BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 28/02/2022
CORAM:
THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.3115 of 2019
and
Crl.MP(MD)No.1741 of 2019

Aathi Sankar : Petitioner/A1

Vs.

1.State through
The Inspector of Police,
City Crime Branch,
Madurai District.
(Crime No.29 of 2018) : R1/Complainant

2.L.P.Brindha (Died) : R2/De-facto complainant
T.R.Krishnaram
(R2 substituted as per the order of this court, dated 12/01/2022 in Crl.MP(MD) No.11473 of 2021 in Crl. OP(MD)No.3115 of 2019)

3.Balakrishna Nadar : R3/9th Accused

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C. to quash the FIR in Crime No.29 of 2018, dated 09/08/2018 on the file of the 1st respondent as against this petitioner.

For Petitioner : Mr.G.Prabhu Rajadurai
For 1st Respondent : Mr.SS.Madhavan
Government Advocate (Crl. Side)
For 2nd Respondent : Mr.T.K.Gopalan

O R D E R

This criminal original petition has been filed seeking quashment of FIR in Crime No.29 of 2018 on the file of the 1st respondent.

2.**The case of the prosecution in brief**:-

The de-facto complainant has lodged a complaint stating that she saw a notice board near her husband's office, wherein it has been mentioned that the owner of the property is one Aathisankar, who is A1 herein. So in August, 2020, the de-facto complainant along with her husband approached A1 and entered into a sale agreement and subsequent sale deed was also registered in the name of the de-facto complainant through 3 separate sale deeds for three separate portions. The full amount was received by A1. In the above said documents, A2 and A7 signed as identifying witnesses and A2, A3 and A4 also signed as witnesses. After purchase, the de-facto complainant was in possession and enjoyment. Later, it came to know that against A1, Mookaiah Nadar has given a complaint in 2002 and she was also enquired. Only during the course of enquiry, it came to her knowledge that A1 impersonated the real owner and sold the property. During the course of enquiry, it was found that A1 introduced A3 as Mookaiah Nadar. So on the basis of the above said investigation, a case in Crime No.29 of 2019 was registered and he has also tried in CC No.287 of 2002 before the concerned court. During the course of the above said trial process, Mookaiah Nadar filed an affidavit stating that the matter was compromised between them in the presence of elders. The entire money was paid to the de-facto complainant and the case ended in acquittal. So again a complaint was given by this petitioner before the Assistant Commissioner of Police, District Crime Branch and during the course of the above said enquiry, 8th accused, who is the son of the above said complainant namely Mookaiah Nadar has issued a cheque for a sum of Rs.5,89,000/- drawn on ICIC Bank bearing registration No.159097, dated 05/06/2006. That cheque was presented for payment. Later that was dishonoured. Only in order to cheat the de-facto complainant, the above said compromise has been reached between the accused persons and the de-facto complainant and even the cheque, which was issued by A9 was dishonoured.

3.Later the de-facto complainant filed a suit in O.S No.463 of 2009 before the District Munsif Court, Madurai Town and in the trial process, expert opinion has also been obtained, wherein it has been clearly mentioned that it is a case of cheating. Since no proper action was taken on the basis of the complaint given by the de-facto complainant, she approached the Judicial Magistrate No.1, Madurai under section 156(3) Cr.P.C. Based upon the complaint, the present FIR has been registered against 9 persons.

4.Seeking quashment of the same, this petition has been filed by A1 namely P.Aatisankar. A specific allegation against this petitioner is that he only introduced A3 as the real owner. So on the basis of the complaint given by the de-facto complainant, a case in Crime No.61 of 2002 has been registered on 30/05/2002 and CC No.287 of 2002 has been initiated. This is admitted by the de-facto complainant as well as this petitioner.

5.The ground on which, this petition came to be filed is that CC No.287 of 2002 ended in compromise and later, on the basis of the complaint given by the de-facto complainant, enquiry was taken by the ADSP, DCB, Madurai and during the course of the above said enquiry, again compromise has been reached, by which, A9 who is the son of Mookaiah Nadar has given a cheque for the above said sale amount. Again, there was a compromise, which also failed because of the dishonour of the cheque. So also filed a suit in O.S No.463 of 2009 against the Mookaiah Nadar, M.Balakrishnan and Aathi Sankar for declaration declaring that the settlement deeds in respect of the plot No.6 executed by Mookaiah Nadar in favour of Balakrishna Nadar is null and void and later, that suit came to be dismissed due to non-prosecution.

6.The learned counsel appearing for the petitioner has raised a simple issue, since there was a compromise between the parties, on basis of the complaint given by the de-facto complainant, even though that compromise failed, because of the dishonour of the cheque and other things, the remedy available to the de-facto complainant is only to proceed against A9 namely Balakrishna Nadar for violation of the agreement and compromise. So, again fallback against the cause of action and filed a complaint stating the subject matter of CC No.287 of 2002.

7.In the light of the above facts, the learned counsel for the petitioner submitted that the FIR in Crime No.29 of 2018 is liable to be quashed as against the petitioner. When this issue was raised by the learned counsel appearing for the petitioner, I sought specific response from the learned Government Advocate (Criminal side) and the 2nd respondent. According them, it is a big conspiracy took place between the parties. This petitioner is also one of the conspirators and he must be proceeded in accordance with law.

8.No doubt that it is a serious case of impersonation, cheating etc. Even though the matter has been compromised between the original de-facto complainant and other accused persons in CC No.287 of 2002, but subsequently, a specific complaint has been made by the petitioner before the District Crime Branch and in that complaint only, as mentioned above, compromise has been reached between herself and A9 herein towards which also received a cheque and that cheque has been dishonoured, over which she has also filed a criminal complaint. Apart from that, she has also filed a suit. So, without going into the other merits of the case, I am of the considered view that this matter can be disposed of with the above said short point.

9.The Hon'ble Supreme Court in the case of ***Gimpex Private Limited Vs. Manoj Goel (2021(4) MLJ (Crl) 610)*** had an occasion to deal with the similar issue, of course, which arose out of the proceedings under section 138 of the Negotiable Instruments Act. In that case, there was a transaction between the parties, over which, the cheque was issued and that came to be dishonoured. There was a compromise between the parties, by which for the above said dishonour, another cheque was also issued. That cheque was also presented for payment. Again it was dishonoured. So again for both the above said cause of actions, separate proceedings were initiated by the complainant. That was the matter for consideration before the Hon'ble Supreme Court. The Hon'ble Supreme Court was of the considered view that in such a situation, when there was a compromise with regard to one cause of action, if it fails, only that cause of action can be proceeded and not the original cause of action. Paragraphs 45 and 46 are relevant for our discussion, which would run thus:-

> *"45.Based on the discussion above, in our opinion, once the compromise deed dated 12 March 2013 was agreed, the original complaint must be quashed and parties must proceed with the remedies available in law under the settlement agreement.*
>
> *46.Once a settlement agreement has been entered into between the parties, the parties are bound by the terms of the agreement and any violation of the same may result in consequential action in civil and criminal law."*

10.This observation can be read conjointly with the observation of the Hon'ble Supreme Court. In para 38, it has been observed like this.

> "38 When a complainant party enters into a compromise agreement with the accused, it may be for a multitude of reasons – higher compensation, faster recovery of money, uncertainty of trial and strength of the complaint, among others. A complainant enters into a settlement with open eyes and undertakes the risk of the accused failing to honour the cheques issued pursuant to the settlement, based on certain benefits that the settlement agreement postulates. Once parties have voluntarily entered into such an agreement and agree to abide by the consequences of non-compliance of the settlement agreement, they cannot be allowed to reverse the effects of the agreement by pursuing both the original complaint and the subsequent complaint arising from such non-compliance. The settlement agreement subsumes the original complaint. Non-compliance of the terms of the settlement agreement or dishonour of cheques issued subsequent to it, would then give rise to a fresh cause of action attracting liability under Section 138 of the NI Act and other remedies under civil law and criminal law."

11.These observations of the Hon'ble Supreme Court has given more clarity to the discussion. The Hon'ble Supreme Court has opined that the settlement arrived between the parties subsumes the original complaint and the non compliance of the terms of the settlement will give a fresh cause of action. So when we apply the analogy to the present case, as rightly pointed by the learned counsel appearing for the petitioner, the only remedy available to the petitioner is to pursue for the violation of the agreement.

12.At the conclusion portion of the argument, learned counsel appearing for the petitioner has submitted that in respect of the dispute between A9 and the petitioner herein, they may work out their possibility of settlement. But even during the course of argument, it was represented by the petitioner that the 3rd respondent also died and he was also impleaded as a formal party. Even now the petitioner is not remediless, she can proceed against the legal representatives of the 9th accused, who is the 3rd respondent herein.

13.Even though the during the course of argument, the learned counsel appearing for the petitioner has submitted that the offences under sections 465, 468 and 420 IPC are not attracted in view of the judgment of the Hon'ble Supreme Court in the case of ***Mohammed Ibrahim Vs. State of Bihar and another [(2009)8 SCC 751],*** are not attracted against this petitioner. But in the light of the above said discussion, I am not going into those issues.

14.In the result, this criminal original petition stands **allowed**. The FIR in Crime No.29 of 2018 is hereby quashed as against this petitioner. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

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 Inspector of Police,
City Crime Branch,
Madurai District.

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

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-9146[F] dated 01/03/2022)

+1 CC to M/s.T.K.GOPALAN, Advocate (SR-9258[F] dated 01/03/2022)

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