



Crl.O.P.No.5197 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.04.2023

Pronounced on : 19.04.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.5197 of 2021

and

Crl.M.P.No.3337 of 2021

Selvam

...Petitioner/A1

Vs.

1.The Inspector of Police

District Crime Branch,

Salem City, Salem.

...1st Respondent/Complainant

2.Mohan

...2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition has been filed under Section 482 of the Criminal Procedure Code, to call for the original records and quash the criminal complaint in C.C.No.138 of 2018 pending on the file of Judicial Magistrate No.IV, Salem.



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For Petitioner : M/s.K.P.Anantha Krishna

For R1 : Mr.A.Damodaran
Additional Public Prosecutor

For R2 : Mr.N.Umapathi

ORDER

The petition is to quash the final report for the offences under Sections 406 and 420 of Indian Penal Code.

2. It is alleged in the complaint that the petitioner and the defacto complainant were partners in two firms called “Amman Traders” and “Amman Transport”; that the petitioner and the second respondent each have 50 percent shares in those two firms; that the firm owned five lorries bearing Reg.Nos. (a) TN 30 B 7571, (b) TN 30 F 7760 (c) TN 30 H 8240, (d) TN 30 J 4425, and (e) TN 30 J 4426; that the petitioner dishonestly sold those five lorries and committed criminal breach of trust and cheating.

3. The learned counsel for the petitioner/A1 submitted that the allegations, even if accepted to be true would not constitute the offences.

It is well settled that where a partner had utilised the property of the



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partnership, he would not be liable for the offence under Section 406 IPC and would not be liable civilly to the other partner.

4. The learned Additional Public Prosecutor appearing for the first respondent/complainant and the learned counsel appearing for the second respondent/defacto complainant submitted that the petitioner had dishonestly sold the lorries belonging to the partnership firm and had gained wrongfully. The allegations would therefore attract the offences of breach of trust and cheating. Hence, they prayed for dismissal of the quash petition.

5. This Court on perusal of the impugned final report finds that the facts of the case is squarely covered by the Judgment of Hon'ble Supreme Court in *Velji Raghavji Patel Vs. State of Maharashtra* reported in *AIR 1965 SC 1433*, wherein the Hon'ble Supreme Court held as follows:

“9.Mr. Chatterjee finally contends that the act of the appellant will at least amount to dishonest misappropriation of property even though it may not amount to criminal breach of trust and, therefore, his



conviction could be altered from one under s.409 to that under s.403. Section 403 runs thus :

"Whoever dishonestly misappropriates or converts to his own use any moveable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

It is obvious that an owner of property, in whichever way he uses his property and with whatever intention will not be liable for misappropriation and that would be so even if he is not the exclusive owner thereof. As already stated, a partner has, undefined ownership along with the other partners over all the assets of the partnership. If he chooses to use any of them for his own purposes he may be accountable civilly to the other partners. But he does not thereby commit any misappropriation. Mr. Chatterjee's alternative contention must be rejected."

6. The above observation makes it very clear that even if the petitioner as partner had sold the lorries of the partnership firm without the knowledge of the second respondent, his act would not amount to misappropriation. He may be accountable to the second respondent civilly.



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7.As regards the offence of cheating, the act of selling and using the sale proceeds is sought to be projected as an offence punishable under Section 420 IPC. The ingredients of the offence of 420 IPC is not made out. There is nothing in the impugned final report to show as to what was the deception practised by the petitioner. In the absence of the said ingredient, the offence of 420 IPC cannot be invoked.

8. For all the above reasons, the impugned final report is liable to be quashed and hence, quashed. Accordingly, the Criminal Original Petition is allowed. Consequently, the Connected Miscellaneous Petition is closed.

19.04.2023

dk

NCC : Yes/No

Index: Yes/No

Speaking/Non Speaking Order



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To

1.The Judicial Magistrate No.IV,
Salem.

2.The Inspector of Police
District Crime Branch
Salem City,
Salem.

3.The Public Prosecutor
High Court of Madras
Chennai – 600 104.



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SUNDER MOHAN,J.
Dk

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