



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.04.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD) No.9501 of 2021

and

Crl.M.P(MD) No.4845 of 2021

WEB COPY

- 1.Dinakaran
- 2.Mahalakshmi
- 3.Saiprasanna
- 4.Raghul Sayee @ Rahul
- 5.Venkatesh

...Petitioners/
Accused Nos. 1 to 5

Vs.

- 1.The State rep. by
The Inspector of Police,
Central Crime Branch,
Madurai City, Madurai.
Crime No.18 of 2020

...1st Respondent/
Complainant

- 2.Sundar P.L

...2nd Respondent/
Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying this Court to call for the records relating to the FIR in Crime No.18 of 2020 on the file of the first respondent police and quash the same as illegal.

For Petitioner	: Mr.R.Gandhi
For R1	: Mr.B.Thanga Aravindh Government Advocate (Crl.Side)
For R2	: Mr.K.Sudalaiyandi

ORDER

The criminal original petition has been filed seeking to quash the proceedings in FIR registered in Crime No.18 of 2020 on the file of the first respondent.

2.The case of the prosecution is that the petitioners had borrowed money from the second respondent and they promised to return it along with interest. The second respondent also gave his own place to them for monthly rent of Rs.20,000/- to run their business. When the second respondent asked them to repay the borrowed amount, the petitioners abused him with filthy languages



and threatened him with dire consequences. Hence, the second respondent lodged a complaint, the first respondent had registered a case in Crime No.18/2020 for the offence under Section 420 of IPC.

3. There are totally 5 accused persons, in which, the petitioners are arrayed as A1 to A5. Notably, all are the same family members. It is seen from the allegations that there were business transactions between the first petitioner and the second respondent. Infact, the first petitioner herein and the son of the second respondent are partners in the "Anirudh Non-Wovens" by partnership dated 30.01.2017. They joined together for the purpose of carrying on the business of manufacture and sale of non-woven bags in partnership with effect from 30.01.2017, in the name and style Anirudh Non-Wovens. The petitioners 1 and 2 are husband and wife, 3 and 4 are their sons and the fifth petitioner is none other than brother of the petitioner herein. There was misunderstanding developed between the first petitioner and the son of the second respondent over sharing of the profit in the partnership firm. In order to prevent the first petitioner from claiming his due share, the defacto complainant had lodged a complaint as against all the petitioners.

4. With the above said allegations, even assuming that the entire transactions are true, no offence is made out under Section 420 of IPC as alleged in the FIR. It is clear that there is a civil dispute pending between the first petitioner and the second respondent. Now, it has been given criminal colour by the impugned FIR.

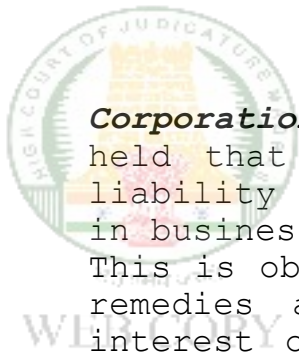
5. It is well settled that in order to bring the charge for the offence under Section 420 of IPC:

- (i) the accused must fraudulently or dishonestly made some false compromise
- (ii) the defacto complainant must act on the strength of such false representation or compromise.

6. In the case on hand, the petitioners neither made any dishonest nor any fraudulent representation to the second respondent. Therefore, the offence under Section 420 of IPC is not at all made out as against the petitioners.

7. On perusal of the entire allegations made in the FIR revealed that even according to the second respondent, the entire allegations are related to many transactions between them. Therefore, the criminal prosecution is used as an instrument to harass the petitioners and as such, the present FIR has been registered with an ulterior motive and it cannot be sustained as against the petitioners.

8. It is relevant to rely upon the judgment made by the Hon'ble 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 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.

9. 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."

10. 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."

11. In view of the above, the impugned FIR cannot be sustained as against the petitioners and it is liable to be quashed. Accordingly, the FIR in Crime No. 18/2020 is quashed and the criminal original petition is allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Protocol)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

lr

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

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correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Inspector of Police,
Central Crime Branch,
Madurai City, Madurai.

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

CrI.O.P.(MD) No.9501 of 2021
12.04.2022

RD(13.05.2022) 5P 3C