

(1952) 07 MAD CK 0034

In the Madras High Court

Case No : Criminal Revision Case No. 531 and Cri. Revision Petition No. 428 of 1952

A. Innasia Pillai and Others

APPELLANT

Vs

Perumal Chettiar (Complainant) and Another

RESPONDENT

Date of Decision : 30-07-1952

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 256

Citation : AIR 1953 Mad 1008 : (1952) 2 MLJ 706

Hon'ble Judges : Ramaswami, J

Bench : Single Bench

Advocate : A.V. Narayanaswami Aiyar, P.P, for the Appellant; S.K. Ahmed Meeran, for the Respondent

Final Decision : Dismissed

Judgement

Ramaswami, J.—This is a criminal revision case illustrating the very abuse pointed out by the High Court in their Circular Order dated 10-1-1931. It was pointed out by this Court "Instances have come up to the High court which disclose that a system of procedure not contemplated by the Code is developing in the subordinate criminal courts. In warrant cases, the accused persons, before they are charged and put upon their defence anticipate their defence by petitions raising preliminary points upon which the court passes judgment and these are then brought up on revision to the High Court pending which the trial of the case is adjourned. The High Court desires to impress upon the lower courts that this procedure is unwarranted and makes for delay and extra work. An accused person has no right to raise a preliminary point before he is charged. He must wait to defend himself till he is charged and if he is convicted, his first remedy is in most cases by way of appeal."

2. The facts of this case are as follows: In Trichinopoly, there was a firm run under the style and name of the Tiruchirapalli Merchants Chit and Investment Co. Ltd. It seems to have been established in 1946. The Memorandum and Articles of

Association of the above company started with 19 shareholders with 255 shares of Rs. 100 each, fully paid. On these 19 shareholders two have been declared insolvents subsequently and one has gone to Malaya. The remaining 16 are accused Nos. 1 to 4, the complainant and witnesses 1 to 11 in the complaint petition. The complaint, namely, the respondent before me, and two others, are stated to have filed a petition before the High Court, Madras, O. P. No. 357 of 1949 for the winding up of the company above named and as per orders of the High Court in the above petition dated 2-1-1951 accused 1 to 4 and witness No. 1 in the complaint petition who were said to be the five directors elected on 23-9-1950 took possession of the articles of the company together with books and accounts from the Official Receiver, Tiruchirapalli and were said to have been managing the affairs of the company from 13-1-1931 upto date.

3. It is in those circumstances that this complaint has been filed and this complaint sets out the various acts of misfeasance and malfeasance of the accused and proceeds to set out the gravamen of the charge. The gravamen of the (sic) against these accused is that accused 1 to 4 a debt of nearly Rs. 16000 and that these acc(sic) have assigned their debt to the son of the accused for a low value of Rs. 9000 and defrauded the company to the extent of Rs. 7000. It is stated that the modus of this swindling was the preparation of false records, making false signatures (sic) faked up resolutions as if ratified by the gen(sic) body of this company.

4. In this connection I am bound to point out the two suits are stated to have some connection. Order No. 66 of 1948 has been filed in the Sub-Co(sic) Tiruchirapalli, by this company against the parties who were owing monies to this company. They seem to have obtained decrees. The fifth accused claims to be an assignee-decree-holder of debt decreed in O. S. No. 66 of 1948 and this fifth accused is stated to be taking out execution " regard to that matter. It is unfortunate that have neither the plaint nor the connected record of this O. S. No. 66 of 1948 and all that we know(sic) is that the fifth accused has come into the picture as an assignee decree-holder in regard to a (sic) due to the company and is levying execution.

5. Then turning to O. S. No. 497 of 1951 this w(sic) a suit instituted by Ratnam Pillai, A. 5, the son of the first accused against one P. Narayanaswar Konar. The relief asked for in this suit is for a decree on a promissory note, Ex. A. 2, which is said to have been assigned in favour of the plaintiff for valuable consideration on 20-4-1951. I need not point out that this second suit is pending, and the present complaint also mentions the filing of this second suit mentioned above.

6. It is in these circumstances that the present application was made in the court of the Magistrate just before the commencement of the examination of the prosecution witnesses that this complaint falls within the mischief of Section 195(I) (c) and that the complaint should be filed by the concerned Civil Court.

7. I am unable to see any connection between the suits and this criminal case

which in substance and effect is nothing more than that these five accused in collusion have swindled the compare of a sum of Rs. 7000 by assigning a debt of R 16000 for a sum of Rs. 9000 and that this was achieved by means of falsification of the record forgery of signatures and preparation of false resolutions of the company.

8. Therefore, the learned Magistrate right pointed out that Section 476 is nowhere in the picture and that the civil courts cannot prefer complaint at this stage in regard to the subject-matter of the complaint before the Magistrate. Therefore there is no overlapping and it cannot be said that the subject-matter of this complaint should be subject matter of complaint by the civil court.

9. There is no substance in the application an it is hereby dismissed and it as enjoined upon the Magistrate to expeditiously dispose of the criminal case which has been held up for such wholly unnecessary length of time owing to his not following the procedure laid down by the High Court in the Circular Order set out at the beginning of this order.