Vaigunth, Advocte, SR.No. 17553 dated 08/04/2022

Crl.O.P (MD) Nos.1538 & 9326 of 2021
06.04.2022

SMV (CO)
KB(19.04.2022) 8P 4C