(2009) 08 MAD CK 0056

In the Madras High Court

Case No : Criminal O.P. No. 10369 of 2007 and M.P. No. 1 of 2007

Manjula Udaya Sankar APPELLANT

Vs

D. Balraj RESPONDENT

Date of Decision : 28-08-2009

Acts Referred:

Citation : (2009) 08 MAD CK 0056

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : Paul Kanagaraj, for R. Rajan, for the Appellant; N. Anand Venkatesh, for the Respondent

Judgement

C.S. Karnan, J.—The petitioner has filed the above Criminal Original Petition to call for the Records in CC No. 428 of 2007 on the file of

Judicial Magistrate III, Coimbatore and quash the same.

2. The ingredients of the complaint is that the complainant''s wife (1) Visweshwari, (2) Tmt. Vasantha, W/o Shanmugam and accused Nos. 1 to 3

formed a partnership firm in the name and style of M/s. Cashgain Finance and investments. The said firm was registered in registration No. 1010 of

1995. The firm was lending money to the customers on hire purchase. A number of persons had also deposited money with the said firm. The

Complainant was acquainted with the nature of business and involved himself in canvassing for deposits and collecting money from customers who

had borrowed money from the said firm.

3. It is further alleged that in the business transactions of the firm, amounts are advanced as loan on the guarantee of each partner in respect of the

persons who were introduced by them. It is alleged that the following amounts had been advanced as loans by the partners and they have collected

and misappropriated this amount.

1) Amount advanced by A3 - Rs. 5,88,941/=

2) Amount advanced by A1 - Rs. 6,97,400/=

3) Amount advanced by A2 - Rs. 3,83,746/=

4. It is alleged that the partners have misappropriated the said sum with an intention to cheat and defraud the firm. In proof, the Complainant has

filed the audited statement of account before this Honourable Court, which proves that the sum advanced was not collected and hence the

guarantor is liable to pay the amounts to the firm. The petitioner has alleged that the accused have collected amounts from the parties and have

misappropriated the amount which is liable to be paid to the firm and have utilised the said amount for their personal purposes. The firm had

received letters from one Tamilselvan, Ramco agencies, Coimbatore-20 stating that he had borrowed a sum of Rs. 75,000 in 1997 and during

August 2002, the accused Nos. 1 to 3 approached him and received the said amount of Rs. 75,000/- after waiving interest, but that the documents

given to firm at the time of borrowing the amount had not been returned to him. The complainant had, in a similar vein , alleged irregularities and

misappropriation of money in a few other cases in which (1) Sundaraj, Coimbatore-20 (2)V. Thangaraj, Coimbatore 47, (3) Sivasubramanian,

Coimbatore-104, who had borrowed money from the firm had paid it to the accused persons, but they had not received any receipts or the

original documents that were given by them.

5. The complainant has further alleged that during the well-being of the firm, some properties/lands were purchased which were worth Rs. 25 lakhs

in 1995-96. Because of the irregularities of the accused, large amounts are due to depositors which cannot be repaid and therefore the

complainant is paying interest to all the depositors. Further, as the accused have not given their consent to dispose of the property, the complainant

is unable to utilise the properties for the clearing of deposits due.

6. The complainant submitted that a Release Deed executed among the partners dated 16.02.2004, was not effected. Further, there was a dispute

between 2 partners namely Vasantha and Paneerselvam, for which a criminal case was also registered in Crime No. 203 of 2004 by the police.

Among the partners, there was strong difference of opinion regarding maintenance of accounts. Considering the other contents of the complaint,

the matter in dispute between the partners were dealt with by the District Crime Branch, Coimbatore and B-4 Police Station, Coimbatore, but

there was no progress on the said complaint. The Learned Magistrate after considering the ingredients of the complaint and perusal of 14

documents filed by the complainant and after consideration of 11 witnesses mentioned in the complaint, has taken the case on his file.

7. Challenging the complaint, the petitioner/accused-1, filed this quash petition. The petitioner has alleged that the complainant is the husband of

one of the partners, viz Visveswari. The accused A1 to A4 and the complainant''s wife, and another partner Vasantha were running the firm. The

petitioner further alleged that the complainant and his wife and others committed forgery and cheating, and so the petitioner had filed a suit in O.S.

No. 959 of 1999, for the dissolution of partnership firm. In the mean time, the complainant''s wife and other partner, Vasantha misappropriated the

firm''s money without the knowledge of the other partners. Hence, the 2nd and 3rd accused had also filed a complaint against the Respondent and

his wife. The said complaint is registered as CC No. 84 of 2002 and is pending on the file of Judicial Magistrate No. VI, Coimbatore. Further, the

firm had purchased a property worth about Rs. 25 lakhs in the name of the firm. The said property has not been disposed of, for settlement of

dues to customers, because of the dispute between the partners. Further the petitioner has raised many allegations on the respondent/complainant

and the other partners.

8. Considering the entire ingredients of the complaint, and contentions of the petitioner and the arguments advanced by the Learned Counsels for

their respective parties and a citation of a Judgement, in Velji Raghavji Patel Vs. State of Maharashtra, , submitted by the petitioner''s counsel, the

Court is of the view that public money is involved in the said case. Further, documents also have not been maintained properly by the partners.

Because they have dispute between themselves, the public/investor cannot be made to suffer. Hence, the case in C.C. No. 428 of 2007 has got to

be tried. Therefore, the Criminal O.P. No. 10369 of 2007 is dismissed.

Consequently, connected Miscellaneous Petition is closed.

