(2014) 09 MAD CK 0013

In the Madras High Court

Case No : Crl O.P. No. 32004 of 2013 & MJP. No.1 of 2013

N. Anbuselvom APPELLANT

Vs

State by Inspector of Police RESPONDENT

Date of Decision : 18-09-2014

Acts Referred:

Citation : (2015) 1 MadWNCri 147

Hon'ble Judges : K.B.K. Vasuki, J.

Bench : Single Bench

Advocate : Abrar Md. Abdullah, Advocate, for the Petitioner; C. Emalias, Additional Public Prosecutor, for the Respondent No. 1; A. Ramesh, Senior Counsel for K.S. Karthik Raja, Advocate, for the Respondent No. 2

Final Decision : Disposed Off

Judgement

K.B.K. Vasuki, J.—This Criminal Original Petition is filed by A1/father, A2/wife & A3 & A4/daughters to quash the proceedings in Cr. No.1045 of 2013 registered for the offences under Sections 420, 406 & 506(ii), I.P.C. on the basis of the complaint given by the Second Respondent/defacto Complainant.

2. The Complaint proceeds as if A1 Anbuselvam is closely known to the Complainant and A1 approached the Complainant for loan of Rs. 3,80,00,000/- for improvement of his hotel business and A1 to A4 obtained loan, agreeing to repay the amount with interest and A2 to A4 have also, with the consent of A1 executed consent and confirmation Letter on 21.9.2012 and in pursuance of the same, A1 executed Sale Deed in respect of his house, towards partial discharge of loan and A1 has, with the consent of A2 to A4 repaid portion of the loan amount and has also issued one Cheque for Rs. 25,00,000/- on 16.10.2012 and the Cheque was not presented for collection at the request of the Accused and in spite of the repeated requests made by the defacto Complainant to repay the amount, the Accused requested time for repayment of the amount and after expiry of the Cheque period the Accused along with 10 others came to the house of the defacto Complainant at 10 am on 15.9.2013 armed with wooden log and

weapons and threatened the defacto Complainant to kill him on his failure to return the documents. The Complaint was registered as Cri. No. 1045/2013 for the offences referred to above.

3. The Petitioners have come forward with the present Petition to quash the FIR on the ground that the allegations raised in the Complaint are purely Civil in nature and would not attract any of the offences of the Indian Penal Code and the present Complaint is tiled only to squeeze the money out of them and that, the previous transaction between the Complainant and the First Petitioner would show the nature of the entire transaction as Civil in nature and the allegations attracting the offence under Section 506(ii), I.P.C. involving the married daughters and unmarried daughter, whose manage was to take place during the relevant point of time, are raised only to give Criminal colour to the Civil dispute.

4. Whereas, the relief sought for herein is seriously opposed by the First Respondent as well as by the Second Respondent defacto Complainant.

5. Heard the rival submissions made on both sides and perused the records.

6. Though the Complaint proceeds as if the First Petitioner along with the Petitioners 2 to 4 borrowed huge amount from the Second Respondent defacto Complainant for business purpose and partially discharged their liability and failed to repay the balance amount and made life threat to return the documents obtained at the time of borrowing the money without actually repaying the amount, the Petitioners have come forward with different theory as if the Petitioners are originally running a fruit vending business and the First Petitioner, at the ill-advice of the defacto Complainant opened a non vegetarian canteen in the name of Mass Canteen by investing huge amount and though the defacto Complainant did not pay any amount, he demanded Rs. 75 lakhs from the First Petitioner in arranging for the same to fructify and materialize and the defacto Complainant took empty Cheques, Stamp Papers and original Title Deeds of his properties and thereafter, the defacto Complainant started taking profit from the hotel business and made the First Petitioner to deposit Rs. 25,000/- per day and also obtained Sale Deed in respect of his property. Even thereafter, he did not return the documents and has been demanding more and more money and threatened the Petitioners to settle the matter and on his failure to settle the amount, threatened to stop the marriage of the second daughter fixed during December 2013 and to put the entire family behind the bars and also made false Complaint, which was subsequently registered as the present FIR.

7. The Petitioners have also produced the copy of the Mortgage Discharge Receipt dated 4.6.2013 executed by the defacto Complainant in favour of the First Petitioner for Rs. 12,00,000/- and the Sale Deeds executed by the First Petitioner in favour of the Second Respondent dated 5.6.2013 and 6.6.2013 for Rs. 20,00,000/- and for Rs. 40,00,000/- respectively and the Statement of Accounts showing the deposit of the amounts varying from Rs. 5,000/- to Rs. 30,000/- daily in the account of Anbuselvam and his mother Nallammal and one

Sakthivel, Krishnamoorthy and Ponnusamy, transcripts of audio conversation between one Inspector Kanagasundaram and the First Petitioner herein and the marriage invitation of the Fourth Petitioner fixed during December 2013 The documents produced herein can be looked into, only for the limited purpose in support of the Petitioners'' case that the Petitioners paid nearly Rs. 72 lakhs under the Mortgage Discharge Receipt and Sale Deeds in favour of the Second Respondent defacto Complainant and another Rs. 28 lakhs by wax of deposits in the bank. Though the defacto Complainant has not produced any document before this Court in support of his theory that borrowal of Rs. 38,00,000/- by A1 along with A2 to A4 and execution of Consent and Confirmation Letters by either A1 or A2 to A4, etc. the documents produced herein would reveal that there was money transaction between the Second Respondent and the First Petitioner and the First Petitioner has made cash payment and executed Sale Deed in respect of his property towards partial discharge of the same.

8. As far as the allegations raised in the present Complaint is concerned, the first part of the same relates to the offences under Sections 420 & 406, I.P.C. and the later part relates to the offence under Section 506(ii), I.P.C. As far as the allegations raised attracting the offences under Sections 420 & 406, I.P.C., are concerned the same do not in my considered view, make out any case of cheating and Criminal Breach of trust The allegations raised in the Complaint in its entirety do only reveal money transaction and partial discharge of the same and the failure to discharge entire liability. As it is only the case of borrowal, agreeing to repay the same with interest and having repaid the part of the amount and on failure to repay the balance amount, no case of cheating and Criminal Breach of trust arises herein. It is nobody''s case that the defacto Complainant was induced to part with money by any false representation made by the Petitioners. The very conduct on the part of the First Petitioner in repaying the amount and executing Sale Deed in respect of his property towards partial discharge of the amount, as per the allegations raised in the Complaint, would go to show that there is no Criminal intention for committing any act of cheating from the inception. The Petitioners have also admittedly issued Cheque for Rs. 25 lakhs on 16.10.2012 towards partial discharge of their liability. The allegation raised herein that the defacto Complainant did not present the Cheque for encashment, as requested by the Accused till the expiry of the Cheque period, without being obtained fresh Cheque leaf, appears to be, in the light of the earlier conduct of the parties, invented for the purpose of this case and is lacking in bona fide.

9. In this context, it is useful to refer the decision of this Court reported in G. Venkatesh and another v. Dr. S. Kalaikumar, 2009 (3) MWN (Cr) 21, wherein, the learned Brother Judge observed that the Hon''ble Supreme Court time and again, discouraged such practise of approaching the Criminal Court for recovery of money due, which is purely Civil in nature, stating that offence under Section 420, is made out. Another learned brother Judge of this Court in the Authority reported in Moosa Ahmed v. The Inspector of Police, CCB, Team No. IV, Egmore,

Chennai-8, 2010 (2) CTC 153, under similar circumstances that the accused undertook to repay the amount, but the defacto Complainant was not prepared to take back the amount, was of the view that the Complainant was driven by mala fides. It is held so by applying the observation of the Hon''ble Apex Court in State of Haryana and others v. Bhajan Lal and others, 1992 Supp (1) SCC 335, that where a Criminal proceedings is manifestly attended with mala fides and/or where the proceedings 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, the proceedings could be quashed.

10. The learned Counsel for the Petitioners also relied on the Judgment of the Hon''ble Supreme Court reported in Hridaya Ranjan Prasad Verma and others v. State of Bihar and another, 2000 (4) SCC 168, wherein, the Apex Court is pleased to hold that there is fine distinction between mere breach of contract act and the offence of cheating and it depends upon the intention of the Accused at the time of inducement which may be Judged by his subsequent conduct and 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 and therefore, it is the intention, which is the gist of the offence and 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. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning that is, when he made the promise cannot be presumed.

11. Such observation of the Hon''ble Supreme Court is squarely applicable to the facts of the present case, wherein, there is nothing to show that the Petitioners have had any fraudulent or dishonest intention at the inception and with such intention induced the defacto complainant to part with money. On other hand, the conduct of the Petitioners would show that the First Petitioner has genuinely repaid the amount in all the possible means and his failure to make to pay the entire amount will amount to mere failure to keep up his promise and nothing more, as such, the Petitioners has no intention of cheating, which is manifest by the subsequent conduct of the parties in repaying the amount, as held by the Teamed brother Judge of this Court in the decision reported in Dr. K. Jagadeesan and another v. Inspector of Police, Central Crime Branch, Egmore, Chennai-8, 2001 (1) MWN (Cr.) 191.

12. Thus, considering the nature of the transactions between the parties and subsequent conduct of the parties, this Court, is of the firm view that the allegations raised in the FIR would disclose that the dispute between the parties is more of Civil in nature and there is no fraudulent or dishonest intention on the part of the Petitioners to attract the offences under Sections 420 & 406, I.P.C.

13. As far as the second part of the allegations attracting the offence under Section 506(ii), I.P.C., is concerned, the same is vague and bald in nature and is raised only to give Criminal colour to Civil dispute. In this context, it is but

relevant to refer to the decision of this Court in Rajan v. State. 2008 (2) MWN (Crl.) 258, wherein, the learned Brother Judge of this Court relied on the following Judgments (i) Nobel Mohandass v. State, 1989 Crl LJ 669 (Madras High Court); and (ii) Usha Bala v. State of Punjab (P & H), 2002 (2) SC Cases 320 (Punjab and Haryana High Court). In the first ease, it is observed by this Court that for being an offence under Section 506(ii), which is rather an important offence punishable with imprisonment winch may extend to seven years, the threat should be a real one and not just a mere word when the person uttering it does not exactly mean what he says and also when the person at whom threat is launched does not feel threatened actually. In the second case, it is observed by the Punjab and Haryana High Court that empty threat does not prim a facie mean that the case under Section 506, I.P.C., is made out against the Petitioner. Following the same, the learned brother Judge was of the view that except a vague and bald allegation of Criminal intimidation, the defacto Complainant has not stated that there was any threat to his life or sought for any Police Protection.

14. By applying the same view herein, this Court is of the opinion that no case is made out against the Petitioners herein to attract the offence under Section 506(ii), I.P.C. Such case put forth on the side of the Complainant involving married daughters and unmarried daughter whose marriage was fixed to be held in December 2013, also appears to be improbable in nature. In this context, it is noteworthy to rely on the observation of the Hon''ble Apex Court in the decision reported in Inder Mohan Goswami and another v. State of Uttaranchal and others, 2007 (2) MWN (Cr.) 451 (SC) : 2007 (12) SCC 1, wherein, the Apex Court, in Para 46 held that the Court must ensure that Criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the Accused. Here is the case wherein the facts discussed above would undoubtedly go to show the mala fide intention with which the present Complaint came to be filed by the Second Respondent. In that event, there is no justification for this Court to allow the Criminal proceedings to continue and to subject the Petitioners to face the ordeal of trial. Hence, in order to prevent the abuse of process of law and to secure the ends of justice, it is but necessary to quash the FIR in Cr. No. 1045 of 2013 on the file of the First Respondent-Police.

15. In the result, this Criminal Original Petition is allowed and the FIR in Cr. No. 1045 of 2013 on the file of the First Respondent Police stands quashed Consequently, connected Miscellaneous Petition is closed.

