IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.07.2024	Pronounced on: 15.07.2024

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.13555 of 2024
& Crl.M.P.Nos.8206 & 8207 of 2024

C.Radhakrishnan .... Petitioner/Single Accused

/versus/

1.State Rep. by
The Inspector of Police,
Guduvanchery Police Station,
Chengalpattu District.
(Crime No.186/2022). .... Respondent/Complainant

2. Mrs.Puppy @ Prema .... Respondent/Defacto Complainant

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records relating to the impugned Charge Sheet in C.C.No.428 of 2023 pending on the file of the Learned Judicial Magistrate Court No.II, Chengalpet and quash the same.

For Petitioner : Mr.V.R.Kamalanathan
for Mr.K.S.Arumugam

For R1 : Mr.S.Udaya Kumar,
Government Advocate (Crl.Side).

For R2 : Mr.L.Dhamodharan

ORDER

The petitioner herein is the sole accused in the criminal case registered in C.C.No:428/2023 on the file of Judicial Magistrate-II, Chenglepet. Based on the direction of the Judicial Magistrate in C.M.P.No.1189/2021 *vide* order dated 16/02/2021, the H-2, Guduvanchery Police after conducting preliminary enquiry found commission of cognizable offence, registered F.I.R in Crime No.186/2022 for the offences under Section 406, 418, 420, 294(b) and 506 (1) of IPC on 01/06/2022 and taken up for investigation.

2. On completion of investigation, final report filed on 29/08/2023 which is under challenge in this petition filed under Section 482 of Cr.P.C., to quash the same on the ground that, a civil dispute been converted into a criminal case suppressing the real facts and by inserting the word 'cheating' wherever possible to make it appear that the accused had committed offence punishable under Section 420 of I.P.C. The complainant had suppressed the fact that her earlier complaint dated 17/06/2019 was enquired by the police and closed on 30/12/2019 after parties agreed to seek redressal before the Civil Court. Later she had manipulated those facts and got the present criminal case registered.

3. According to the Learned counsel for the petitioner, based on the power of attorney dated 25/07/2016 given by the complainants and other two co-owners of the land measuring about 1.98 acres in item (1), 1/4th share in item (2) measuring 49 cents, ½ share in item (3) measuring 33 cents and 1/5th share in item (4) measuring 15 cents and based on the three more power of attorney deeds from other 21 sharers, this petition aggregated land measuring about 4.50 acres and sold the property to one M/s.Krishna Estate *vide* sale deed dated 01/08/2016. The owners of the land, about 25 in numbers were duly paid the sale consideration. None of them have any grievance about it, except these two owners who have very minuscule share in the total extend of land. They taking advantage of two cheques given as security purpose at the time of executing power of Attorney coupled with interest, to extract money started intimidating in different ways. Earlier they caused notice through lawyer on 17/06/2019 to cancel the sale deed dated 01/08/2016. On the same day gave a police complaint on distorting facts. The Lawyer notice was suitably replied by the petitioner and also participated in the enquiry conducted by the police on the complaint given against him. On 30/12/2019, the first respondent police closed the complaint recording that the complainant had agreed to get redressal from civil court. The complainants thereafter did not proceed under Civil Law for any remedy. While so, this complaint to the Magistrate five years after completion of the transaction is clear abuse of process of law and it is nothing but a Forum shopping.

4. The Learned counsel for the petitioner submitted that, the petitioner as the agent of the complainants and other land owners aggregated their land and sold it on their behalf. The sale consideration was passed on to them immediately. If at all any grievance in rendition of account to the principal, it is a dispute civil in nature. Having not raised any dispute regarding the rendition of account, posing themselves as innocent and illiterates, criminal complaint for cheating been made several years after receiving entire sale consideration.

5. Referring the cheques given at the time of executing the power of attorney deed in the year 2016 and making wield allegation that the purchaser of the land M/s.Krishna Estate, a partnership firm in which the petitioner, his brother and one Vijay Surana are Partners had committed breach of trust, cheating, abusing in filthy language and criminal intimidation. The Judicial Magistrate failed to take note of the fact that the allegations in entirety is related to civil transaction. The complaint lodged on 17/06/2019 for the transaction happened during July 2016 was taken cognizance on 29/08/2023. Thus, the case is hopelessly barred by limitation. The Judicial Magistrate before taking cognizance of the offences, ought to have examined whether the required ingredients for the offences mentioned in the final report is available to proceed. The Judicial Magistrate has failed to examine the material placed before it along with the final report whether any commission of cognizable offence is made out. He had taken cognizance mechanically without application of mind, hence it vitiates the prosecution.

6. Per contra, the learned counsel appearing for the defacto complainant contended that the petitioner herein earlier canvassed the very same points before this court in his petition to quash the FIR, but this court declined to consider these defence and had passed detailed order in Crl.O.P.No.16814 of 2022 dated 23/09/2022. He is recanvassing the same point in the present petition to quash the charge.

7. The defacto complaint also had filed counter which reads as below:-

> "*7. The petitioner obtained a power of attorney on 25.07.2015. The first Respondent has also obtained signature in blank papers on the said date. Thereafter the petitioner seems to have transferred the property to M/s. Krishna Estates on 01.08.2016 by way of Deeds of Sale dated 01.08.2016 registered as document nos. 8066,8068 of 2016. As per the Sale Deed dated 01.08.2016, registered as Doc. No. 8066 of 2016 a sum of Rs. 4,16,50,000/- was the sale transaction and the sale deed dated 01.08.2016 registered as Doc. No. 8068 of 2016 reveals the sale price transferred is Rs. 6,07,60,000/- totaling in all Rs. 10,24,00,000/-. I have been given Demand Drafts for a sum of Rs. 15,00,000/- and cheques bearing No. 000306. 000314 for a sum of Rs. 35,00,000/-. The said cheques were given as a security at the time of obtaining Power of Attorney on the assurance that after the selling of the property the sale proceeds would be paid to me and my sister. But on the other hand the first Respondent made use of our illiteracy and transferred the property in his name along with the Partner Vijay Surana for a sum of Rs. 10,24,00,000/-.*

8. When we approached for the payment, the petitioner evaded making the payment. In the year 2019, we came to know the illegality indulged by the petitioner. We have lodged a complaint before the first Respondent with regard to the illegality indulged by the petitioner. The complaint was not taken on file resulted in filing of Crl. O.P. No. 26522 of 2019 on the file of the Hon'ble High Court. The Hon'ble High Court by order dated 04.03.2020 following the case of Lalithakumari directed to invoke Section 156(3) of CrPC. In pursuant to the said order the Petitioners have filed CMP No. 1189 of 2021 on the file of Judicial Magistrate, Chengalpattu. The Hon'ble Court by order dated 16.02.2021 was pleased to pass an order to conduct enquiry and if the cognizable offences has been made out to registered a FIR. In pursuant to the sald order the first Respondent conducted the enquiry and registered a FIR bearing Crime No. 186 of 2022. The first Respondent filed a Crl. O.P. No. 16184 of 2022 and sought to quash the FIR filed in Crime No. 186 of 2022. The Hon'ble High Court by order dated 23.09.2022 was pleased to dismiss the petition filed by the first Respondent and directed the second Respondent to file the final report within a period of 4 months from the date of receipt of copy of the Order. The Petitioners have communicated the order by way of representation dated 12.12.2022. Even after the receipt of the communication the second

Respondent has not chosen to file the final report to conduct the enquiry and to file the final report. The said act of the second Respondent resulted in filing of the Contempt Petition No. 1721 of 2023 before the Hon'ble High Court. In the contempt preceding the second first took notice and filed the charge sheet.

9. I further submit that as stated in the earlier paragraph, the petitioner is a land grabber. The modus operandi is that to obtain Power of Attorney and to get the property transferred in the name of Partnership firm in which he is a Partner. In the sale deed, it will be whispered that crores of rupees have been transferred. Literally thousands will not be paid to the real owners. The petitioner being an influential person makes use of the judiciary to shield him to cover up his illegality and the present petition is one such instance."

8. To buttress his submission that the prosecution of the petitioner does not suffer any limitation, he relies on the judgment rendered in ***State of H.P -vs- Tara Dutt and another*** reported in ***2000 (1) SCC 230*** paragraph 5, which reads as below:-

*"**5.** The plain and unambiguous language of the aforesaid provision of the Code of Criminal Procedure*

makes it crystal clear that under sub-section (2)(a) of Section 468 where the offence with which the accused is charged is punishable with fine only, the prosecution must be launched within six months from the date of commission of the offence. Similarly, under sub-section (2)(b) of Section 468, the period of limitation is one year if the offence is punishable with imprisonment for a term not exceeding one year and under sub-section (2)(c) of the said section where the offence charged is punishable with imprisonment for a term exceeding one year but not exceeding three years, then the period of limitation provided is three years for taking cognizance. Sub-section (3) of Section 468 which was added by the Code of Criminal Procedure (Amendment) Act, 1978, provides that in relation to offences which may be tried together, the period of limitation shall be determined with reference to the offence which is punishable with the more or most severe punishment. The language of sub-section (3) of Section 468 makes it imperative that the limitation provided for taking cognizance in Section 468 is in respect of the offence charged and not in respect of offence finally proved. This being the position, in the case in hand, when the respondents were charged under Section 468 read with Section 120-B, for which the imposable punishment is seven years and Section 5(2) of the Prevention of Corruption Act, 1947, which is punishable with imprisonment for a term which may extend to seven years *and for such offences no period of limitation having been provided for in Section 468, the cognizance taken by the learned Special Judge cannot be said to be barred by limitation. The High Court in recording its conclusion relied upon the decision of this Court in the case of State of Punjab v. Sarwan Singh [(1981) 3 SCC 34 : 1981 SCC (Cri) 625] . In the said case, the respondent was charged under Section 406 for misappropriation. The challan was presented on 13-10-1976 and therein it was clearly mentioned that the offence was committed on 22-8-1972. The learned trial Judge acquitted the accused of the charges under Section 468 but convicted him of the charge under Section 406 of the Code of Criminal Procedure. This Court came to the conclusion that since the charge-sheet itself mentions that the offence was committed on 22-8-1972, the cognizance was barred under Section 468(2)(c) of the Code. At the outset it may be stated that in the aforesaid case the Court had not considered the provisions of sub-section (3) of Section 468 which was in fact not there on the statute-book when the alleged offence was held to have been committed. But in view of the provisions of sub-section (3) of Section 468 which we have already considered this decision will be of no application and the High Court committed error in relying upon the aforesaid decision to come to the conclusion that in the case in hand the cognizance itself was barred by limitation."*

9. Heard the Learned Counsels and Records perused.

10. The case of the prosecution is that the petitioner on promising to develop the land of the complainants as housing plots and on receipt of the sale price of the house plots will pay them the price, got a power of attorney from them. Initially the petitioner gave the complainants a demand draft for Rs.15 lakhs and a cheque for Rs.35 lakhs. The demand draft was encashed by the complainants immediately. The complainants were informed by the petitioner that he is looking for suitable buyers for the sales of housing plots, till then not to present the cheque. Later, during the month of June 2019 they came to know that the petitioner has sold the property for Rs.10,24,00,000/- (Rupees Ten Crores Twenty Four lakhs) to M/s.Krishna Estate through sale deed dated 01/08/2016.

11. Claiming that no semblance of right flow from the Power of Attorney deed dated 25/07/2016 and sale deeds dated 01/08/2016, the complainants issued notice through their advocate on 17/06/2016 seeking cancellation of these documents. On the same day alleging that the petitioner making use of the ignorance and illiteracy of the complainants, had fraudulently transferred the property to M/s.Krishna Estate without paying the sale consideration to the complainant and when asked for the money they were threatened with dire consequence lodged complaint to the jurisdiction police.

12. The below dates and events are relevant in this case: -

Power of attorney: 25/07/2016.

Sale deeds: 01/08/2016.

Lawyer notice to cancel the deeds: 17/06/2019.

Complaint to jurisdiction police : 17/06/2019.

Judicial Magistrate order to register FIR: 16/02/2021

FIR registered on :01/06/2022.

Final report : 29/08/2023.

13. The tenure, language and the facts found in the lawyer notice is not the same as in the complaint, though both emanated on the same day. Adding a specific allegation of cheating, the complaint is given to the Police. The first respondent police had conducted enquiry. On enquiry, the police had found it is a property dispute, so closed the complaint on 30/12/2019 stating that matter could be settled only through Civil Court. During the enquiry, the petitioner has explained why he gave cheques bearing No.000313, dated

22/07/2016 and bearing No.000314 dated 22/07/2016 and it being given as security same was not presented. Later he paid Rs.5 lakhs each to the complainant on 17/02/2017 and 29/01/2018 respectively; and Rs.10 lakhs on 03/02/2018 and settled the entire money payable to them.

14. While the first complaint dated 17/06/2019 to the Guduvanchery police was under enquiry, it appears the complainants Mrs. Puppy @ Prema and Mrs. Vijaya had sent a representation through RPAD on 31/07/2019 to the Superintendent of Police, Kanchipuram reporting no action been taken by the Inspector of Police on the complaint dated 17/06/2019. Thereafter, the complainants had also filed Crl.O.P.No.26522/2020 under Section 482 Cr.P.C., before the High Court seeking direction to take action on their complaint dated 17/06/2019. This Court, *vide* order dated 04/03/2020 relying upon the Division Bench Judgment in Crl.O.P.(MD).No.13681/2018 and batch of cases, dated 20/09/2018, disposed the petition giving liberty to the petitioners to work out their remedy in accordance with the guidelines issued by the Division Bench in the decision referred.

15. Pursuant to the liberty granted, the petitioners have filed C.M.P.No:1189/2021 under Section 156(3) of Cr.P.C before the Judicial

Magistrate-II, Chengalpattu and sought direction to the jurisdiction police to register the complaint. The Learned Judicial Magistrate vide order date 16/02/2021 directed the SHO of the jurisdiction Station to expedite the enquiry following ***Lalitha Kumari -vs- State of U.P and others reported in 2013(4) Crimes 243 (SC)*** and act in accordance to law. As a consequence, after preliminary enquiry, case in Crime No.186/2022 registered and investigated. On coming to know about the registration of complaint, this petitioner had filed Crl.O.P.No.16814/2022 to quash the FIR. The said petition came to be dismissed on 23/09/2022 with direction to complete the investigation and file final report within 12 weeks. Alleging that the respondent police had not filed final report within the time fixed, Contempt Petition No.1721/2013 filed for disobedience of the court direction dated 23/09/2022. This contempt petition came to be closed on 30/08/2023 recording that final report filed and same has been taken cognizance by Judicial Magistrate-II, Chengalpattu in C.C.No: 428/2023.

16. The commission of offence of cheating is presumed in this case accepting the complainants version that the General Power of Attorney dated 25/07/2016 was executed by them to the petitioner only to develop the property by forming layout and not to sell. But, exploiting their innocence, the petitioner sold away the property on the strength of General Power of Attorney deed to a firm in which he himself a partner. Whereas, on perusal of the Power of Attorney dated 25.07.2016 executed by the complainants, this Court finds that the terms of the deed specifically confers power to the agent to negotiate for sale of the properties, to receive advance/full sale price, to execute on the behalf of the principal any documents of sale or otherwise dispose of the property. On the strength of these covenants, the petitioner on behalf of the complainants and others had sold the property to M/s.Krishna Estate on 01/08/2016.

17. In the complaint dated 17/06/2019 and the Lawyer notice, receipt of Rs.15 lakhs towards sale consideration is admitted and for non payment of the balance sale consideration, the complainants had sought for cancellation of the Power of Attorney deed and the consequential sale deeds. It is very notable that, having admitted the receipt of part sale consideration and delivery of possession, the Power of Attorney coupled with interest is repudiated three years later.

18. To attract offence under Section 420 I.P.C., the element of deception at the inception is necessary. In this case, the complaint and the statements of witnesses recorded during investigation do not disclose any *prima facie* material to show deception at the inception. In fact, nearly 3 years after completion of sale transaction, the lawyer notice is caused on 17/06/2019 and on the same day they have sent a complaint to the Inspector of Police, Guduvanchery.

19. In ***Sarabjit Kaur -vs- State of Punjab and another*** reported in ***(2023) 5 SCC 360,*** the Hon'ble Supreme Court has held breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely, allegation of failure to keep up promise, will not be enough to initiate criminal proceedings. Further, it is trite law that in same transaction, breach of trust and cheating cannot co-exist.

20. The material collected in the course of investigation and relied by the prosecution indicates that the complainants land which forms part of a larger extend been consolidated by the petitioner and sold to M/s.Krishna Estate. The land been developed as plots by the purchaser and the value of the property had escalated multi-fold due to the conversion of the agricultural land into housing plots. The cheques given as security at the time of executing the power of attorney and the fact that the power agent (petitioner herein) is one of the partner of the buyer firm M/s.Krishna Estates, complaint for cheating been made out.

21. Apparently on the date of complaint, the cheque had become a stale and admittedly even after that, some money been received by the complainants from the petitioner. The petitioner as agent of the vendors had executed sale deeds to M/s.Krishna Estates, in which the petitioner is one of the partner. The facts of the case viewed at any angle is at the most a case for civil remedy based on the alleged breach of contract/ failure to pay the balance sale consideration and it is not a case for criminal prosecution to take cognizance nearly 7 years after the completion of the contract when apparently no element of deception at the inception is available to take cognizance of the commission of offence - cheating.

22. The Learned Counsel for the Respondent/defacto complainant made a general statement that most of the innocent villagers are allured by land grabbers under the cloak of land promoters, promising huge price for their land

and get power of attorney deed and other documents from them. After transferring the property to the third parties name, the promised sale considerations are not transferred to the land owners. This sweeping statement may be true in some cases, however in this case if that is the real fact, then the complainants ought to have reacted immediately and not after three years. Another significant fact to be noted in this case is, when along with these two complainants, 23 more persons have given power of attorney to this petitioner and permitted him to consolidate their lands for promoting it as housing plots and got their sale price, only these two complainants have made a belated allegation of cheating and breach of trust. Hence, the above general statement, on facts on record inapplicable to the case in hand.

23. This Court is conscious of the trite law that, the inherent power of the High Court under section 482 Cr.P.C., should be sparingly exercised. However, when the Court is satisfied that the said criminal proceedings is essentially a civil dispute, then court should not hesitate to exercise the power conferred to prevent abuse of process of law. Also at this juncture, it is gainful to recollect the below passage of the Supreme Court in ***Paramjeet Batra -vs- State of Uttarakhand and others*** reported in ***2013(11) SCC 673***:

> ***"12.** While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court."*

24. In the case in hand, if the complainants had any genuine grievance they ought to have sought redressal before the court within reasonable time. Though, civil remedy was available to them, they did not resort to Civil Court but, belatedly giving criminal colour to the civil transaction and had manifested the complaint for cheating.

25. Therefore, for the reasons stated above, this Criminal Original Petition is allowed. The petition to quash C.C.No.428/2023 on the file of the Judicial Magistrate-II, Chengalpattu hereby quashed. Consequently, connected Miscellaneous Petitions are closed.

15.07.2024

Index :Yes/No.
Internet :Yes/No.
Speaking Order/Non-Speaking Order
bsm

To:-

1.The Judicial Magistrate Court No.II, Chengalpet.

2.The Inspector of Police, Guduvanchery Police Station, Chengalpattu District.

3. The Public Prosecutor, High Court, Madras.

DR.G.JAYACHANDRAN,J.

bsm

Pre-delivery order made in
Crl.O.P.No.13555 of 2024

15.07.2024