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Crl.O.P.No.34597 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

Crl.O.P.No.34597 of 2019

and

Crl.M.P.No.19240 of 2019

Vijayanandh

... Petitioner / A1

-Vs-

1.The State Rep. by
The Inspector of Police,
Ponnai Police Station,
Ponnai,
Vellore District.

... 1st Respondent / Complainant

2.Pushparaj

... 2nd Respondent / Defacto Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in pursuant to the FIR in Crime No.227 of 2019 on the file of the 1st respondent and to quash the same.

For Petitioner

: Mr. J. Arokhiaaraj

For R1

: Mr. A. Damodaran,
Additional Public Prosecutor

For R2

: Mr. G. Saravanabhavan
For Mr. G. Balaji Venkateswaran



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ORDER

This Criminal Original Petition has been filed seeking to quash the FIR in Crime No.227 of 2019 on the file of the 1st respondent filed for the offences under Sections 486, 420, 465, 471 and 34 of IPC.

2.The allegations in the FIR are that the petitioner and the defacto complainant were partners in a firm called M/s. A. S. V. Developers and Builders; that the petitioner had not conducted the affairs of the partnership firm in a proper manner and was misappropriating the money belonging to the partnership firm. Hence, the 2nd respondent wanted to exit from the partnership firm. On 14.09.2018, he had sent a notice to the petitioner asking him to return a sum of Rs.1,75,00,000/-. It is further alleged in the FIR that the petitioner is not allowing the 2nd respondent into the building belonging to the partnership firm and the petitioner is attempting to sell the property of the partnership firm without reference to the 2nd respondent.

3.The learned counsel for the petitioner submitted that the dispute



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between the partners and the partnership firm is sought to be projected as a criminal case. None of the offences alleged are not made out. There is no misappropriation or cheating alleged in the impugned FIR. The impugned FIR only pertains to alleged difference of opinion between the partners. The learned counsel further submitted that there cannot be any misappropriation insofar as the partners are concerned and one partner may be liable civilly to the other partner and it is for the Civil Court to decide as to how the assets of the partnership firm has to be divided. Hence, he prayed for quashing of the impugned FIR.

4.The counsel for the 2nd respondent, per contra, submitted that the petitioner is not running the partnership firm in a proper manner and in fact, the partnership firm does not have bank account and they have not even filed balance sheet pertaining to the partnership firm. Further, the misappropriation committed by the petitioner in the partnership firm has to be investigated by the 1st respondent and cannot be scuttled at this stage. Hence, he prayed for dismissal of the quash petition.

5.The learned Additional Public Prosecutor appearing for the 1st respondent submitted that there are allegations in the impugned FIR and the matter has to be investigated by the respondent police.



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6.This Court on a reading of the impugned FIR finds that the dispute is primarily between the partners of M/s. A. S. V. Developers and Builders. Admittedly due to the dispute, the 2nd respondent wanted to exit from partnership and issued notice on 14.09.2018 calling upon the petitioner to pay a sum of Rs.1,75,00,000/-. It appears that the petitioner had not paid the said amount. The allegation even if accepted to be true reveals that it is a dispute between the partners. The Hon'ble Supreme Court in ***Velji Raghavji Patel Vs. State of Maharashtra*** reported in ***AIR 1965 SC 1433***, had held that where one partner chooses to use the property for his own purpose, he may be accountable to the other partner civilly and the offence of misappropriation would not be made out. The relevant observations are extracted hereunder:-

“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



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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."

The above observation is squarely applicable to the facts of this case.

7. There is nothing in the impugned FIR, to show that the petitioner has forged any document to attract the offence of forgery. The offence of cheating is also not made as the dispute between the partners has to be resolved only before the Civil Court.



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8. In such view of the matter, this Court is of the opinion, that the impugned FIR is clearly an abuse of process of law and it is liable to be quashed. Accordingly, the impugned FIR in Crime No.227 of 2019 on the file of the 1st respondent is quashed insofar as the petitioner herein is concerned and the Criminal Original Petition is allowed. Consequently, connected Criminal Miscellaneous Petition is closed.

16.06.2023

smv

Index : Yes/No

Neutral Citation : Yes/No

Speaking/Non Speaking order

To

1.The Inspector of Police,
Ponnai Police Station,
Ponnai,
Vellore District.

2.The Public Prosecutor,
High Court of Madras.



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SUNDER MOHAN,J.

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