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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.O.P.(MD)No.2742 of 2023
and
Crl.M.P.(MD)No.2470 of 2023

1.Raj Anand
S/o.Rajamani

2. Jeyachitra
W/o.Raj Anand ... Petitioners / Accused 1 & 3

Vs.

1.The Inspector of Police,
D1, Thallakulam Police Station,
Madurai City.
(Crime No.961 of 2013) ... Respondent No.1 / Complainant

2. Raj Sri,
W/o.Ramanathan ... Respondent No.2 /
De-facto Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the entire records relating to the impugned charge sheet in C.C. No. 223 of 2014 on the file of the learned Judicial Magistrate-II, Madurai and quash the same.

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For Petitioners : Mr.Suthakaran.I

For R1 : M/s.M.Aasha,
Government Advocate (Crl. side)

ORDER

This criminal original petition is filed with the prayer to call for the records relating to the impugned charge sheet filed in C.C. No. 223 of 2014 on the file of the learned Judicial Magistrate No.II, Madurai and to quash the same.

2. The case of the prosecution is that the de-facto complainant is the sister of the 1st petitioner herein. It is the allegation of the de-facto complainant that these accused being her brothers, originally in the year 2000, after the death of her father, got lease deed in respect of the father's properties by promising to pay cash in respect of her share. Believing them, she also executed the release deed. However, only 12 years later, she came to know that immediately after the death of the father, an application was filed before the Commercial Tax Officer to change the commercial tax account in the name of the brothers alone by suppressing the fact that she is also one of the legal heirs.

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3. On the strength of the above said allegations, the case in Crime No. 961 of 2013 was registered by the respondent police and after due investigation, the above final report was filed.

4. The learned counsel appearing on behalf of the petitioners would assail the final report on the grounds that, firstly, the business of the father was not a joint family business, and he was carrying on the business of the bookstore individually in his own name. The said fact is vouched by the counter affidavit filed by the Commercial Tax Department in the connected writ petition in W.P.(MD). No. 12114 of 2011. After the death of the father, the petitioners started a separate partnership firm and continued the business. Therefore, there is no question of them having suppressed the legal heirship certificate or produced any false legal heirship claim before the Commercial Tax Department. He would submit that as a matter of fact, the writ petition was also filed in respect of the same relief in W.P.(MD). No. 12114 of 2011 and ultimately when a counter was duly filed by the department in the said case, the petitioner/de-facto complainant left the same for default. He would further submit that simultaneously a civil suit was also filed by the de-facto complainant in O.S. No. 85 of 2007. The learned counsel for the petitioner would submit that even in the year 2007

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itself, the de-facto complainant had filed O.S. No.85 of 2007 and another one suit in O.S. No.41 of 2016 on the file of the I Additional District Judge, Madurai. Both suits were tried together and by a common judgment and decree, the suits ended in favour of the petitioners herein. Specific issues were framed with reference to the validity of the release deed as to whether the plaintiff/de-facto complainant has been ousted from the suit properties and whether the plaintiff is entitled for partition etc, and the Civil Court has considered the evidence on record and answered the issues against the de-facto complainant herein. He would submit that while the very complaint is without any substance, the subsequent decree of the Civil Court would fortify the case of the petitioners and therefore, the final report is liable to be quashed.

5. Per Contra, the learned Government Advocate (Criminal side) would submit that this Court is concerned with the quashing of the final report. For the said purpose the statements given by the witnesses, during the course of the investigation, has to be taken as such on face value and if the statements are taken as such on face value, the de-facto complainant has stated that only by promising further share, she has been made to execute the release deed and subsequently she has been cheated and

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therefore, the offences would be made out. She would further submit that, immediately after the death of the father, the records have been changed before the Commercial Tax Department. Therefore, she would submit that in this case the matter can be decided only after the trial.

6. As far as the de-facto complainant is concerned, even though notice has been served, the de-facto complainant did not appear before this Court. As a matter of fact, this Court only heard the petitioners counsel as well as the Government Advocate on 23.09.2024. On that occasion also the learned counsel for the 2nd respondent is not present. Therefore, this Court gave one more opportunity to argue the matter and adjourned the matter under the caption 'part heard'. Today also, there is no representation on behalf of the 2nd respondent.

7. I have considered the submissions made by the learned counsel for the petitioners and the learned Government Advocate (Criminal Side) and perused the material records of the case.

8. It is essential to take into account the very case of the de-facto complainant herself. It can be seen that the petitioners got married even

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prior to 30.09.1995 and the averments in the complaint is that the petitioner's father was running business in the name of M/s.Vijayam Book Centre and M/s. Jeyam Book Centre and he died on 30.09.1995. After the death of the father, with reference to the said business and in respect of one property in Door No.41, Arul Malar Convent Road, K.K.Nagar, there were disputes between the petitioners and de-facto complainant. Immediately after the death of the father, the petitioners suppressed the name of the de-facto complainant and changed the commercial tax account in their name. Therefore, when the petitioners suppressed the de-facto complainant's name and changed the commercial tax license to their name, it amounts to cheating the de-facto complainant. It is trite proposition that this Court exercising its power under Section 482 of the Code of Criminal Procedure for the purpose of considering the quashment of the case, can apart from the material which is produced by the prosecution, can also taken into account the incontrovertible materials, if any, produced by the parties.

9. In this regard, it can be seen that with reference to the change of commercial tax account and the name of the businesses, the de-facto complainant already filed W.P.(MD).No.12114 of 2011. In the said writ petition, a detailed counter affidavit is filed on behalf of the department. In

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paragraph 8(a), it has been categorically stated that the business was not categorized as 'Hindu undivided Family'. The said deceased father /M.S.Rajamani was not running the business as 'Kartha' of the family. It was treated only as a proprietary concern. After the death of the person, there was no question of any continuation in respect of the said proprietary concern. Thereafter, the de-facto complainant's brothers were trading as a partnership and they have been carrying their business from 23.11.1995. The department has also controverted the claim of the de-facto complainant that she came to know about the registration only in the year 2012 by contending that there is already a dispute pending and the suit itself is filed in the year 2007. Therefore, upon considering the same, it can be seen that the allegations made by the de-facto complainant do not have any legs to stand even factually. Secondly, as far as the allegation that the de-facto complainant was cheated by making her to execute a release deed is concerned, it can be seen that the self same issue has been raised before the civil court and the issue in detail has been framed and answered against the de-facto complainant by a judgment and decree dated 31.07.2017 in O.S. Nos.85 of 2007 and 41 of 2016.

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10. In this regard, the learned counsel would rightly rely upon the judgment of the Hon'ble Supreme Court of India in ***Usha Chakraborty and Ors. -vs- State of West Bengal and Ors.*** reported in ***MANU/SC/0079/2023*** and more specifically paragraph no.11 of the said judgment is extracted hereunder:-

> "*11. In the aforesaid circumstances, coupled with the fact that in respect of the issue involved, which is of civil nature, the respondent had already approached the jurisdictional civil court by instituting a civil suit and it is pending, there can be no doubt with respect to the fact that the attempt on the part of the respondent is to use the criminal proceedings as weapon of harassment against the appellants. The indisputable facts that the respondent has filed the pending title suit in the year 2015, he got no case that he obtained an interim relief against his removal from the office of Secretary of the School Managing Committee as also the trusteeship, that he filed the stated application for an order for investigation only in April, 2017 together with absence of a case that despite such removal he got a right to get informed of the affairs of the school and also the trust,*

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would only support the said conclusion. For all these reasons, we are of the considered view that this case invites invocation of the power under Section 482 Cr.P.C. to quash the FIR registered based on the direction of the Magistrate Court in the afore-stated application and all further proceeding in pursuance thereof. Also, we have no hesitation to hold that permitting continuance of the criminal proceedings against the appellants in the aforesaid circumstances would result in abuse of the process of Court and also in miscarriage of justice."

11. In this case, not only have the parties approached the Civil Court, but the Civil Court has also rendered categorical findings regarding the alleged fraud related to the execution of the release deed. The Court held that the allegations of fraud were unfounded, confirming that the de-facto complainant voluntarily appeared before the Sub-Registrar and executed the document. The Civil Court has upheld the release deed. Furthermore, regarding the de-facto complainant's claims related to the other partnership business, the Civil Court examined the issue in detail and rendered a finding in favor of the petitioners herein. Therefore, in view of

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the same also, the claim of the de-facto complainant cannot be countenanced anymore.

12. It appears that, even on a plain reading of the complaint, it is clear that the de-facto complainant's father passed away in 1995. Thereafter, until the suit which was filed in the year 2007, the de-facto complainant did not claim any share in the business neither she attempted to carry on the business. When the de-facto complainant's brothers were conducting the business from 1995, the suit was filed after 12 years. Subsequently, a writ petition was filed 16 years later, in 2011. Then, after 18 years, the present complaint is lodged in the year 2013. That itself would smack that the complaint is nothing but an afterthought. Except for the mere assertion of the de-facto complainant that her brothers made promises to the execution of the release deed, there is no other evidence to support her claims. Even the statement of LW1 is not clear and categorical as to how much was promised, when the brothers promised to give money, etc. The allegations in the First Information Report (FIR) as well as in the 161 statement are vague in nature. Therefore, for all the above reasons, I am inclined to allow the criminal original petition.

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13. Accordingly, the criminal original petition is allowed. The case in C.C. No. 223 of 2014 on the file of the learned Judicial Magistrate No.II, Madurai shall stands quashed. Consequently, the connected miscellaneous petition is closed.

22.10.2024

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

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To

1.The Judicial Magistrate No.II,
Madurai .

2.The Inspector of Police,
D1, Thallakulam Police Station,
Madurai City.

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

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D.BHARATHA CHAKRAVARTHY, J.

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