



Crl.O.P No.29213 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **27.02.2023**

CORAM:

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Crl.O.P No.29213 of 2019
and Crl.M.P.No.15704 of 2019

1. R.Alagarsamy
2. Padmavathi

... Petitioner/accused 1 & 2

Vs.

1. The State represented by
The Inspector of Police,
District Crime Branch,
Krishnagiri District.

2. Pushparaj

... Respondents

Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records and quash the First Information Report registered in Crime No.24/2018 for the offences under Sections 465, 468, 471 and 420 IPC on the file of the Inspector of Police, District Crime Branch, Krishnagiri District.

For Petitioners : Mr.C.Arun Kumar
For Respondent-1 : Mr.A.Gopinath
Government Advocate (crl.side)
R2 : Ms.R.Aparna



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ORDER

This Criminal Original Petition has been filed to call for the records in Crime No.24/2018 on the file of the first respondent and quash the same.

2. The petitioners are the accused 1 and 2. The case of the prosecution as it appears from the complaint is that the petitioners and the *de facto* complainant were running a business under the name and style “Sangeetha Agencies” and they have entered into a partnership deed on 11.05.2011. The business run by the partnership firm is with regard to the crackers. The wife of the first accused by name Padmavathi, the second petitioner herein, was approved as the authorised signatory for the firm. All of a sudden even without giving notice to the *de facto* complainant, he was removed from the partnership firm by creating some documents. The *de facto* complainant came to know about that only after making due enquiries and that too when he was not given with any accounts of the company. In this regard a case has been registered against the petitioners in Cr.No.24 of 2018 for the offences under Section 465, 468, 471 and 420 IPC.



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3. The learned counsel for the petitioners submitted that the second respondent has already filed a civil suit in O.S. No.46 of 2022 and in which he had sought a relief of partition and separate possession along with permanent injunction of the suit property; the suit is of the year 2016 and in the said suit the second respondent had not stated anything about the alleged forgery of documents or releasing his partnership from the partnership firm, but he has given the complaint in the year 2017 by stating different facts; even before the complaint was filed, the petitioners have filed their written statement wherein they have specifically denied about the creation of certain documents; the second respondent had suppressed the material facts with regard to seeking civil remedy in the complaint filed by him; the second respondent had taken different stand before different forum and having opted to resolve his remedy before the civil Court, he had chosen to file the criminal case also; such an action on the part of the second respondent is nothing but an abuse of process of law; non-disclosure of essential facts cannot be taken lightly and on that score, the FIR against the petitioners should be quashed. In support of his above contentions, the learned counsel for the petitioners cited the following decision of the Supreme Court:



- i) ***B.Suresh Yadav Vs. Sharifa Bee and another*** reported in (2007) 13 SCC 107
- ii) ***Usha Chakraborty and another Vs. State of West Bengal and another in SLP No.5866/2022.***

4. The learned Government Advocate (Crl.side) submitted that the civil remedy sought by the second respondent for partition will not disentitle the second respondent from initiating criminal proceedings against the petitioners for having caused the forged documents; the judgment cited by the learned counsel for the petitioners are not applicable to the facts of the present case; since the complaint filed by the second respondent makes out a *prima facie* case the investigation should be allowed to go.

5. The learned counsel for the second respondent submitted that in the suit itself the second respondent has stated about the forging of certain documents and there is no suppression of any facts; the second respondent is entitled to get civil remedy and initiate criminal action for the offences of impersonation and forgery committed by the petitioners; just because the second respondent had filed a suit, she cannot be prevented from initiating criminal action against the petitioners for committing the offence of forgery;



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the petitioners have not produced the original release deeds so far for examination; under such circumstances the investigation should be allowed to continue.

6. On perusal of the records it is seen that the second petitioner is one of the partners in the firm by name “Sangeetha Agencies” which involves in the business of selling crackers. Since the second respondent all of a sudden was expelled from the partnership firm and he was not recognized as a partner, he had initiated a civil action for seeking certain reliefs. The criminal complaint given by the second respondent would also show the manner in which he is alleged to have been cheated by the petitioners. The second respondent came to know about creation of certain deeds on the basis of which the petitioners claim that the second respondent had relinquished his partnership rights in the firm.

7. The core contention of the learned counsel for the petitioners is that the second respondent had filed a civil suit much earlier than the criminal complaint and hence his remedy lies only before the civil Court. His further contention is that the second respondent had not stated about the



the pending civil case in the complaint given by him and thus suppressed the material fact.

8. In the judgment cited by the learned counsel for the petitioners in ***Suresh Yadav's case (cited supra)*** it is held that if contrary stands are taken in a civil proceedings and criminal proceedings by the complainant that would amount to abuse of process of Court. In the case in hand, the second respondent had not changed his stand by making a different allegations in his complaint. In the suit also the second respondent had stated that the petitioners have achieved their purpose by creating certain forged documents in connection with the same partnership agency. Even in the complaint he had stated those facts. Of course in the complaint the second respondent had not stated about the pending civil suit which he had filed for partition. But the omission to mention the civil suit in my view cannot be considered as something fundamental to the maintainability of the criminal case itself.

9. In the other case cited by the learned counsel for the petitioner in ***Usha Chakraborty's case (cited supra)*** it is held as under:



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“ 9. The materials on record pertaining to the said pleadings instituted in the Civil Suit, produced in this proceeding would reveal that the respondent was in fact ousted from the membership of the trust. In the counter affidavit filed in this proceeding, the respondent has virtually admitted the pendency of the suit filed against his removal from the post of Secretary and the trusteeship and its pendency. The factum of passing of adverse orders in the interlocutory applications in the said Civil Suit as also the prima facie finding and conclusion arrived at by the Civil Court that the respondent stands removed from the post of Secretary and also from the trusteeship are also not disputed therein. Then, the question is why would the respondent conceal those relevant aspects? The indisputable and undisputed facts (admitted in the counter-affidavit by the respondent) would reveal the existence of the civil dispute on removal of the respondent from the post of Secretary of the school as also from the trusteeship. Obviously, it can only be taken that since the removal from the office of the Secretary and the trusteeship was the causative incident, he concealed the pendency of the civil suit to cover up the civil nature of the dispute.

10. By non-disclosure the respondent has, in troth, concealed the existence of a pending civil suit between him and the appellants herein before a competent civil Court which obviously is the causative incident for the respondent's allegation of perpetration of the aforesaid offences against the appellants.”



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10. A holistic reading of the above judgment would show that it was the complaint given by a person who claimed as a Secretary / Trustee. Even before the said complaint he has been removed from his Secretaryship / Trusteeship in an order passed by the Civil Court. The non-disclosure of the above said fact would affect his *locus standi* to file a criminal case and also the facts stated by him in the complaint. So the judgment rendered in the above said case is applicable to its own facts. But the case in hand is entirely different and the observation that has been made basing upon the different facts that have been already stated, cannot be considered as applicable to the facts involved in this case.

11. The second respondent who had filed the suit as well as the complaint had not declared by any order of the Civil Court that he seized to be a partner of the subject firm. Hence there is no factor which would hinder the criminal complaint given by the second respondent wherein he has alleged about forgery of certain documents done by the petitioners for the purpose of cheating and removing him from the partnership firm in an illegal manner.



12. Since the relief claimed by the second respondent before the Civil Court and the action sought before the criminal forum by filing a complaint are different and the *de facto* complainant who is the aggrieved person has got the right to maintain the civil suit in respect of the reliefs claimed by him and also the criminal case or the purpose of which the same has been filed. Since the complaint filed by the second respondent on the face of it makes out a prima facie case for cheating and forgery, it is right for the first respondent police to register a case and initiate the investigation. Hence it does not deserve to be quashed by invoking the powers of this Court under Section 482 Cr.P.C.

13. In the result, this Criminal Original Petition is dismissed.
Connected miscellaneous petition is closed.

27.02.2023

Index : Yes/No
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To:

1. The Inspector of Police,
District Crime Branch,
Krishnagiri District.
2. The Public Prosecutor,
High Court, Madras.



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R.N.MANJULA, J.,

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