IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 18.07.2022

Delivered On : 27.01.2023

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.O.P.No.24521 of 2021
and
CMP.No.13514 of 2021

Anant Kankani .. Petitioner

Vs.

1. The Inspector of Police,
   District Crime Branch,
   Namakkal District,
   Tamil Nadu.

2. M/s. Meenakshi (India) Limited
   Rep. By its Managing Director,
   Mr. Ashutosh Goenka,
   Having its Registered Office at 29/16,
   Whites Road, 4th Floor,
   Royapettah, Chennai – 600 014. .. Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to quash all further proceedings in C.C.No.186 of 2020 on the file of the learned Judicial Magistrate, Rasipuram, Namakkal District.

For Petitioner : Mr.V.P.Raman
Senior Counsel
for Mr.C.Prasanna Venkatesh

For Respondents : Mr.L.Baskaran
Government Advocate (Crl. Side) for R1

Mr.ARL.Sundaresan
for Mr.K.P.Ananthakrishnan for R2

ORDER

This Petition has been filed to quash the proceedings in C.C.No.186 of 2020 on the file of the learned Judicial Magistrate, Rasipuram, Namakkal District.

2. Mr.V.P.Raman, learned Senior Counsel for the Petitioner invited the attention of this Court to the Complaint dated 08.09.2017 regarding the deposit of the cheque amount into the credit of the Petitioner herein. Subsequently, the Petitioner had re-deposited in the account of the Company. Based on the Complaint, the Petitioner was summoned by the Teynampet Police Station. The Petitioner was a Chartered Accountant by profession. He was employed as General Manager of the Second Respondent's Company. He left the service of the Company. The Company

had dispute with the labour union of the Company regarding the payment of the gratuity. The subject dispute in Minimum Wages Act went upto the Hon'ble Supreme Court. The Hon'ble Supreme Court directed the Company to pay the wages as per the Minimum Wages Act to the employees. The Hon'ble Supreme Court gave interim direction directing the Company to deposit 50% of the arrears amount before petition could be heard. Due to continuous pressure from the buyer's Company, the Complainant already paid more than 50% of arrears to the employees. The Company decided to withdraw the amount and to pay the entire amount to workers themselves. Accordingly, the Petition for withdrawal was filed and the Hon'ble Supreme Court permitted the same. Since the Petitioner had left the service of the second Respondent's Company, with an ulterior motive to harass the Petitioner, the second Respondent had preferred a Complaint to the Teynampet Police which was closed on the dispute having been settled between the Petitioner and the second Respondent. Subsequently, for the same cause of action another Complaint was lodged with the Namakkal Police Station, Rasipuram. The subject of the dispute is civil in nature but the Police had registered a case, had conducted the investigation in a partial manner and laid the final report of the investigation before the Court of the learned Judicial Magistrate, Rasipuram in C.C.No.186 of 2020.

2.1. It is the contention of the learned Counsel for the Petitioner that the statements had been recorded by the Investigation Officer and signed by him on 20.02.2020. For example, the statement of Pugazhenthi S/o. Veeraraghavan, Joint Director in Industrial Safety and Health Department, Salem District, while on duty on 24.02.2020 had received a letter from the Deputy Superintendent of Police, District Crime Branch, Namakkal District, pertaining to provide certain details in connection with grievance Complaint filed by one Anand Kankani, Nungambakkam, Chennai from his email regarding the non-payment of arrears to employees by Meenakshi (India) Limited and action taken details. After that a phone call also received from the Deputy Superintendent of Police, District Crime Branch, Namakkal regarding the above said matter and asking the details and verifying genuineness of the letter issued from the Office of the Deputy Superintendent of Police. The said statement was recorded on 24.02.2020. After the Investigation Officer had signed the statements, the Witnesses examined have given partial statement, which are not spoken in the Court. When the dispute between the Petitioner and the Company had been settled, the Teynampet Police Station had closed the CSR. The statement was recorded from the Petitioner's Witness who was a workman in the Company. The statement of Witnesses does not disclose the details about the offence, that are different from the earlier offence for which CSR was earlier given by the Teynampet Police. Therefore, the second Respondent have chosen this forum to harass the Petitioner. As the subject matter is to be dealt with in a Domestic Enquiry or in the Civil Suit, the offence alleged in the final report are not made out. Therefore, he seeks to quash the charge sheet filed before the Court of the learned Judicial Magistrate, Rasipuram.

3. The learned Government Advocate (Crl. Side) appearing for the first Respondent vehemently objected to quash the charge sheet stating that there was no Petition earlier to quash the FIR. Not only that, the fact stated in the statement of Witnesses cannot be considered by this Court exercising extraordinary powers under Section 482 of Cr.P.C., What had been argued by the learned Counsel for the Petitioner is to be considered only during trial at the time of adducing evidence and not at this stage. Therefore, the learned Government Advocate (Crl. Side) appearing for the first Respondent seeks to dismiss this Petition.

3.1. There is no violation by the Prosecution. The Prosecution had examined 17 Witnesses. The offences alleged in this case under Sections 66(c) and 72 of the Information Technology Act, cannot be quashed while exercising extraordinary powers under Section 482 of Cr.P.C. The *prima facie* offence alleged in the charge sheet are made out from the statement of witnesses recorded by the Investigation Officer. As per the rulings of the Hon'ble Supreme Court reported in ***1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426*** in the case of ***State of Haryana and others Vs. Bhajanlal and others***, while exercising extraordinary powers under Section 482 of Cr.P.C., to be used sparingly. Therefore, the learned Government Advocate (Crl. Side) appearing for the first Respondent sought to dismiss this Petition.

4. Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the second Respondent/De-facto Complainant by way of reply submitted that the Petitioner was removed as General Manager of the Company for misappropriation of funds.

4.1. After having left the Company, the Petitioner herein who was earlier working with the Second Respondent's Company as a General

Manager had indulged in activities which are considered to be the breach of law. The Directors of the Company discussed the sensitive information of the Company with the General Manager which cannot be delivered to other people or third parties. The Petitioner having left the Company of the second Respondent, the Petitioner had been sharing the confidential reports of the Company to its rivals and also on the public domain which had caused loss to the second Respondent's Company.

4.2. The learned Senior Counsel appearing for the second Respondent/De-facto Complainant submitted that the Complaint was preferred by the Company about the conduct of the Petitioner herein regarding the sharing sensitive information of the Company. Based on the confidential information having been shared in the public domain is against the ethical practice. Therefore, the Complaint preferred by the Company to the Institute of Chartered Accountant against the Petitioner was enquired by the Ethical Committee of the Institute of Chartered Accountants of India and the Petitioner was removed for a period of five years from practicing as Chartered Accountant. The Investigation Officer had conducted the investigation partially and he had examined the Witnesses belonging to the

Company and also to the member of the Chartered Accountant. The evidence alleged by the Company/Second Respondent against the Petitioner the prima facie was made out. On perusal of the statement of Witnesses under Section 164 of Cr.P.C., that had been collected by the Investigation Officer, the objection of the learned Counsel for the Petitioner that the Court in Rasipuram or Namakkal Police does not have jurisdiction cannot be accepted. The Indian Companies having branches through out India, they approached the Court where the cause of action arisen. Therefore, the claim that the second Respondent had earlier preferred a Complaint with regard to the signature for which CSR issued and had filed Complaint before the Rasipuram Police Station where the FIR was filed and the investigation proceeded with the laying of the final report. There are sufficient materials to incriminate the Petitioner in the final report filed by the first Respondent.

4.3. The learned Senior Counsel for the second Respondent invited the attention of this Court to the averments in the final report and submitted that at this stage, the charge sheet cannot be quashed as per the reported ruling in ***1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426*** in the case of

State of Haryana and others Vs. Bhajanlal and others.

4.4. The learned Senior Counsel for the second Respondent invited the attention of this Court to the FIR, the relevant portion is extracted hereunder:

> "*.....But in course of time he developed enmity with the company without any proper reason. The accused has written false information's about his employer to its clients namely foreign exporting companies by sending emails by using the company email illegally and as a consequence the company has sustained huge loss. There after his attitude changed and the year 2017, he has transferred Rs.2,53,258/- from the Companies Account in Canara Bank Account No.941201006401 into the own Account of HDFC Bank Account of his wife Renukankani through a cheque. The accused activities and his irregularities are noticed by the Company, such irregularities and misappropriation was pointed out by the Management and the accused demanded some crores and if not paid he published the company secretes and tarnish the reputation of the company and created heavy loss to the company. The company detecting the wrongs has warned the accused but he did not change and this misappropriation was accepted by the Accused and the demand of the accused also refused by the company, hence the service of the accused was terminated on 07.04.2017. In view of the company activities. It is important to note that email was sent to a public website www.ethicspoint.com on 21.03.2017 and later to one Sucheta.ramprakash@vfc.com on 05.04.2017, this email the accused has disclosed may confidential information's of the company. The corporations was one of the oldest and big client of the company. Thus the accused while in service of the company has acted against the intereset of the company. Then the accused upon terminated began to annoy the company by giving false complaints against the company to various statutory authorities. This caused all these authorities to conduct proceedings on the company. Thereafter the accused has downloaded some vital information from*

the computer system of the company and he contacted the company customer at USA and sent a unwanted information to the customer of the company with the intention of creating bad image upon the company. The company also lodged a complaint before the Institute of Charered Accountants of India against the accused. The institute initiated disciplinary proceedings on the accused with first giving a prima facie findig on the accused and then pronounced him guilty after a full enquiry. In consequences of that, the defacto Complainant company has lost a valuable orders of export resulting which a loss of 35 crores turnover per year to the company and livelihood about 2,000 labourers also affected. The prosecution has collected and downloaded all the message sent by the accysed to the foreign company which reveals that the commission of mischief by the accused. Therefore, the accused has committed the offence u/s.406, 408, 420, 182 of IPC and 66 C, 72,72-A of IT Act 2000"

4.5. He invited the attention of this Court to 161(3) Statement of Ashutosh Goenka S/o Shri Shyam Sundar Goenka, the relevant portion is extracted hereunder:

"*.... This infuriated the Anant Kankani and he threatened the company that he would see to their end if removed. The company presumed that he was upset over his termination. The Anant Kankani informed the management about his knowledge of various non-public, confidential, sensitive and privileged information of the company, its trade secrets including customer related information, etc., and demanded money in crores on the threat of misuse and unauthorized disclosure of such confidential information of the Company to cause wrongful loss to the Company.......*

.... The Anant Kankani however highhandedly demanded further money at a later time and at this juncture the company gave a complaint to the local police station for his threaten to the company. The Anant Kankani and his family approached and pleaded with the management not to proceed further with the case and promised not to trouble the company in any way. Therefore, under the circumstances,

the CSR was closed...........

.... On 07.04.2017, when the full and final settlement amount was paid to the Accused, he issued a letter and undertaking to the company in which the Anant Kankani inter alia fully confirmed that " I have handed over all assets including documents, files, date to the company. Further I confirm that I do not possess any files, documents, information hardcopy or softcopy." After releasing of the Anant Kankani from the services of the Company on 7th April 2017 and after having made the above payment to the accused, the Anant Kankani wrote a letter dated 26th April 2017 to the company and in the said letter dated 26th April 2017 the Anant Kankani proudly announced under point 12 o the said letter that " I had on 21.03.2017 lodged a complaint with www.ethicspoint.com (website to lodge complaints against suppliers of VF Corporation for unethical practices) regarding embezzlement of funds. Various proofs have been submitted to establish my allegation of embezzlement of funds."

4.6. He invited the attention of this Court to the Complaint, the relevant portion is extracted hereunder:

"*a. Mr.Anant Kankani had somehow gained the knowledge of the confidential login ID and password of my e-mail account of (email ID agoenka@milgroup.net by cracking the same by hacking or through other illegal means and have been regularly without any authority acessing and pursuing various email and documents from my mail account, which obviously contained various personal, confidential, sensitive and proprietary information about myself and that of the company, to which only I should have the privy or knowledge.*

b. Mr.Anant Kankani has done so obviously with malafide intention of misusing such sensitive and confidential information of the company as well as the personal information, to meet and sub-serve his selfish and dishonest ends."

4.7. The first Complaint does not disclose any private Complaint. In the earlier Complaint, there was no mention of disclosure about rival Company through internet. CSR was closed. At the stage of CSR, final report is differed and the larger allegation was against the Petitioner. The sensitive material of the second Respondent shall not have been disclosed by the person who was a Manager of Chartered Accountant. The learned Senior Counsel invited the attention of this Court to Section 161(3) of Cr.P.C., statement of V.Pugazhenthi S/o. Veeraraghavan, Joint Director, Industrial Safety and Health, Salem and the statement of Rajavel S/o. Sengotuvelu under Section 161(3) of Cr.P.C, there is no Complaint from the union while so the second Respondent had filed a Complaint that the Petitioner had violated Code of Ethics. The Petitioner had been removed from the role of Chartered Accountant. Against this, the Petitioner had filed a Petition, which was dismissed.

4.8. The learned Senior Counsel invited the attention of this Court to the scope of Section 482 of Cr.P.C., cannot be pressed into the service. In support of his contention, he relied on the ruling reported in ***2014 (7) SCC***

215 in the case of ***Rishipal Singh Vs. State of U.P,*** the relevant portion is extracted hereunder:

> *"11. This court in Medchl Chemicals & Pharma (P) Ltd. v. Biological E.Ltd has discussed at length about the scope and ambit while exercising power under section 482 CrPC and how cautious and careful the approach of the Courts should be. We deem it apt to extract the relevant portion from that judgment,which reads: (SCC p.272,para 2)*
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> > *"2. Exercise of jurisdiction under the inherent power as envisaged in Section 482 of the Code of Criminal Procedure to have the complaint or the charge sheet quashed is an exception rather than a rule and the case for quashing at the initial stage must have to be treated as the rarest of rare so as not to scuttle the prosecution. With the lodgement of first information report the ball is set to roll ad thenceforth the law takes its own course and the investigation ensues in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and its undue expansion is neither practicable nor warranted. In the event, however, the court on a perusal of the complaint comes to a conclusion that the allegations levelled in the complaint or charge-sheet on the face of it does not constitute or disclose any offence as alleged, there ought not to be any hesitation to rise up to the expectation of the people and deal with the situation as is required under the law. Frustrated litigants ought not to be indulged to give vent to their vindictiveness through a legal process and such an investigation ought not to be allowed to be continued since the same is opposed to the concept of justice, which is paramount".*
>
> *12. This court in a plethora of judgments has laid down the guidelines with regard to exercise of jurisdiction by the Courts under section 482 CrPC. In State of Haryana v. Bhajan Lal this court has listed the categories of cases when the power under section 482 can be exercised by the court. These principles or the guidelines were reiterated by this court in (1) CBI v. Duncans Agro Industries Ltd., (2) Rajesh Bajaj v. State (NCT of Delhi) and (3) Zandu Pharmaceuticals*

Works Ltd. v. Mohd.Sharaful Haque. This court in Zandu Pharmaceuticals Works Ltd.,observed that:

> *the power under section 482 of the code should be used sparingly and with circumspection to prevent abuse of process of court, but not to stifle legitimate prosecution. There can be no two opinions on this, but, if it appears to the trained judicial mind that continuation of a prosecution would lead to abuse of process of Court, the power under section 482 of the code must be exercised and proceedings must be quashed.*
> *Also see Om Prakash v. State of Jharkhand,SCC p.95, para 43.*

13. What emerges from the above judgments is that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made in the complaint prima facie establish the case. The courts have to see whether the continuation of the complaint amounts to abuse of process of law and whether continuation of the criminal proceeding results in miscarriage of justice or when the court comes to a conclusion that quashing these proceedings would otherwise serve the ends of justice, then the court can exercise the power under section 482 crpc. While exercising the power under the provision, the courts have to only look at the uncontroverted allegation in the complaint whether prima facie discloses an offence or not, but it should not convert itself to that of a trial court and dwell into the disputed questions of fact."

4.9.In the reported ruling of the Hon'ble Supreme Court in ***2009 4 SCC 439 [Mahesh Chaudhary Vs. State of Rajasthan and another]*** it has been held as under:

"*A. Criminal Procedure Code,1973-S.482-Quashing of charge sheet-inherent jurisdiction of High Court - scope and limitations - allegations of fraud and forgery – held, power under is to be exercised to prevent abuse of process of court or to secure ends of justice - court can quash charge sheet if allegations in fir or complaint petitions do*

not disclose commission of offence even if on face value they are taken to be correct in their entirety - while doing so, high court is not to embark upon appreciation of evidence but to consider only material on record as a whole though the high court is required to consider as to whether the allegations made in the fir or the complaint petition fulfil the ingredients of the offences alleged against the accused - further held, dispute being primarily of civil nature is not by itself a ground to quash criminal proceedings because in cases of forgery and fraud there would always be some element of civil nature – penal code,1860,Ss. 420, 467 and 468
(paras 11,12,14,17 and 18)

B.Criminal procedure code ,1973 – S.482- quashment of chargesheet- materials that may be relied on - document relied on by accused in his defence, held, may not be relied on except in very exceptional circumstances.
(para 12)

C. Constitution of India – Art. 142 – exercise of power under – doing of complete justice to parties – appellant ready and willing to settle contractual dispute wherein allegations of forgery and fraud had been made – bail granted subject to appellant's appearance before Magistrate within four weeks and filing bail petition – directions given to consider petition for exemption from personal appearance on merits – criminal procedure code,1973 – Section 438 – Penal Code, 1860 , Ss. 420, 467 and 468 (Paras 17 and 18)

***"11.** The principle providing for exercise of the power by a high court under section 482 of the code of criminal procedure to quash a criminal proceeding is well known. The court shall ordinarily exercise the said jurisdiction, inter alia, in the event the allegations contained in the FIR or the complaint petition even if on face value are taken to be correct in their entirety, does not disclose commission of an offence.*

12. It is also well settled that save and except in very exceptional circumstances, the court would not look to any document relied upon by the accused in support of his defence. Although allegations contained in the complaint petition may disclose a civil *dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue. For the purpose of exercising its jurisdiction, the superior courts are also required to consider as to whether the allegations made in the FIR or the complaint petition fulfil the ingredients of the offences alleged against the accused.*

13. Indisputably, the question as to whether the Complainant was entitled to a higher amount of commission in terms of the agreement dated 21-2-1973 is essentially a civil dispute. The Complainant in terms of the said agreement was not only entitled to inspect the documents maintained by the accused but also to get the same audited. It is, therefore, difficult to hold as has rightly been opined by the investigating officer that a case for imposing a criminal liability on the accused on that score has been made out.

14. While saying so, we are not unmindful of the limitations of the court's power under section 482 of the code of criminal procedure which is primarily for one either to prevent abuse of the process of any court or otherwise to secure the ends of justice. The court at that stage would not embark upon appreciation of evidence. The court shall moreover consider the materials on record as a whole. In Kamaladevi Agarwal v. State of W.B., this court opined:(SCC pp.559-60.para 7)

"7. This court has consistently held that the revisional or inherent powers of quashing the proceedings at the initial stage should be exercised sparingly and only where the allegations made in the complaint or the FIR, even if taken at their face value and accepted in entirety, do not prima facie disclose the commission of an offence. Disputed and controversial facts cannot be made the basis for the exercise of the jurisdiction."

It was furthermore observed that the high court should be slow in interfering with the proceedings at the initial stage and that merely because the nature of the dispute is primarily of a civil nature, the criminal prosecution cannot be quashed because in cases of forgery and fraud there would always be some element of civil nature."

4.10. This is the case where the breach of trust is attracted. Therefore, Sections 43 and 66 of Information Technology Act is invoked. Offences under Sections 406 and 120 of IPC also made out. Therefore, what had been argued by the learned Counsel for the Petitioner is to be treated as valuable defence during trial. Therefore, he seeks to dismiss the Petition as not maintainable.

4.11. In short after two years, the Petitioner was a signatory to the agreement in the Hon'ble Supreme Court regarding the Minimum Wages Act. No witness was examined regarding sharing of information with whom it was shared. The learned Senior Counsel for the Petitioner submitted that if at all this Court is not inclined to quash the final report, it can order further investigation by another agency in Chennai.

5.In the light of the above discussion, the fact that the Complaint given to the Teynampet Police was closed and subsequently the Complaint given to District Crime Branch, Namakkal. When the alleged offence had taken place in Chennai, the Namakkal Police has no territorial jurisdiction to investigate the case. Further, what had been alleged is a violation of professional etiquette by a Chartered Accountant employed by the second Respondent's Company, for which the second Respondent already had instituted the Complaint with the Institute of the Chartered Accountants. Based on the Complaint lodged by the second Respondent enquiry held and the Petitioner was removed from the roll of the Institute of Chartered Accountants. The same cannot be considered as criminal offence and investigated by the District Crime Branch. As rightly pointed out by the learned Senior Counsel for the Petitioner, it is nothing but victimizing the Petitioner, who had left the services of the second Respondent's Company. By fixing the agency, District Crime Branch, Namakkal which does not have the territorial jurisdiction to investigate the alleged offence. In the light of the above discussion, the vehement objection of the learned Government Advocate (Crl. Side) and the learned Senior Counsel for the second Respondent are found unacceptable and hence rejected. In the final analysis, *prima-facie* case is made out regarding quashing of the charge-sheet filed by the first Respondent before the Court at Rasipuram and numbered as C.C.No.186 of 2020. Therefore, the same is liable to be quashed.

In the result, this ***Criminal Original Petition is allowed.***

The final report laid by the District Crime Branch, Namakkal in C.C.No.186 of 2020 on the file of the learned Judicial Magistrate, Rasipuram, Namakkal District is quashed. Consequently, connected Miscellaneous Petition is closed.

27.01.2023

dh
Index: Yes/No
Internet: Yes/No
Speaking Order/Non-speaking Order

To

1. The learned Judicial Magistrate,
   Rasipuram, Namakkal District.

2. The Inspector of Police,
   District Crime Branch,
   Namakkal District,
   Tamil Nadu.

3. The Section Officer,
   V.R.Section,
   High Court, Madras.

SATHI KUMAR SUKUMARA KURUP, J.

dh

Order made in
Crl.O.P.No.24521 of 2021

27.01.2023