



Crl.O.P.No.19394 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :01.08.2024

Pronounced on :07.08.2024

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.O.P.No.19394 of 2023

and

Crl.M.P.Nos.13042 & 9628 of 2023

S.G.Gurubaran

.. Petitioner

/versus/

1.State rep.by Inspector of Police,
CCB-1 Police Station,
Vepery, Chennai-CCB,
Cr.No.278 of 2022

2.K.Hari Krishna Reddy

.. Respondents

Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records relating to Crime No.278 of 2022 on the file of the 1st respondent herein and quash the same.

For Petitioner

:Mr.S.Aby Backer Sidhic

For R1

:Mr.K.M.D.Muhilan,
Govt.Advocate (Crl.Side)

For R2

:Mr.E.Sathish Kumar



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ORDER

On the direction under Section 156(3) of Cr.P.C. issued by the learned Metropolitan Magistrate, Presiding the Special Court for cases investigated by CCB/CBCID cases at Egmore, the respondent police registered the complaint of Harikrishna Reddy against Gurubaran for offences under Sections 406 and 420 of IPC in Crime No:278/2022 on 31/12/2022.

2. To quash the said complaint, the accused Gurubaran has preferred this petition.

3. The gist of the complaint:

Harikrishna Reddy, the complainant, was gainfully employed in a Multinational Company. In the year 2015, he resigned the job and was in search of a new one. Through his auditor Mr.Satish Dulipatti, he came in contact with the accused Gurubaran. Believing the words of Gurubaran, who claimed himself as an established businessman at Singapore and his inclination to start business in India, the complainant



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joined him as Partner in the business and invested his money believing the assurance given by Gurubaran that they can earn star and sky in the business.

4. They both started the business in the name and style of M/s Supa Impex at No:10, 2nd Main Road, Abiramapuram. A deed of partnership was entered between them on 05/10/2016. Gurubaran persuaded the complainant to invest on capital expenditures such as rental advance, civil works at the business premises, import and export license cost including goods cost. Bank account in the Firms name was opened with the money contributed by the complainant. The entire investment for the firm was made by the complainant. Whereas Gurubaran not even paid Rs.2.50 lakhs, which he agreed to invest. Few shipments of vegetables, plastic items, grocery items, grinders etc, worth Rs.18lakhs was exported to the Singapore Company owned by Gurubaran. After receiving the goods through another company, Gurubaran did not pay the cost of the goods. Whenever the complainant demanded the money from Gurubaran, he conveniently said that he has



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some emergency personal expenses and again assured that he will return entire amount whenever his other outstanding amounts realised.

5. Further, at the request of Gurubaran, the complainant arranged Rs.30 lakhs and paid to meet out the medical expenses of his wife, other family expenses and to meet his Singapore trip to collect the old dues and gave Rs.10 lakhs to one Vivek, who is the niece of Gurubaran. That apart, Gurubaran used the firms funds for his own business in India as well as in Singapore.

6. In the suggestion of Gurubaran, the complainant started a Departmental Stores in the name “Fresh Harvest”. However, Gurubaran brought his wife, brother-in-law and sister-in-law to the business premises and looted the sale proceeds. On his complaint to the Abiramapuram Police, for cheating Rs.75 lakhs, Gurubaran agreed to pay Rs.65lakhs. For smoother settlement, the complainant agreed for the lesser amount. The debt payable was confirmed by Gurubaran through e-mails, letters, mortgage, text message, etc. However, he did not pay the



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money agreed. Contrarily, Gurubaran has encashed Rs.18,57,873.50 (i.e. SCD 37,157.47) payable to the partnership firm M/s Suria Impex Pvt. Ltd.

7. Gist of the quash petition:

Admitting the partnership in the name of M/s Supa Impex with the complainant and the deed of partnership dated 05/10/2016, the petitioner/accused contends that, the business was running successfully and onion worth of Rs.18 lakhs exported to Singapore got rejected in the year 2017. The complainant not willing to share the loss incurred due to the rejection of the goods exported. Instead, had made false complaint taking advantage of his wife Ragini working in the Office of DGP. From 2018, the complainant through his wife with the help of police continuously harassing the petitioner and his family members under the guise of enquiry. He was tortured and threatened to give a letter to pay Rs.65 lakhs. Also, he was forcible thrown out from the firm premises. The entire assets of the partnership business has been taken into the illegal custody of the defacto complainant .



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8. On 13.11.2018, he was illegally taken custody of his service apartment with the aid of Abiramapuram/Kotturpuram Police and the Assistant Commissioner of Police, Mr.Sudharshan forcible took away Rs.45,000/- cash from his pocket and took him to the nearby ATM to withdraw cash of Rs.50,000/- and gave it to the complainant and his wife. Further, he was let out only on the promise that he will pay Rs.1 lakh on the next day. Fearing further humiliation, the petitioner went to Kotturpuram Police Station on the next day and gave Rs.1 lakh to the Assistant Commissioner, Mr.Sudharshan.

9. In June 2019, on the threat by the complainant's wife that she will give a false complaint and arrest him and his family members, he transferred Rs.1 lakh to the account of the complainant. On 07/03/2020, two men in uniform and three in civil dress went to the house of his widow sister in Tirchy and threatened her. In January 2021, again policemen went to Musuri the native place of the petitioner and tarnished his image in the village under the guise of investigation. In April 2021,



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two policemen attached to the Kotturpuram Police Station came to his house and informed him that he must come to the station immediately. Similarly, in May 2021, two policemen from Kotturpuram station went to Pammal in search of the petitioner and harassed him and his family members. On 21/04/2023, five policemen went to the petitioner's mother-in-law's house and threatened her under the guise of enquiring a girl missing case. Thereafter, the wife of the complainant had threatened the petitioner to settle the dispute or else he and his family members will be arrested.

10. **Oral submissions made by the Learned Counsel for the petitioner/accused:**

The Learned Counsel for the petitioner submits that a pure civil dispute between the partners been given a criminal colour by misusing the position of complainant's wife in the DGP office. Since 2018, the petitioner is put to grave hardship due to the high handedness of the complainant and his wife, who happens to be a Superintendent in the DGP office and residing in the Police Quarters at Chennai were the



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policemen from the Abiramapuram/Kotturpuram Police Station also resides.

11. Taking advantage of the proximity with the police personnels, the dispute arose between the partners in the year 2017 been given a criminal colour of cheating. The complaint reading on the whole does not disclose any ingredient of cheating. Except certain letters obtained under duress with the help of the police, no piece of evidence produced by the complainant to prove that he invested in the firm and the firm money was taken away by the petitioner. With the influence of his wife, the petitioner wants to extract Rs.65 Lakhs illegally. If at all there is any dispute regarding the settlement of accounts in the partnership firm, the complainant has to approach civil court and not the police station just because his wife has influence with police due to her position in the DGP Office.

12. **Oral submissions made by the Learned Counsel for the**

Respondent/complainant:



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The Learned Counsel for the respondent/defacto complainant submitted that, the allegation that the wife of the defacto complainant is highly placed in the Police Department is an exaggerated falsehood. Relying on the letter dated 24/03/2018 given by Gurubaran addressed to the Police Inspector, E-4 Abiramapuram Police, it is contended that the petitioner on his own handwriting has admitted his liability of Rs.65 lakhs and agreed to pay cash of Rs.20 lakhs by April, 30th and balance by selling his share in the ancestral property at Tummalam Village, Musiri Taluk, Tirchy District. Also rely upon the e-mail dated 26/08/2019 and letter dated 25/10/2020 addressed to the Inspector of Police, E-4 Police Station wherein the petitioner reiterating his earlier undertaking given to the police on 24/03/2018 and promised to produce the accounts and his passport to the police on the next hearing date. Hence, it is not a case of pure civil in nature between the partners, but a case of cheating and criminal breach of trust designed at the inception to deceive the complainant.



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13. **Discussion:**

From the documents relied by the respondent/complainant, it appears that on 04/06/2021, the petitioner has caused notice through his Lawyer to the respondent and his wife Ragini narrating the incidents which is reflected in the quash petition and to stop all the illegal act of sending policemen to the petitioner's premises to intimidate him and extort money. The copy of the notice also been marked to the DGP and Commissioner of Police to take action against their staff Mrs.Ragini and the policemen, who are helping Ragini in her misuse of official position.

14. To this notice, the respondent/complainant had replied through his counsel on 15/06/2021. The reply is as lengthy as the notice and denial of each and every allegations mentioned in the notice under reply. In this reply notice, the respondent/complainant has called upon the petitioner to repay Rs.63,00,000/- together with interest and other damages within 15 days from the receipt of the notice, failing which legal proceedings will be initiated for :



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(a)for recovery of the above amount through civil proceedings;

(b)for defamation, criminal action under Section 500 IPC and

(c)also proceed with the pending criminal complaint. It is pertinent to record that in this reply notice, the complainant had emphasised that the partnership firm not terminated and still alive.

15. Reverting to the criminal complaint filed before the Judicial Magistrate, the order of the Learned Metropolitan Magistrate for Exclusive Trial of CCB Cases (Relating to Cheating Cases in Chennai) and CBCID Metro cases, Egmore, Chennai passed in Crl.M.P. No.31117/2022 filed under Section 156(3) of Cr.P.C. reads as below:-

“3.From the above submission, the petitioner has filed the present petition in this Court stating that while the petitioner has not cooperated in any way with the investigation of the respondent, the respondents have not taken any action on the petitioner's complaint. Due to the non-cooperation of the petitioner, the action on the petition of the petitioner is dropped. Therefore, considering the submissions of the respondent and the nature of the complaint, this Court is inclined to allow this petition on condition that the petitioner is hereby directed to appear before the respondent for investigation purpose as and when required.

4.In the result, this petition is allowed



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and this complaint is hereby forwarded to the Deputy Commissioner of Police, Central Crime Branch, Vepery, Chennai-7.

5.The Deputy Commissioner of Police is hereby required to direct the concerned Inspector of Police to investigate the matter on basing of complaint dated 24.03.2018 and investigate into the matter and file a report.

6.The Inspector of Police who nominated by the Deputy Commissioner of Police, is hereby directed to investigate the matter and register the FIR or file a report without any delay.”

16. Based on this direction, the respondent police has registered the complaint against the petitioner for offences under Sections 406 and 420 IPC in Cr.No:278/2022 on 31/12/2022. The above order of the Learned Metropolitan Magistrate does not disclose any application of mind about the content of the complaint or documents relied. The order is conspicuously silent about any *prima facie* evidence to infer commission of cognizable offence.

17. At this juncture, this Court is of the view that few judgments of the Hon'ble Supreme Court need to be referred and relied to decide whether the order passed by the Learned Metropolitan Magistrate



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to register the complaint in exercise of the power under Section 156(3) of Cr.P.C. is sustainable and whether the complaint is purely a civil dispute given criminal colour without any *prima facie* material to show any commission of offence punishable under Sections 406 and 420 IPC. .

18. The march of law regarding the power of the Judicial Magistrate under Section 156(3) of Cr.P.C in brief can be narrated by referring the following judgments:

(i) In *Dilawar Singh v. State of Delhi [(2007) 12 SCC 641]*, the Hon'ble Supreme Court held that:

“18. The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words



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while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter."

(ii) In *Ramdev Food Products Private Limited v. State of Gujarat* [2015 (6) SCC 439], while dealing with the exercise of power under Section 156(3) Cr.P.C by the learned Magistrate, a three-Judge Bench of the Hon'ble Supreme Court held:

".... the direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone instance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued. Cases where Magistrate takes cognizance and



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postpones issuance of process are cases where the Magistrate has yet to determine “existence of sufficient ground to proceed”.”

(iii) In *Priyanka Srivastava & Anr vs State Of U.P.& Ors:*

[(2015)6 SCC 287], the Hon’ble Supreme Court, taking note of the Constitution Bench Judgment in *Lalita Kumari v. Government of Uttra Pradesh and others [(2014) 2 SCC 1]*; and with due regard to the enunciation of law laid by the Constitution Bench, the Division Bench of two Learned Judges held as below:-

“27. it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind “.

29. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows



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citizens, efforts are to be made to scuttle and curb the same.

30. In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores. W

31. We have already indicated that there has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an the application under Section 156(3) be supported by an affidavit so that



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the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/latches in initiating criminal prosecution, as are illustrated in Lalita Kumari case are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”

19. In the instant case, without verifying the genuineness or veracity of the complaint, the Learned Metropolitan Magistrate had directed the police to register the case and investigate. The complaint on the face of its discloses partnership agreement, investment and some private money dealing thereafter failure to return the money. However, the letter to the Inspector of police promising to pay Rs.65 lakhs, the exchange of notice to restrain from misusing the police force and the



reply to pay back the money with interest are conspicuously absent.

20. The Learned Magistrate in his order has recorded that the complainant after giving complaint to the jurisdiction police inspite of several notices to appear for enquiry had not turned up to produce the documents relied. This has prompted the jurisdiction police to close the case. There is no record to show along with the complaint u/s 156(3) CrPC the relevant records produced or perused by the Magistrate.

21. The letters of the petitioner addressed to the Inspector of Police, admitting his liability on the face of it prove that it was obtained under threat and duress at the police station. The reply of the complainant to the lawyer notice also predominantly focus only on recovery of money with interest and damages for defamation.

22. In the complaint, nowhere it is stated or indicated that the money was entrusted to the accused in a particular manner and that was misappropriated to attract offence under Section 406 IPC. Likewise, in



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the complaint, there is nothing to draw inference that the petitioner induced the complainant to deliver money with intention to deceive. In the complaint, it is admitted that the partnership firm was running successfully for few months. In the petition filed to vacate the stay, the defacto complainant admits that the partnership firm still exist. The dispute arose after the export of goods worth Rs.18 lakhs to Singapore during 2017. The petitioner/accused pleads that the container of onion exported to Singapore got rejected and that was the cause for loss in the business.

23. Thus, apparently, it is dispute between partners in the business, which has run into bad weather and incurred loss. A pure civil dispute, by misuse of power and influence been given a criminal colour. The petitioner and his family has been put to constant threat of arrest and humiliation. Under the said threat, letters admitting liability has been obtained.

24. The learned Magistrate without applying his mind and



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without perusing the complaint and the supporting documents, has directed to register the complaint. In the landmark judgment, '*State of Haryana & Ors. Vs. Ch. Bhajan Lal and Ors. Reported in [(1992) SCC (Cri) 426]*', regarding exercise of inherent powers under Section 482 of Cr.P.C, the Hon'ble Supreme Court has laid down following categories of instances wherein inherent powers of the Court can be exercised in order to secure the ends of justice. They are:-

“(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not



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constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

25. Applying this dictum to the instant factual matrix, it can be safely concluded that the present case clearly falls within the ambit of first, second and seventh category of the seven categories enlisted in the above said judgment. The case therefore warrants intervention by this



26. In the case of *Indian Oil Corporation Vs. NEPC India Ltd & Ors. reported in [(2006) 6 SCC 736]*, the Hon'ble Supreme Court made the following observations:-

“ While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law.”

“While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors....There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.”

27. In the case of *Hridaya Ranjan Prasad Verma & Ors. Vs. State of Bihar & Anr. Reported in [(2000) 4 SCC 168]*, The Hon'ble Supreme Court has observed as below :-



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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...”

28. Applying this dictum to the instant case, the key ingredient of having a dishonest or fraudulent intent under Sections 406 and 420 IPC at the inception of the partnership agreement is not made out. Hence, in the considered opinion of this Court, it is a case, where exercise of the power under Section 482 Cr.P.C by this Court is required.

29. Accordingly, the complaint in Crime No:278 of 2022



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registered by the respondent police on the direction of the learned Metropolitan Magistrate, Exclusive for the trial of cases investigated by CCB/CBCID, Egmore stands quashed.

30. In the result, **this Criminal Original Petition is allowed.**

Consequently, connected Miscellaneous Petitions are closed.

07.08.2024

Index:yes

Neutral Citation:yes/no
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To:

- 1.The Inspector of Police, CCB-1 Police Station,
Vepery, Chennai-CCB.
- 2.The Public Prosecutor, High Court,Madras.



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DR.G.JAYACHANDRAN,J.

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delivery Order made in
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07.08.2024