BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 24.07.2023	Delivered on: 15.09.2023

CORAM

THE HON'BLE MR.JUSTICE P.DHANABAL

Crl.O.P.(MD)No.19218 of 2019
and
Crl.M.P.(MD)Nos.11279 & 11281 of 2019

R.S.Ramadass ... Petitioner

Vs.

1.The Inspector of Police,
CCB Police Station,
Madurai District.
(Crime No.17 of 2018)

2.P.Hemachandra Babu ... Respondents

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.117 of 2019 on the file of the Judicial Magistrate No.I, Madurai and to quash the same.

For Petitioner : Mr.K.Sami Durai

For R1 : Mr.M.Sakthi Kumar,
Government Advocate(Crl.side)

ORDER

This criminal original petition has been filed to quash the proceedings in C.C.No.117 of 2019 on the file of the Judicial Magistrate No.I, Madurai.

2.According to the petitioner, the defacto complainant is a residence of Bangalore and he is working in True Logistics Private Limited as Chief Executive Officer. The branch of the said company situated at Gomathipuram, Madurai, was entrusted to the petitioner herein. The company is catering the needs of the public by transporting goods through the branches all over India. According to the defacto complainant, the company entrusted a sum of Rs.1,30,000/- and entered into an agreement dated 01.12.2016 and further, even before the said assignment, a sum of Rs.1,67,51,2,438/- was available in the account of the Bank. While the petitioner was managing the affairs of the Company, on 01.05.2017, the petitioner sent an email to the company expressing his willingness to resign from the company. Further, it is alleged that the petitioner committed breach of trust with malafide intention and started a company on 31.03.2017 in the name of True

Express Private Limited and was doing the same kind of business at the same place by utilizing the same staff. Further, out of Rs.1,67,51,2,438/-, the petitioner settled only a sum of Rs.1,37,23,215 and misappropriated a sum of Rs.30,28,033/- and also failed to repay the said amount. Thereby committed offence under Sections 406 and 420 IPC. In fact, the petitioner was appointed as General Manager Marketing by communication dated 21.11.2012. Thereafter, the petitioner was promoted as Chief Executive Officer by the resolution of the company dated 26.10.2015. Subsequently, on 21.01.2017, the company entered into an agreement with the petitioner for the business development with regard to the Madurai, Erode, Calcutta and Delhi were entrusted to the petitioner. By the said agreement, the company invested a sum of Rs.1.3 Crores on a condition that the petitioner should pay 3% i.e., Rs.4,00,000/- per month to the second respondent. According to clause No.7 of the said agreement, the petitioner will not be an employee. The only condition is that if the petitioner wishes to discontinue the agreement, the petitioner will be responsible to repay the investment to arrive mutual understanding. As such, the petitioner is liable to pay only the working capital amount of Rs.1.3 Crores. The petitioner submitted his resignation on 01.05.2017. In the resignation letter itself, the petitioner requested the second respondent to fix the investment amount of Rs.1.3 Crores and agreed to return the said amount. As there was no proper response, the petitioner, who intense to settle the dispute amicably, invokes clause 9 of the agreement dated 20.07.2017 and sent a notice to the second respondent on 01.08.2017. Even after said notice, the second respondent has not taken any steps to send reply. Thereafter, the petitioner sent a letter to the second respondent for fixing Arbitrator and the same was also not considered. Therefore, the petitioner filed a petition before the High Court of Karnadaka in CMP.No.46 of 2018 for appointment of Arbitrator and the same is pending. In the mean time, a false complaint was given before the first respondent. Based on the complaint, FIR was registered in Cr.No.17 of 2018 for the offence under Sections 406 and 420 IPC and thereafter, charge sheet was also filed before the learned Judicial Magistrate No.I, Madurai and the same was taken cognizance in C.C.No.117 of 2019. The above said FIR and charge sheet are clear abuse of process of law and thereby, the said charge sheet is liable to be quashed.

3.The first respondent filed counter by stating that the second respondent has preferred a complaint before the first respondent on 16.12.2017 and FIR in Cr.No.17 of 2018 was registered on 03.04.2018. Thereafter, the first respondent investigated the case and examined witnesses and also collected documents. Since prima facie materials are available as against the petitioner to proceed with the case, the first respondent filed charge sheet and the same was taken cognizance by the learned Judicial Magistrate No.I, Madurai in C.C.No.117 of 2019. Now, the trial Court has framed charges and the case is at the stage of questioning the accused. During investigation, it reveals that the petitioner started the same logistic business from the same location with the same staff and thereby, prima facie offences are made out. Hence, at this stage, this petition is liable to be dismissed and the petitioner has to face the trial.

4.The learned counsel appearing for the petitioner would contend that the second respondent lodged a complaint before the first respondent. Based on the complaint, the first respondent registered FIR in Cr.No.17 of 2018 for the offences under Sections 406 and 420 IPC. Thereafter, the first respondent investigated the case and filed final report and the same has been taken cognizance by the learned Magistrate in C.C.No.117 of 2019. In fact, there is dispute between the defacto complainant and the petitioner with regard to the starting business alone and no offence was committed by the petitioner as alleged in FIR and the final report. The petitioner was entrusted the company branch at Madurai and he also running the business successfully and thereafter, the petitioner wanted to resign his job. Already both the second respondent and the petitioner entered into an agreement and as per the agreement, Rs.1.3 Crores was invested by the second respondent, for that, the petitioner has to pay Rs.4 Lakhs per month. Thereafter, the petitioner requested the second respondent to settle the matter amicably. But the second respondent is not amenable for amicable settlement and thereby, the petitioner filed arbitration petition for appointment of Arbitrator before the High Court of Karnataka. Thereafter only, the second respondent had given the complaint before the first respondent by converting the civil dispute into criminal case. Therefore, the charge sheet in C.C.No.117 of 2019 on the file of the learned Judicial Magistrate No.I, Madurai is liable to be quashed.

5.The learned Government Advocate(Crl.side) appearing for the first respondent would contend that the second respondent has lodged a complaint before the first respondent and they registered FIR. Thereafter investigated the case and filed final report and the same was taken on file in C.C.No.117 of 2019 by the learned Judicial Magistrate No.I, Madurai. Now, the case is posted for further proceedings. As per final report, there are prima facie materials available to proceed with the case further as against the petitioner and therefore, at this stage, this petition is liable to be dismissed.

6.Heard both sides and perused the materials available in the records.

7.On perusal of records shows that the petitioner and the defacto complainant entered into agreement for running business of transporting goods, through agreement dated 01.12.2016. At that time, Rs.1.3 Crores was deposited in the account, for the business purpose, as agreed in the agreement. According to the petitioner, he was entrusted the business of the defacto complainant to the branch at Madurai and was running business, thereafter he resigned the job, due to that the present case has been filed. As per agreement, the matter has to be settled through Arbitrator, but without doing the same, the criminal colour has been given to the civil dispute. The respondents contention is that already investigation was completed and as per investigation prima facie materials available as against the petitioner. On careful perusal of the records, it is seen that the first respondent has investigated the case and filed final report, as per final report, there are prima facie materials available to proceed against the petitioner and it needs elaborate trial.

8.The learned counsel appearing for the petitioner has relied upon a judgment of this Court in a case of Himanshu Subash Chandra Pant, Haryana and others Vs. State Rep by Inspector of Police, Central Crime Branch, Tiruppur and others reported in (2023) 1 MLJ (Crl) 75. On careful reading of the judgement shows that it will not applicable to the present facts of the case. Because, in this case, already final report filed and as per final report, there are prima facie materials available to proceed further.

9.The learned counsel appearing for the petitioner relied upon the judgment of the Hon’ble Supreme Court of India in a case of Robert Jhon D’Souza and others Vs. Stephen V.Gomes and another, wherein the Hon’ble Supreme Court held as follows:-

> *46.The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior*

motive to pressurise the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 CrPC though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained." In view of the above discussion and facts and circumstances of the case, we are of the view that none of the offences for which the appellants are summoned, is made out from the complaint and material on record. We further find that it is nothing but abuse of process of law on the part of the complainant to implicate the appellants in a criminal case after a period of twelve years of execution of registered sale deeds in question, who is neither party to the sale deeds nor a member of the Society. Therefore, we allow the appeal and set aside the orders passed by the High Court and that of the courts below. Accordingly, the order passed by the Magistrate summoning the appellants in the criminal complaint filed by respondent No. 1, in respect of offences punishable under Sections 406, 409 and 420 IPC, also stands quashed.

10.The learned counsel appearing for the petitioner relied upon the another judgment of the Hon'ble Supreme Court of India in a case of Mitesh Kumsr J.Sha Vs. The State of Karnataka & Ors., wherein Hon'ble Supreme Court held as follows:-

> *39.This Court in the case of Hridaya Ranjan Prasad Verma & Ors. Vs. State of Bihar & Anr.6, has observed:-*
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> > *"15. ....that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time to inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise..."*
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> *40.Applying this dictum to the instant factual matrix where the key ingredient of having a dishonest or fraudulent intent under sections 405, 419 and 420 is not made out, the case at hand, in our considered opinion is a suitable case necessitating intervention of this Court.*

11.On careful reading of the above said judgment it is clear that the Court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. There is distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time to inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. In the case on hand, as per investigation, the petitioner after entered into an agreement with the second respondent for the business purpose, he separately started the same business in the same location with the same staff and also allegations of misappropriation. Thereby, the above said case laws will not be applicable to the present facts of the case.

12.According to the second respondent, the petitioner, who misappropriated a sum of Rs.30,28,033/- and also formed another company in the name and style of same logistic business at the same location with the same staff and thereby, committed forgery and breach of trust. According to the petitioner, he wanted to resign his job and thereby, he sent representation. Without considering the said representation, in order to wreck vengeance, this complaint has been given. Already FIR was registered as against the petitioner and after elaborate investigation, the first respondent filed final report. As per final report, there are prima facie materials available to proceed with the case and the trial Court has also taken cognizance in C.C.No.117 of 2019 for the offences under Sections 406 and 420 IPC. At this stage, the veracity of the statements of the witnesses and other documents cannot be looked into by this Court and as per averments made in the complaint and final report, it needs elaborate trial. All the grounds raised in this petition can be agitated before the trial Court.

13.On careful perusal of the records shows that no valid grounds available to invoke power under Section 482 Cr.P.C., by this Court. Therefore, this petition deserves to be dismissed and accordingly, dismissed. Consequently, connected miscellaneous petitions are closed.

15.09.2023

Index :yes/No
Internet:yes/No
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To

1.The Judicial Magistrate No.I,
Madurai.

2.The Inspector of Police,
CCB Police Station,
Madurai District.

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

P.DHANABAL, J

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Pre-Delivery Order
made in
Crl.O.P.(MD)No.19218 of 2019

15.09.2023