BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.07.2023

Pronounced on : 16.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl.O.P(MD).No.3736 of 2020
and
Crl.M.P(MD) No.2029 of 2020

M.Kannan ...Petitioner

Vs

1.The Inspector of Police
District Crime Branch
Madurai City

2.Karthikeyan ...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the records pertaining to the First Information Report in Crime No.22 of 2019 on the file of the first respondent and quash the same.

For Petitioner : Mr.Niranjan S.Kumar

For R-1 : Mr.R.M.Anbunithi
Additional Public Prosecutor

For R-2 : Mr.C.Muthu Saravanan

ORDER

This Criminal Original Petition has been filed to quash the First Information Report in Crime No.22 of 2019 on the file of the first respondent

2.According to the petitioner, the second respondent/defacto complainant lodged complaint on 20.09.2019 alleging that, he along with his uncle decided to do real estate business and sold an extent of 1acre 50cents at Kottagaimedu, Othakadai, Madurai. Then he approached A2/Varadharajan and he introduced A1 as a high profile broker and A2 had expressed that an extent of 22 acres land situated at Melvellanji Village, Sivagangai District is available for purchase and hence the defacto complainant was interested to purchase it for Rs.6000/- per cent and he promised to complete the sale. For that, on 10.04.2008, the second accused along with the first accused received an advance of Rs.16lakhs to purchase the said extent. Thereafter, A1 and A2 had obtained another sum of Rs.5 lakhs from the defacto complainant towards the purchase of said land. After receipt of Rs.21 lakhs, no documents were registered in the name of the defacto complainant. Subsequently, on 09.07.2020, A1 had produced a power of attorney document dated 15.05.2008 and based on that power of attorney sale deed will be executed in favour of the defacto complainant. Thereafter, the defacto complainant came to know that A1 was arrested and remanded in a forgery criminal case. Then, the defacto complainant had approached A2 to return the advance amount and subsequently A2 and A3 assured to return the money and on 10.02.2019 and 25.02.2019 when the defacto complainant had demanded his money, the accused persons threatened him with dire consequences and hence, he lodged complaint before the first respondent police. Based on the directions issued by the learned Judicial Magistrate No.I, Madurai in Crl.M.P. No.4589 of 2019, the case in Crime No.22 of 2019 has been registered for the offences under Sections 34,406,420,465,468,474 and 506(i) of IPC.

3. According to the petitioner the defacto complainant and the second accused entered into agreement for purchase of land and to divide the same into housing plots and to sell the same for profits. Since, the defacto complainant was not ready to purchase the property and hence he dragged the proceedings, therefore, the petitioner had sent legal notice dated 12.08.2008 to the second respondent asking him to make further payments for registration of land for which, the second respondent had not replied and filed this criminal complaint, after a lapse of 11 years. The above act clearly indicates the *malafide* intention of the second respondent. Even according to the complaint no specific averments was attributed as against this petitioner/third accused to invoke the criminal prosecution against the petitioner, since the entire transaction is purely civil in nature. Therefore, the First Information Report is liable to be quashed.

4. No counter was filed by the respondents.

5 According to the complainant there were money transactions were between defacto complainant and the A1 and A2. This petitioner is arrayed as A3 and he is the son of A1. The only allegation against the petitioner is that he assured to repay the amount and thereby he produced the document alleging that the property is worth about Rs.20 lakhs and thereafter the defacto complainant came to know that the property is not worth about Rs.20 lakhs and it is only about Rs.2 lakhs.

6. The learned counsel appearing for the second respondent/defacto complainant would contend that on 10.04.2008, the second accused along with the first accused received an advance of Rs.16lakhs to purchase the said extent. Thereafter, A1 and A2 had obtained another sum of Rs.5 lakhs from the defacto complainant towards the purchase of said land. After receipt of Rs.21 lakhs, no documents were registered in the name of the defacto complainant. Subsequently, on 09.07.2020, A1 had produced a power of attorney document dated 15.05.2008 and based on that power of attorney sale deed will be executed in favour of the defacto complainant. Thereafter, the defacto complainant came to know that A1 was arrested and remanded in a forgery criminal case. Then, the defacto complainant had approached A2 to return the advance amount and subsequently A2 and A3 assured to return the money and on 10.02.2019 and 25.02.2019 when the defacto complainant had

demanded his money, the accused persons threatened him with dire consequences and hence, he lodged complaint

7. The learned Additional Public Prosecutor appearing for the first respondent would contend that the second respondent gave complaint before the Judicial Magistrate No.I, Madurai and the learned Magistrate had also forwarded the same to the first respondent under Section 156(3) of Cr.P.C. On receipt of the complaint given by the second respondent, the first respondent police registered a case in Crime No.22 of 2019 for the offences under Sections 34,406,420,465,468,471 and 506(i) of IPC and the same is under investigation. Since the case is under preliminary stage, the petition is liable to be dismissed.

8. Heard both sides and perused the materials available on record.

9. It is an admitted fact that A3 was not involved in the above said money transactions and execution of agreement and purchase of the said land and there is a dispute between A1 and A2 and the defacto complainant with regard to repayment of money. The allegation against A3 is that when the defacto complainant asked the A1 to repay the

money, A3 being the son of A1 stated that he assured to repay the money and thereafter he gave a original documents of his relatives by alleging that the property is worth about more than Rs.20 lakhs. This bald allegation that he gave original documents stating that it is worth about Rs.20 lakhs and the same is only worth about Rs.2 lakhs alone will not constitute any offence as alleged in the complaint and the First Information Report. Even according to the complaint, A3 had handed over original documents, whileso, there is no any *malafide* intention and only because of that act he was implicated as one of the accused in this case but no offence is made out as against this petitioner. Since the original document itself was handed over to the defacto complainant there is no any offence made out against this petitioner. On perusal of the records it reveals that in the document itself the value of the property was mentioned as Rs.2 lakhs and that too the documents also not stands in the name of the petitioner . Only after knowing all the facts, the second respondent has received the said document from the petitioner. Therefore even according to the complaint averments no offence is made out as against this petitioner/A3, hence the First Information Report is liable to be quashed as against this petitioner.

10. At this juncture the learned counsel for the petitioner relied on the judgments of the Hon'ble Apex Court in the cases of

i) Anil Mahajan .vs. Bhor Industries Ltd and another

reported in ***(2005)10 SCC 228***, wherein it is held as follows:

9. In Alpic Finance Ltd. v. P. Sadasivan[1] this Court was considering a case where the complainant had alleged that the accused was not regular in making payment and committed default in payment of instalments and the bank had dishonoured certain cheques issued by him. Further allegation of the complainant was that on physical verification certain chairs were found missing from the premises of the accused and thus it was alleged that the accused committed cheating and caused misappropriation of the property belonging to the complainant. Noticing the decision in the case of Nagawwa v. Veeranna Shivalingappa Konjalgi[2] wherein it was held that the Magistrate while issuing process should satisfy himself as to whether the allegations in the complaint, if proved, would ultimately end in the conviction of the accused, and the circumstances under which the process issued by the Magistrate could be quashed, the contours of the powers of the High Court under Section 482 CrPC were laid down and it was held: (SCC p. 520, paras 10-11)

"10. The facts in the present case have to be appreciated in the light of the various decisions of this Court. When somebody suffers injury to his person, property or reputation, he may have remedies both under civil and criminal law. The injury alleged may form the basis of civil claim and may also constitute the ingredients of some crime punishable under criminal law. When there is dispute between the parties arising out of a transaction involving passing of valuable properties between them, the aggrieved person may have a right to sue for damages or compensation and at the same time, law permits the victim to proceed against the wrongdoer for having committed an offence of criminal breach of trust or cheating. Here the main offence alleged by the appellant is that the respondents committed the offence under Section 420 IPC and the case of the appellant is that the respondents have cheated him and thereby dishonestly induced him to deliver property. To deceive is to induce a man to believe that a thing is true which is false and which the person practising the deceit knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence. There is no allegation that the respondents made any wilful misrepresentation. Even according to the appellant, the parties entered into a valid lease agreement and the grievance of the appellant is that the respondents failed to discharge their contractual obligations. In the complaint, there is no allegation that there was fraud or dishonest inducement on the part of the respondents and

thereby the respondents parted with the property. It is trite law and common sense that an honest man entering into a contract is deemed to represent that he has the present intention of carrying it out but if, having accepted the pecuniary advantage involved in the transaction, he fails to pay his debt, he does not necessarily evade the debt by deception.

11. Moreover, the appellant has no case that the respondents obtained the article by any fraudulent inducement or by wilful misrepresentation. We are told that the respondents, though committed default in paying some instalments, have paid substantial amount towards the consideration."

(emphasis supplied by us)

10. We have examined the complaint and it is clear from its substance that present is a simple case of civil disputes between the parties. Requisite averments so as to make out a case of cheating are absolutely absent. The principles laid down in Alpic Finance Ltd. case[1] were rightly applied by learned Additional Sessions Judge and it cannot be said that the ratio of the said decision was wrongly applied. On due consideration, the learned Additional Sessions Judge had rightly set aside the order of the Magistrate issuing process to the appellant.

ii) ***Randheer Singh .vs. The State of Uttar Pradesh and Ors*** in ***Criminal Appeal No.1190 of 2021,*** wherein the Hon'ble Apex Court has held that

"32. In Kapil Agarwal (supra), this Court observed that Section 482 is designed to achieve the purpose of ensuring that criminal proceedings are not permitted to generate into weapons of harassment.

33. In this case, it appears that criminal proceedings are being taken recourse to as a weapon of harassment against a purchaser. It is reiterated at the cost of repetition that the FIR does not disclose any offence so far as the Appellant is concerned. There is no whisper of how and in what manner, this Appellant is involved in any criminal offence and the charge sheet, the relevant part whereof has been extracted above, is absolutely vague. There can be no doubt that jurisdiction under Section 482 of the Cr.P.C. should be used sparingly for the purpose of preventing abuse of the process of any court or otherwise to secure the ends of justice. Whether a complaint discloses criminal offence or not depends on the nature of the allegation and whether the essential ingredients of a criminal offence are present or not has to be judged by the High Court. There can be no doubt that a complaint disclosing civil transactions may also have a criminal texture. The High Court has, however, to see whether the dispute of a civil nature has been *given colour of criminal offence. In such a situation, the High Court should not hesitate to quash the criminal proceedings as held by this Court in Paramjeet Batra (supra) extracted above"*

11. On careful reading of the above judgments it is clear that there can be no doubt that jurisdiction under Section 482 of Cr.P.C should be used sparingly for the purpose of preventing abuse or process of any court or otherwise to secure the ends of justice and whether a complaint discloses criminal offence or not depends upon the nature of the allegation and whether the essential ingredients of a criminal offence are present or not has to be judged by the High Court. In the case on hand as per allegation of compliant and the First Information Report, no offences are made out against the petiitoner and he not at all involved in the agreement and money transactions, thereby the said case laws are squarely applicable to the present facts of the case

12. The learned counsel appearing for respondent relied on the Judgment of the Hon'ble Apex Court in the case of ***Skoda Auto Volkswagen (India) Private Limited -vs- State of Uttar Pradesh*** reported in ***(2021)2 SCC(Cri)709,*** wherein it is held that:

"41. As cautioned by this Court in State of Haryana v.Bhajan lal, the power of quashing should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. While examining a complaint, the quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or in the complaint".

13. On careful of the judgment it reveals that this Court can exercise the power to quash the First Information Report sparingly and with circumspection and that too in the rarest of rare cases, In the case on hand on reading of the complaint no offence is made out against the petitioner. hence case law will not be helpful to the respondents.

14. In view of the above discussions and inview of the said judgement, this Criminal Original Petition stands allowed and the First Information Report in crime No.22 of 2019 on the file of the first respondent is hereby quashed in so far the petitioner alone. Consequently connected miscellaneous petition is closed.

16.08.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
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To

1.The Inspector of Police
District Crime Branch
Madurai City

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

P. DHANABAL,J.

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