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BEFORE THE MADURAI BENGH OF MADRAS HIGH COURT
DATED: 18.04.2022
CORAM
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN
Crl.O.P.(MD)Nos.8971, 18175, 18178 & 18181 of 2021
and
Crl.M.P(MD)Nos.4590, 9965, 9966 & 9969 of 2021

1.Crl.O.P(MD)No.8971 of 2021:-

Manoharan ... Petitioner/Accused No.11

Vs.

1.The State,
Represented by its,
The Deputy Superintendent of Police,
EOW, Tirunelveli.

2.The State,
Represented by its,
The Inspector of Police,
Economic Offences Wing,
Tirunelveli.
(In Crime No.1 of 2021) ... Respondents 1 & 2/Complainant

3.M.Rishikesh Marimuthu ... 3rd Respondent/
Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the impugned order in FIR No.1 of 2021 on the file of the Economic Offences Wing, Tirunelveli and quash the same as far as the petitioner is concerned.

For Petitioner : Mr.S.Ramsundarvijayraj

For RR 1 & 2 : Mr.K.Sanjai Gandhi
Government Advocate (Crl. Side)

For R – 3 : Mr.R.L.Dhilipan Pandian

2.Crl.O.P(MD)No.18175 of 2021:-

P.Annamalaichamy ... Petitioner/Accused No.12

Vs.

1.The State,
Represented by its,
The Deputy Superintendent of Police,
EOW, Tirunelveli.

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2.The State,
Represented by its,
The Inspector of Police,
Economic Offences Wing,
Tirunelveli.
(In Crime No.1 of 2021) ... Respondents 1 & 2/Complainant

3.M.Rishikesh Marimuthu ... 3rd Respondent/
Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the impugned order in FIR No.1 of 2021 on the file of the second respondent/Economic Offences Wing, Tirunelveli and quash the same as far as the petitioner is concerned.

For Petitioner : Mr.K.Seenu Ramachandran

For RR 1 & 2 : Mr.K.Sanjai Gandhi
Government Advocate (Crl. Side)

For R - 3 : Mr.R.L.Dhilipan Pandian

3.Crl.O.P(MD)No.18178 of 2021:-

1.G.Xavier Fernando
2.G.Manoj Rodrigo ... Petitioners/Accused Nos.9 & 10

Vs.

1.The State,
Represented by its,
The Deputy Superintendent of Police,
EOW, Tirunelveli.

2.The State,
Represented by its,
The Inspector of Police,
Economic Offences Wing,
Tirunelveli.
(In Crime No.1 of 2021) ... Respondents 1 & 2/Complainant

3.M.Rishikesh Marimuthu ... 3rd Respondent/
Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the impugned order in FIR No.1 of 2021 on the file of the second respondent/Economic Offences Wing, Tirunelveli and quash the same as far as the petitioners are concerned.

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For Petitioners : Mr.P.Saravana Kumar

For RR 1 & 2 : Mr.K.Sanjai Gandhi
Government Advocate (Crl. Side)

For R - 3 : Mr.R.L.Dhilipan Pandian

4.Crl.O.P(MD)No.18181of 2021:-

1.M.V.Subramanian
2.M.V.Muthurajan
3.M.V.Lakshmanan
4.M.Ganesh Marimuthu
5.S.Sankar Marimuthu
6.M.Srinivas Marimuthu
7.S.Hariharanmarimuthu ... Petitioners/Accused Nos.1, 2, 4 to 8

Vs.

1.The State,
Represented by its,
The Deputy Superintendent of Police,
EOW, Tirunelveli.

2.The State,
Represented by its,
The Inspector of Police,
Economic Offences Wing,
Tirunelveli.
(In Crime No.1 of 2021) ... Respondents 1 & 2/Complainant

3.M.Rishikesh Marimuthu ... 3rd Respondent/
Defacto Complainant

4.M.Sharmila
5.M.Karthik Marimuthu ... Respondents 4 & 5

(RR 4 & 5 impleaded vide order dated 16.12.2021
in Crl.M.P(MD)No.11412 of 2021)

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the impugned order in First Information Report in Crime No.1 of 2021 on the file of the second respondent and quash the same as far as the petitioners are concerned.

For Petitioner : Mr.S.Ramsundarvijayraj
For RR 1 & 2 : Mr.K.Sanjai Gandhi
Government Advocate (Crl. Side)
For R - 3 : Mr.R.L.Dhilipan Pandian

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COMMON ORDER

These Criminal Original Petitions have been filed by the accused to quash the F.I.R in Crime No.1 of 2021 on the file of the second respondent.

2.The case of the prosecution is that the accused persons fraudulently transferred the shares belonging to the family. A.1 to A.4 are the grandsons of AVM.Marimuthu Nadar through his son M.Velayutham and they owned and running jewelry business in the name and style of AVM Marimuthu Nadar and Sons Private Limited (Jewelrs) and AVM Associates Private Limited (Hospital), M.Edison & Co Private Limited (AVM Sovereign oil Mill) and MV.Subramaninan & brothers - Firm (Marriage Hall). The said late AVM.Marimuthu Nadar from his first marriage had one son namely Velayutham, in which, the petitioners 1 to 4 were born and the said AVM.Marimuthu Nadar, after the demise of his first wife, had married one Gandhimathiyammal and through the said Gandhimathiyammal, they had one son, namely M.Edison and he had a son, namely M.E.Muthukumar and he had two sons, namely Karthick Marimuthu and Rishikesh Marimuthu. The said Rishikesh Marimuthu had lodged the complaint herein.

3.The second respondent lodged the complaint alleging that his father was the grandson of AVM.Marimuthu Nadar through M.Edison, who is a partner in M/s.MV.Subramanian & brothers and he died on 27.07.2016. As his father is a partner, he approached A.1 to A.4, after the death of his father, to include him in the partnership firm namely “M.V.Subramaniam & Brothers”. They stated that his father was not at all partner in the above said Firm and no way connected with the partnership Firm. The fist petitioner said to have forged the signature of the defacto complainant's father with the help of Accused Nos.9, 10 and 11, who are the chartered accountants and they have manipulated the documents and they have not returned any money contributed by his father for the development of the Company, which would be roughly around Rs.10 crores. Thereafter, the defacto complainant was invited for the amicable resolution by Accused Nos.1 to 4. The defacto complainant was threatened with dire consequences by Accused Nos.1 to 4. Further alleged that when the defacto complainant enquired about the shares of the great grandfather AVM.Marimuthu Nadar in Tamil Nadu Mercantile Bank, the shares held by the great grandfather was transferred to Accused Nos.1 to 4 immediately after the demise of his great grandfather. As per the registered Will, dated 20.11.1959 of the deceased Marimuthu Nadar, the shares have to be devolved equally among the grandsons. But, such shares were not allotted to his father Muthukumar, who is one of the grandsons. The grandfather of the defacto complainant M.Edison purchased 2000 shares from the Tamil Nadu Mercantile Bank and the same was transferred to the defacto complainant's father M.E.Muthukumar in the year 2003. He transferred 1600 shares each to Accused Nos.1 to 4 without any

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consideration. They had fraudulently obtained the shares and the value will be Rs.115,00,00,000/-. On the said complaint, the second respondent registered the F.I.R in Crime No.1 of 2021 for the offences under Sections 409, 420 of I.P.C r/w Section 10(b) of I.P.C.

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4.Heard the learned counsel appearing for the petitioners, the learned Government Advocate (Criminal Side) appearing for the respondents 1 and 2 and the learned counsel appearing for the third respondent and perused the materials available on record.

5.On a perusal of the entire records revealed that during the life time of AVM.Marimuthu Nadar, he had executed a Will, dated 20.11.1959 regarding the disposition of the properties and the business among the sons and grandsons of AVM.Marimuthu Nadar. The said AVM.Marimuthu Nadar died on 01.04.1964. After his demise, the Firm called M/s.M.V.Subramanian and Brothers was constituted on 02.03.2009 by its partners namely A.1 to A.8 and the father of the defacto complainant. While being so, the father of the defacto complainant was removed from the above partnership Firm by the majority of the partnership dated 18.03.2015 which came into effect from 01.04.2014. Thereafter, the reconstituted partnership deed was entered on 20.08.2015 between A.1 to A.8 as partners. The father of the defacto complainant was expelled from the above Firm during his life time and the same was not objected by him during his life time. Further, the capital amount of the defacto complainant's father is very much available and they are also ready and willing to settle the amount as per the books of accounts and other necessary and other relevant documents. As per the partnership deed, dated 02.03.2009, if he has any grievance, the remedy to redress before the Arbitration proceedings or through the process of law. However, the second respondent or his father failed to do so. After the demise of his father, the defacto complainant now lodged the complaint thereby had given criminal colour to the issue of civil in nature.

6.As per the allegation, the Firm called M.V.Subramaniam and Brothers said to have been constituted during the year 1985, whereas, there are no document to show that such a Firm was constituted in the year 1985. It was constituted only on 02.03.2009 and the Income Tax Returns were submitted for the said Firm only from the Assessment Year 2015-2016. In fact, Pan Card was obtained during the year 2009 and as such, there is no question of fabrication of false documents by A.1 to A.4 to induct their sons as partners during the year 2009. Further alleged that the defacto complainant's father had pumped lot of money roughly around Rs.10 crore into the above Firm from his own pocket and the same was misappropriated by A.1 to A.4. During his life time, he never made any complaint in this regard. The said allegations were made only after five years of the death of his father. Further, the defacto complainant alleged that his great grandfather had executed a Will

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on 20.11.1959 and thereby he bequeathed his shares to his grandsons through his male sons and such shares were not allotted to his father and thereby the above shares were fraudulently transferred to A.1 to A.4 with the connivance of A.12. After the demise of his great grandfather, A.1 to A.4 were the surviving grandsons. The said Edison was not given birth to his son Muthukumar on the date of enforcing the Will. Hence, the question is that whether the shares hold by Marimuthu Nadar which was bequeathed by Will can be taken by A.1 to A.4 alone. It is an issue that has to be decided by the civil Court.

7.Moreover, the grandfather of the complainant Edison and his father had not raised any question during their life time. The shares of Marimuthu Nadar was transferred on 27.02.1966, whereas the father of the defacto complainant was born only on 14.09.1966. Even after attainment of majority, the father of the defacto complainant had not questioned the transfer of shares of Marimuthu Nadar in favour of A.1 to A.4. The above transaction had taken place during the year 2003. Thereafter, the respective share certificate was also issued in favour of A.1 to A.4. The father of the defacto complainant was receiving dividend for his 400 shares. He never questioned the transfer of shares of Marimuthu Nadar in favour of A.1 to A.4 without any consideration. The said Muthu Kumar died on 27.07.2016. Even till his life time, he never questioned about the same and he never lodged any complaint. After 5 years from the date of his demise, the defacto complainant now claiming that the said shares were transferred fraudulently in favour of A.1 to A.4, that too, without any consideration. Even assuming that there is a fraudulent transaction, no offence is made out as against the petitioners under Section 420 of I.P.C. Sofar as the offence under Section 409 of I.P.C is concerned, there is no breach of any conditions stated in the Will execute by the defacto complainant's great grandfather. It was given effect during the year 1964. All the conditions stipulated in the said Will are executed and the beneficiaries of the Will had received the respective shares from the Will. After 58 years from the date of execution of the said Will, now it is questioned by the defacto complainant. Thus, it is clear that the entire issues are purely civil in nature and the defacto complainant is making an attempt to convert the civil case into criminal colour.

8.Further, 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 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

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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 discouraged".

9.It is also 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*

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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."

Applying the above dictum to the present case, it can be concluded that the present case falls within the ambit of first, third and fifth category of the seven categories enlisted in the above said Judgment. It is nothing but there has been attempt to stretch the contours of a civil dispute and thereby essentially impart a criminal colour to it.

10.In view of the above, the impugned F.I.R cannot be sustained as against any of the accused and the same is liable to be quashed. Accordingly, the F.I.R in Crime No.1 of 2021 on the file of the second respondent is quashed and the Criminal Original Petitions are allowed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

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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 Deputy Superintendent of Police,
EOW, Tirunelveli.

2.The Inspector of Police,
Economic Offences Wing,
Tirunelveli.

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

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+1 CC to M/s.`S. RAMSUNDARVIJAYRAJ, Advocate (SR-19131[F] dated 18/04/2022)

+1 CC to M/s.Veera Associates, Advocate (SR.No.19130)

+1 CC to M/s.P.Saravanakumar, Advocate (SR.No.19129)

+1 CC to M/s.K.Seenu Ramachandran, Advocate (SR.No.19132)

+5 CC to M/s.R.L.Dhilipan Pandian, Advocate (SR.No.19898)

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MGJ(17.05.2022) 9P 13C

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