(2011) 02 MAD CK 0434

In the Madras High Court

Case No : Criminal O.P. No. 15917 of 2010 and M.P. No''s. 1 and 2 of 2010

E. Sathish Kumar and Others — APPELLANT

Vs

Inspector of Police, P.S. X, C.C.B. Central Crime Branch, Chennai Suburban Police, Chennai-600016 and Another — RESPONDENT

Date of Decision : 15-02-2011

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 195, 227, 482
Penal Code, 1860 (IPC) — Section 177, 182, 463, 467, 468

Citation : (2012) MLJ(Cri) 608

Hon'ble Judges : G.M. Akbar Ali, J

Bench : Single Bench

Advocate : S. Shunmuga Sundaram, for T.K.S. Gandhi, for the Appellant; Hassan Mohammed Jinnah, Additional Public Prosecutor and K. Rajendra Chowdhary, for A. Thayaparan, for the Respondent

Final Decision : Allowed

Judgement

G.M. Akbar Ali, J.—By consent, the matter is taken up for final hearing. The petition is filed seeking a direction to call for the records in Cr. No. 41 of 2010 on the file of the first respondent and quash the same. The brief facts of the case is as follows :

The de facto-complainant is a Company represented by the second respondent, who is the General Manager. The Company is acquiring and developing properties and in the course of their business, they had purchased 17 acres 18 cents of land at Jameen Pallavaram Village, Tambaram from various persons. The Company is in possession and enjoyment of the land. Gorden Woodroff Limited was a Company (hereinafter referred to as GWL") carrying on business of leather tanning and manufacture of leather goods till December 1994. The said Company became sick and the business was closed on the same year. The Company came out of the sickness and diversified its business to real estate. The Company was owning 109.39 acres of land at Jameen Palalvaram. They have also conveyed

22.28 acres on 4.12.2003. GWL applied for Encumbrance Certificate for the remaining land of measuring 87.11 acres in March 2008. The Encumbrance Certificate revealed certain entries in the name of SNP Ventures Private Limited, the de facto-complainant herein, for a land measuring 11.75 acres. Since there is a counter claim, GWL filed a civil suit in O.S. No. 169 of 2008 against the de facto-complainant before the District Court, Chengalpattu. The suit was for a declaration against various sale deeds in favour of the de facto-complainant. Later, the patta issued to the said GWL was also cancelled and an appeal filed against the same is pending. GWL has been claiming the property by virtue of two sale deeds dated 10.3.1922 and 27.6.1922. On the basis of the above two sale deeds, they have approached the Tahsildar, Tambaram and obtained patta.

2. Meanwhile, the de facto-complainant Company verified with the Registrar''s Office, Saiapet, regarding the two sale deeds as claimed by GWL. It is found that the alleged document Nos. 1551 of 1922 dated 10.3.1922 and 1575 of 1922 dated 27.6.1922 pertains to transaction between some private parties and not concerned with GWL. The Sub Registrar also informed that there was no transaction during the year 1922 in respect of the subjected lands at Jameen Pallavaram. Having found so, the de facto-complainant has given a complaint against the representatives of GWL properties for the alleged offence of forgery and production of fraudulent documents and for making false statement.

3. On such a complaint dated 25.3.2010 given by the second respondent, the Inspector of Police, Central Crime Branch, Chennai Suburban, St. Thomas Mount has registered a case in Cr. No. 41 of 2010 for the offence punishable under Sections 468 and 471 IPC against the first petitioner showing him as the Manager of the Company and showing the 2nd petitioner as Senior Manager and the third petitioner as Director of GWL. Aggrieved by the registration of the case against these petitioners, they are before this Court for quashing of the first information on various grounds and more particularly, on the ground that the petitioners 1 and 3 are legal advisers on a monthly legal retainer fee and the 2nd petitioner, being a retired Senior Manager of the Company, have nothing to do with the document of the year 1922.

4. Mr. R. Shanmuga Sundaram, learned senior counsel who appeared for Mr. T.K.S. Gandhi, the petitioners'' counsel, would submit that the complaint, on the face of the allegation, will not make out a prima facie offence against the petitioners. The learned senior counsel also submitted that GWL was a Company of high repute and has been granted patta for a total extent of 109.39 acres of Jameen Pallavaram and after finding out that there is a rival claim of 11.75 acres of land, GWL filed a civil suit in O.S. No. 169 of 2008 and when the patta granted to GWL was cancelled by the Tahsildar without notice, they have applied for a fresh patta and thereby initiating proceedings in Civil Court for resolution of the dispute.

5. The learned senior counsel also submitted that u/s 195 of Cr.P.C., no Court shall take cognizance of an offence punishable under Sections 172 to 188 of IPC

except on the complaint in writing of the public servant concerned.

6. The learned senior counsel further submitted that when the dispute between the parties are purely civil in nature, the de facto-complainant has filed a criminal complaint without any specific allegation and the averments in the complaint does not make out a case under Sections 467 or 471 IPC. The learned senior counsel further pointed out that there is no culpability of the involvement of the petitioners and they are not even the employees of GWL or persons responsible for the company.

7. The learned senior counsel relied on a decision Basir-ul-huq and Others Vs. The State of West Bengal, in which, the Hon''ble Supreme Court has held as follows:

9. Section 195 of the Criminal Procedure Code, on which the question raised is grounded, provides, inter alia, that no Court shall take cognizance of an offence punishable under Sections 172 to 188 of the Indian Penal Code, except on the complaint in writing of the public servant concerned, or some other public servant to whom he is subordinate. The status thus requires that without a complaint in writing of the public servant concerned no prosecution for an offence u/s 182 can be taken cognizance of. It does not further provide that if in the course of the commission of that offence other distinct offences are committed, the Magistrate is debarred from taking cognizance in respect of those offences as well. The allegations made in a complaint may have a double aspect, that is, on the one hand these may constitute an offence against the authority of the public servant or public justice, and on the other hand, they may also constitute the offence of defamation or some other distinct offence. The Section does not per se bar the cognizance by the Magistrate of that offence, even if no action is taken by the public servant to whom the false report has been made. It was however argued that if on the same facts an offence of which no cognizance can be taken under the provisions of Section 195 is disclosed and the same facts disclose another offence as well which is outside the purview of the Section and prosecution for that other offence is taken cognizance of without the requirements of Section 195 having been fulfilled, then the provisions of that Section would become nugatory and if such a course was permitted those provisions will stand defeated. It was further said that it is not permissible or the prosecution to ignore the provisions of this Section by describing the offence as being punishable under some other Section of the Penal Code.

8. Per contra, Mr. K. Rajendra Chowdry, learned senior counsel who appeared for Mr. A. Thayaparan, the second respondent/de facto complainant would submit that the said GWL represented by the petitioners have been claiming to be the owners by virtue of two sale deeds of the year 1922, but on verification, it is found that there is no such document relating to the disputed land and the petitioners, with dishonest motive of grabbing the lands, have indulged in committing forgery and fabrication of the documents.

9. The learned senior counsel for the respondent submitted that the entire allegation in the complaint itself is that the petitioners have misrepresented and produced 1 fraudulent documents to obtain patta.

10. The learned senior counsel pointed out that when there is a prima facie offence is made out in the complaint, the High Court need not interfere in the investigation. The learned senior counsel relied on a decision in A.S. Krishnan and Another Vs. State of Kerala,

Under IPC, guilt in respect of almost all the offences is fastened either on the ground of "intention" or "knowledge" or "reason to believe". We are now concerned with the expressions "knowledge" and "reason to believe". "Knowledge" is an awareness on the part of the person concerned indicating his state of mind. "Reason to believe" is another facet of the state of mind. "Reason to believe" is not the same thing as "suspicion" or "doubt" and mere seeing also cannot be equated to believing. "Reason to believe" is a higher level state of mind. Likewise "knowledge" will be slightly on a higher plane than "reason to believe". A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to believe if he has sufficient cause to believe the same.

11. He also relied on a decision in M. Viswanathan v. S.K. Tiles and Potteries Private Limited and Others (2008) 16 SCC 390 : LNIND 2008 SC 2294 : (2009) 2 MLJ (Crl) 290, in which the Apex Court in paragraph-12 held as follows :

12(11)(7)

.... As noted above, the powers possessed by the High Court u/s 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest Court of a State should normally retrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material.....

12. He also relied on a decision in M. Krishnan Vs. Vijay Singh and Another, in which the Hon''ble Supreme has held as follows:

4. .... In a criminal Court the allegations made in the complaint have to be established independently, notwithstanding the adjudication by a civil Court.........

13. He further relied on a decision in Syed Askari Hadi Ali Augustine Imam and Another Vs. State (Delhi Admn.) and Another, in which, the Apex Court has held as follows :

22. It is, however, now well settled that ordinarily a criminal proceeding will have

primacy over the civil proceeding. Precedence to a criminal proceeding is given having regard to the fact that disposal of a civil proceeding ordinarily takes a long time and in the interest of justice the former should be disposed of as expeditiously as possible. The law in this behalf has been laid down in a large number of decisions. We may notice a few of them.

14. I have given my thoughtful consideration to the arguments advanced by the learned senior counsels appearing on either side and meticulously perused the materials available on record.

15. The petition is filed to quash the first information report by exercising the inherent power u/s 482 Cr.P.C. In the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, the Apex Court has clearly laid down the guidelines by illustration, where the inherent powers u/s 482 of the Court could be exercised.

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers u/s 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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 FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 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 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 u/s 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.

16. This has been followed in catena of cases and reference of such decisions are not necessary at this stage.

17. In the case of Moosa Ahmed v. The Inspector of Police, LNIND 2009 Mad 4275 : (2010) 3 MLJ (Crl) 32, the learned single Judge of this Court had quashed the proceedings on the ground that when a complaint is driven by mala fides and matter in issue is civil in nature the Court can exercise its power u/s 482 Cr.P.C. and quash the proceedings.

18. Therefore, it is well settled that if the allegations made in the complaint do not prima facie constitute any offence, the Court can and should exercise its power u/s 482 Cr.P.C. Therefore, while considering a plea to quash the first information report, the duty of the Court is only to look at the allegations made in the first information report and if the allegations made prima facie constitute a cognizable offence, then there is nothing for the Court to interfere with the investigation and leave the matter with the investigating agency for a fair and proper investigation so as to arrive at a logical conclusion.

19. Similarly, it must also be borne in mind that While considering the allegations made in the complaint, the Court is free to consider materials that may be produced by the accused. In the case of Rukmini Narvekar Vs. Vijaya Satardekar and Others, the Hon''ble Supreme Court has differentiated the scope of considering the materials at the stage of framing of charge u/s 227 of Cr.P.C. and that of considering the materials when the proceedings are initiated u/s 482 Cr.P.C. However, this view has been differentiated with a view taken in the decision in State of Orissa Vs. Debendra Nath Padhi, wherein the Apex Court held that at the initial stage, the Court could only consider what was informed in the complaint and the Court cannot look into the materials and documents produced by the accused. It is also well settled that in a given case, civil as well as criminal proceedings may very well proceed simultaneously. Pendency of a civil proceedings cannot be ground for quashing the proceedings. However, unless there is prima facie case to take cognizance the criminal proceedings cannot be allowed to be continued and it has to be decided independently.

20. The above being the legal position, let us consider the complaint given by the second respondent for offences under Sections 468 and 471 IPC, which read as follows:

468. Forgery for purpose of cheating:

Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

471. Using as genuine a forged (document or electronic record).

-Whoever fraudulently or dishonestly uses as genuine any (document or electronic record) which he knows or has reason to believe to be a forged (document or electronic record) shall be punished in the same manner as if he had forged such (document or electronic record).

21. Section 463 IPC defines forgery. Whoever makes any false document with intent to cause damage or injury to the public or to any person or to support any claim or title is said to have committed forgery. Section 468 IPC deals with forgery for the purpose of cheating. Section 471 IPC deals with using forged document as a genuine one. Therefore, the offence forgery presupposes making a false document with intent to cause damage or injury.

22. The ingredients to attract the offence u/s 468 IPC is that making a false document with intent that such document shall be used for the purpose of cheating. The ingredients for 471 IPC is using forged document fraudulently and dishonestly as genuine document with the knowledge that such document is a forged one.

23. The perusal of the complaint would narrate in what manner the complainant has acquired the property of 17.18 acres of land in various survey numbers at Jameen Palalvaram from various title holders and further states how GWL approached the Tahsildar to obtain a patta in a fraudulent manner. Moreover, it is alleged that GWL represented by the third petitioner has filed a civil suit with the dishonest intention to grab the lands. The complaint would also allege that on verification, the sale deeds claimed by the said GWL of the year 1922 was not related to the suit property and the complaint would proceed to allege "thus evidently these two sale deeds being produced by GWL are forged and fabricated and after making the false documents, they were used as genuine to make fraudulent and illegal claim over our lands".

24. The petitioners are shown as accused on the allegation "the representatives of GWL properties with dishonest motive of grabbing our lands, have indulged in forgery and fabrication of documents and with the aid of forged documents are attempting to criminally trespass into the property".

25. It is further alleged that the representatives of GWL properties are also making false statement to the revenue authorities by producing these forged and fabricated documents with a dishonest intention to enter their names in the Government records.

26. The specific allegation against the third petitioner is that he has instituted a civil suit using the forged documents. The first petitioner has assisted in

fabricating the forged documents and used the same to get patta from Tahsildar. However, there is no specific allegation against the second petitioner. Indisputably, the alleged forged documents are document Nos. 1551 and 1575 of 1922 dated 10.3.1922 and 27.6.1922 respectively.

27. As stated earlier, the ingredients u/s 468 IPC will be attracted when a person makes a false document with an intention to cheat and the offence u/s 471 will be attracted when a person uses the forged document as genuine.

28. In my considered view, the above said allegations made in the first information report even if they are taken at the face value and accepted in its entirety, do not prima facie constitute any offence or make out a case against the petitioners. The reason being that the petitioners are not the makers of the alleged forged documents of the year 1922 and filing of the civil suit will not amount to cheating.

29. As far as the alleged offence u/s 471 IPC is concerned, the first and second petitioners are said to have assisted in fabricating the forged document and using the same to get patta from the Tahsildar and thereby cheated the Government Officials. Section 177 of IPC deals with furnishing of false information to any public servant. Section 182 deals with false information with an intention to cause public servant to use his lawful power to the injury of another person. However, u/s 195 of Cr.P.C., no Court shall take cognizance of offences punishable under Sections 177 and 182 IPC except on the complaint in writing of the public servants concerned. Therefore, in the clear absence of a complaint, the allegation made in the complaint lodged by the de facto-complainant will not make out a prima facie case against the petitioners for the alleged offence u/s 471 IPC.

30. The illustration assigned in paragraph No. 102 in State of Haryana and Others v. Bhajanlal and Others (supra), in particular, sub para (1) thereof, as quoted below, squarely applies to the case on hand. The extraordinary power under Article 226 or the inherent power u/s 482 Cr.P.C. could be used,

(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",

to prevent abuse of process of Court or otherwise to secure ends of justice.

31. That being so, the continuance of the proceedings in Cr. No. No. 41 of 2010 is nothing but abuse of process of law and this Court can and should interfere with such proceedings so as to avoid unnecessary harassment to the petitioners and to secure ends of justice. In the result, the Criminal Original Petition is allowed and the proceedings in Cr. No. 41 of 2010 is hereby quashed. Consequently, connected MP is closed.