(2003) 03 MAD CK 0073

In the Madras High Court

Case No : Criminal O.P. No. 23497 of 2000 and Criminal M.P. No. 8962 of 2000

Pasumai Irrigation Limited APPELLANT

Vs

Mansi Finance (Chennai) Limited RESPONDENT

Date of Decision : 13-03-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 482

Citation : (2003) 3 BC 86 : (2003) 2 CTC 270

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : S.Y. Masood, for the Appellant; C. Kathiravan, for the Respondent

Judgement

1. The petitioner, praying to call for the records in C.C.No.4628 of 2000 on the file of the Court of VII Metropolitan Magistrate, George Town,

Chennai and quash the same, has come forward to file the above criminal original petition on averments such as that the petitioner is a limited

company doing business in drip irrigation system and more than 150 persons are working in the company; that during the course of business, the

petitioner borrowed a sum of Rs.25 lakhs from the respondent and subsequently, it was repaid with interest, but the respondent, with fraudulent

intention and to harass the petitioner, filed an application u/s 439(1)(b) read with Section 433(e) and (f) and 434(1)(a) of the Companies Act

before this Court in Company Petition No. 529 of 2000 for winding up of the petitioners company, which is pending.

2. The petitioner would further submit that suppressing the fact of filing of C.P. 529 of 2000 before this Court, the respondent filed a private

complaint contemplating the offences punishable under Sections 406 and 420 read with 34 Indian Penal Code before the Court of VII

Metropolitan Magistrate, George Town, Chennai alleging that the petitioner has committed the offences in respect of the amount claimed in C.P.

No. 529 of 2000; that the learned Magistrate forwarded the complaint u/s 156(3) Code of Criminal Procedure to the Inspector of Police, B1

Police Station, Chennai-I for investigation and report. In these circumstances, the petitioner, stating that the respondent is converting the civil

dispute into a criminal case in order to harass the petitioner, has come forward to file the above criminal original petition seeking the relief extracted

supra.

3. During arguments, the learned counsel appearing on behalf of the petitioner would lay emphasis on the factual position of the case being brought

forth as it has been brought froth in the petition further stating that it is purely a civil dispute and the money borrowed on promissory note to the

extent of Rs. 25 lakhs has been repaid on periodical installments and that the respondent company also filed a winding up petition before the High

Court which is pending and while such proceedings have been initiated, they cannot resort to the criminal proceedings particularly when there is no

prima facie case made out. At this juncture, the learned counsel for the petitioner would cite two judgments in support of the case of the petitioner,

the first one delivered by the Honourable Apex Court in Hridaya Ranjan Pd. Verma and Ors. v. State of Bihar and Anr. AIR 2000 SC 2341 and

the second one delivered by a learned single judge of the Bombay High Court in Chandrakant Chandulal Bhansali v. Srikant Shrikishna Joshi &

Anr., 1993 (2) Crimes 389.

4. So far as the first judgment referred to above is concerned, it has been held therein:

The distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time

of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. 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. Therefore, it is the intention which is the gist of the offence. 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 subsequently such a culpable intention right at

the beginning, that is, when he made the promise cannot be presumed"".

5. In the second judgment cited above, a learned single judge of the Bombay High Court, while dealing with an application for cancellation of bail

filed not by the State but by the de facto-complainant himself u/s 482 of the Code of Criminal Procedure, quoting the passing observations made

by Chandrachud, CJI (as he then was) in Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab, has observed:

The Court has laid down a salutary principle that anticipatory bail should not be refused merely because the police make out a case for remand of

an offender to police Custody. In the very well-considered judgment, the Supreme Court has enunciated this principle, which is of predominant

importance. It casts a duty on the Court to judicially evaluate the material placed before it and to independently decide as to whether anticipatory

bail should be granted or not. Undoubtedly, barring very few instances, and possibly that category of suspicious cases where there is collusion

between the Prosecution and the accused, it may reasonably be assumed that the prosecution will mechanically contend that if it is pointed out that

custody is required for the purpose of discovery u/s 27 of the Evidence Act ""the person released on bail shall be liable to be taken in Police

Custody for facilitating the discovery"". There is no inflexible rule that can be pressed into operation and there is no prohibition imposed either on

the Court of Session or on the High Court with regard to the refusal of anticipatory bail or cancellation thereof, in appropriate cases"".

On such arguments, the learned counsel for the petitioner would pray to grant the relief as prayed for in the petition.

6. In reply, the learned counsel for the respondent would argue that specific averment in the complaint has been made to the effect that the accused

have cheated the complainant to the extent indicated therein and that the company petition which is pending is binding on the company and that

there is no bar for a criminal proceeding to be initiated against the petitioner and the other office bearers of the company such as the Chairman,

Managing Director and Directors who are the accused and would ultimately pray to dismiss the above criminal original petition.

7. In consideration of the facts pleaded, having regard to the materials placed on

record and upon hearing the learned counsel for both, it could be

assessed that the petitioner company, its Chairman, Managing Director and the Directors have been arrayed as the accused in the complaint

lodged before the Court of VII Metropolitan Magistrate, George Town, Chennai by the respondent for offences punishable under Sections 406

and 420 read with 34 Indian Penal Code on averments such as that during the month of January, 1996, the accused approached the complainant

for the sanction of a loan to the tune of Rs.25 lakhs to meet the working capital causing production of various correspondences further assuring to

repay the same with interest on agreed terms; that the accused No.2 to 10 have control over the first accused company who undertook to repay

the loan taken from the complainant company.

8. Narrating the mode of payment, the terms and conditions agreed with cheques issued by the company getting dishonoured, the contracts

entered into in between them and ultimately accusing that the accused have committed breach of trust and cheated the complainant company for

the wrongful gains and thereafter issuing notices on various dates thereby ultimately alleging that all the accused have colluded and defrauded the

complainant company and misappropriated the loan amount received from the complainant company to the tune of Rs.25 lakhs, the

respondent/complainant have filed the complaint before the Court of VII Metropolitan Magistrate, George Town, Chennai.

9. Now, the point of consideration is whether the subject in hand is civil or criminal in nature and whether the respondent is entitled to file the

private complaint before the Magistrate''s Court for offences contemplated under Sections 406 & 420 read with 34 Indian Penal Code particularly

when it has resorted to initiate proceedings before the Company Court?

10. No doubt, it is purely a money transaction duly entered into in between the two companies, who are the petitioner and the respondent, based

on an agreement entered into and determining the principal amount borrowed by the petitioner company, the interest, the duration of repayment

and the mode of payment in installments etc. But, nowhere in the complaint, the respondent is able to even allege that in the agreement they have

included a default clause particularly contemplating the prosecution against the Company, its Chairman, Managing Director and the Board of

Directors as it has now come out in launching the prosecution against them before the Court of VII Metropolitan Magistrate, George Town,

Chennai nor does it seem to have been expressly or impliedly agreed by parties to the contract.

11. On the part of the petitioner company, it would come forward to allege that the entire amount borrowed has been repaid with interest and

there is absolutely no due pending. When the repayment of the amount is disputed, it has to be resolved only by the Court of Civil jurisdiction

affording such opportunities for both parties to be fully heard and the matter decided framing such issues and permitting the parties to record their

evidence and appreciating such evidence placed on record and has to arrive at valid conclusion regarding the contract entered into and the amount

borrowed by the, which are all admitted facts, and it is only the repayment which is to be determined by the Court of Civil jurisdiction. But, since

both the petitioner and the respondent are companies and the money transaction held in between these two companies being a company affair, the

respondent, admittedly, has resorted to initiate winding up proceedings before the High Court on the Company side and while so, is the respondent

entitled to file the criminal complainant as it has been resorted to in the lower Court contemplating the offences under Sections 406 & 420 read

with 34 Indian Penal Code is the vital point for determination.

12. For any criminal complaint to be lodged, the subject matter must be purely criminal and so far as the case in hand is concerned, the element of

intention either to cheat or defraud or to commit breach of trust are the essential ingredients which are prima facie to be proved at the time of

entering into the agreement about which the complainant has not satisfactorily brought forth a prima facie case to exist on the face of the complaint.

13. The next vital question that surfaces for consideration is the forum in which the ordinary jurisdiction lies for such complaints to be lodged, which

is undoubtedly the police and not the Magistrate''s court as it has been wrongly chosen by the respondent but readily accepted by the Magistrate,

both of which cannot be said to be proper. It could be understood if the respondent has filed the private complaint before the Magistrate''s court

after his complaint before the police was either refused to be registered or having entertained the complaint, the respondent police referred to case on grounds such as ''mistake of fact of law'' or ''undetectable'' or ''civil in nature'' etc. in which event the Magistrate''s court entertain such

complaints, but it cannot usurp the jurisdiction of the police just for the simple reason that it is empowered to entertain the private complaint.

14. Moreover, an irregularity was committed on the part of the Magistrate''s Court in entertaining such matters of civil jurisdiction where in the

subject matter is based on a contract of civil agreement or money transactions in execution of pronotes, bond, issuance of cheques etc., in which

event, only the Civil Court is having competent jurisdiction to entertain and decide the dispute and once the civil jurisdiction is open for such

disputes, no criminal complaint could be lodged either with the police or with the Magistrate nor could it be entertained unless the police or the

Magistrate concerned is personally interested in such matters or for personal gains so as to usurp the civil jurisdiction in misuse of the power given

to them by law.

15. The case in hand in spite of purely a case civil in nature, which is patent, without even a question raised either regarding initiating a civil

proceeding or resorting to the police if at all any criminality is involved, which the police are bound to go into and register a case in a fitting manner,

the Magistrate has seized rather usurped the civil jurisdiction and even the jurisdiction of the police without giving an option for them to register the

case even in the event any criminality is made out prima facie, which could be done by a Magistrate, who is confined only regarding the criminal

jurisdiction and unless for extraneous reasons and considerations, no such complaint under any pretext could be entertained.

16. Nowadays it has become very common for the Magistrates and the police entertaining such matters of civil jurisdiction under some pretext or

other wherein the possibility is only to initiate a civil suit or proceeding. In the case in hand, in spite of the respondent having initiated the company

proceeding before the High Court, regarding the same subject matter, he has resorted to file a private complaint u/s 200, Code of Criminal

Procedure as though either he is entitled to have a dual proceeding one in the civil or company forum and the other in the criminal forum that too

bypassing the police who are empowered to entertain complaints of such nature wherein commission of offences under sections 406 & 420 read with 34 Indian Penal Code have been alleged,

17. Whether in the common parlance or regarding the division of powers as civil and criminal made under law, unless the Magistrate is of the view

that the subject matter is purely criminal and no civil proceeding could lie, he cannot entertain such complaints much less without resorting to the

ordinary jurisdiction with the police, acting as the collecting agents of money on behalf of the complainants which is none of the duties and

responsibilities entrusted with them and unless such practices are eschewed it would only bring disrespect to the position that they hold. One such

act is perpetrated by the VII Metropolitan Magistrate, George Town, Chennai in entertaining the complaint of the respondent, which he has no

reason to entertain and hence this Court is of the firm view that the complaint of the respondent entertained by the Magistrate is definitely outside

the ambit of criminal jurisdiction and it has to be nullified.

18. This petition has been filed only by the A.1 in the case praying to quash the criminal proceedings. But, as it has been already observed supra,

since the very initiation of the said proceeding is an abuse of process of law, this Court is of the view that the technicalities should not stand as

obstacles in rendering justice and therefore the criminal proceedings are liable to be quashed even against the other accused, who are not the

petitioners herein.

In result,

(i) The above criminal original petition is allowed.

(ii) The proceedings in C.C.No. 4628 of 2000 on the file of the Court of VII Metropolitan Magistrate, George Town, Chennai are quashed in

respect of all the accused therein.

Consequently, Crl. M.P.No. 8962 of 2000 is closed.

