(2009) 07 MAD CK 0236

In the Madras High Court

Case No : Criminal R.C. No''s. 1326 and 1435 of 2007

Pradeep Jain and Vinoth Kumar Mehta APPELLANT

Vs

Inspector of Police, CCB and Others RESPONDENT

Date of Decision : 22-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190(1), 200, 202
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2009) CriLJ 4789 : (2010) 6 RCR(Criminal) 586

Hon'ble Judges : M. Jeyapaul, J

Bench : Single Bench

Advocate : R. Sankarappan, for the Appellant; N. Kumanan, Government Advocate (Crl. Side) for RR 1 and 2 and A. Ramesh for RR 3 to 7, for the Respondent

Final Decision : Dismissed

Judgement

M. Jeyapaul, J.—Challenging the order of the learned III Metropolitan Magistrate accepting the final report filed by the second respondent

in Crime No. 28 of 2007 as mistake of fact, by his order dated 6.8.2007, Criminal Revision Case No. 1326 of 2007 is filed by the de facto

complainant Pradeep Jain.

2. Aggrieved by the order of the learned III Metropolitan Magistrate accepting the final report filed in Crime No. 92 of 2007 as mistake of fact by

his order dated 6.8.2007, the de facto complainant Vinoth Kumar Mehta has preferred Criminal Revision Case No. 1435 of 2007.

3. Both the cases are found to be connected with each other in almost all respects. Therefore, arguments were heard in common and the following

common order is passed.

4. The prosecution case, in brief, is as follows:

Dinesh Baghmar, the sixth respondent herein ranked as A4 in Crime Nos. 28 of 2007 and 92 of 2007, having introduced himself as a sub agent

for Surana Corporation, approached the de facto complainants Pradeep Jain and Vinoth Kumar Mehta and convinced them to invest their money

in the bullion trade business in gold and silver carried on by M/s. Surana Corporation Limited. The de facto complainant Pradeep Jain invested the

money to the tune of Rs. 1.25 crores into Surana Corporation and the other de facto complainant Vinoth Kumar Mehta invested the money to the

tune of Rs. 84.40 lakhs with Surana Corporation accepting return of gold after the stipulated period. The de facto complainant Pradeep Jain would

claim that a sum of Rs. 1.05 crores was transferred to ICICI account of the accused through 28 transactions on 28 different dates between

17.11.2005 and 24.1.2006 in addition to the payment of Rs. 20,00,000/= made to the fifth accused Vijayraj Surana in crime No. 28 of 2007. The

other de facto complainant Vinoth Kumar Mehta would allege that Rs. 84.40 lakhs was transferred to Surana Corporation by cash and through

bank transactions between 6.10.2005 and 9.12.2005. After one year, the de facto complainants approached Surana Corporation and claimed

return of gold based on the value realised from their investments. But, they were threatened mortally by the accused. A case in Crime No. 28 of

2007 was registered by the first respondent based on the complaint of fraud, cheating and breach of trust alleged by the de facto complainant

Pradeep Jain as against the accused therein. Based on the complaint given by the de facto complainant, Vinoth Kumar Mehta alleging criminal

breach of trust and cheating punishable u/s 406 and 420 of the Indian Penal Code, the case in Crime No. 92 of 2007 was registered by the first

respondent as against the accused.

5. The second respondent, Assistant Commissioner of Police, who took up the case for investigation after the transfer of the first respondent, filed

closure report as mistake of fact in respect of both the accused.

6. It is relevant to refer to the finding of the investigating officer found a place in the closure report filed by him. The sum and substance of the

closure report would read as follows:

The de facto complainants Pradeep Jain and Vinoth Kumar Mehta, the author of the complaints were not able to substantiate their claim that

Dinesh Baghmar was sub agent of Surana Corporation. The de facto complainant could not produce any material to support such a claim made in

the complaint. No agreement between the de fact complainant and Surana Corporation with respect to their alleged business transaction was also

produced. Nothing was produced by the de facto complainants to show prima facie that Surana Corporation owed the huge sum of money to the

de facto complainants as alleged in the complaints. On physical verification of the remittances made by the de facto complainants Pradeep Jain to

ICICI bank account of M/s. Surana Corporation of Mayiladuthurai Branch, there were only nine transactions relating to the transaction made by

Pradeep Jain. Pradeep Jain, during the course of investigation has come out with a revelation that he pumped in black money for investment with

Surana Corporation and therefore, the remittance challans were not signed by him personally. The account books of the de facto complainant

Pradeep Jain were not produced to show that such a huge sum of Rs. 1.25 crores were paid from their accounts. The main source of the amount

of Rs. 1.25 crores claimed to have been invested with Surana Corporation was not even prima facie shown by the de facto complainant Pradeep

Jain. The de facto complainant Vinoth Kumar Mehta also was not able to substantiate the payment of money to the tune of Rs. 84.40 lakhs to

Surana Corporation. He only produced certain counterfoils for remittance. But, he disowned the initials found on the counterfoils saying that he had

just scribbled in order to conceal his identity. The payment of Rs. 84.40 lakhs by Mr. Vinoth Kumar Mehta was also not accounted in his books

of accounts. He was not able to show the source of the whopping sum of Rs. 84.40 lakhs which he claimed to have invested in Surana

Corporation. Both the de facto complainants claim that they generated funds through dealings in diamonds. But, when letters were sent to the

diamond merchants claimed to have traded in diamonds, those letters were returned with the endorsement that there was no such person existing.

The de facto complainant Pradeep Jain remitted a sum of Rs. 25,00,000/= to the ICICI bank account of M/s. Surana Corporation Mayiladuthurai

Branch. A sum of Rs. 35,00,000/= was remitted by the de fact complainant Vinoth Kumar Mehta into ICICI bank account of M/s. Surana

Corporation. The sales bills produced by Surana Corporation would go to show that gold worth Rs. 27,43,249/= was delivered to the de facto

complainant Pradeep Jain and gold worth Rs. 35,16,096/= was delivered to the de facto complainant Vinoth Kumar Mehta. Though the sales bills

did not carry the signature of the de facto complainants, the custom in practice was confirmed from other reputed jewellers in the city. With the

aforesaid findings, the second respondent, Assistant Commissioner of Police, CCB, Chennai chose to file the final reports classifying both the

cases as mistake of fact.

7. Both the de facto complainants filed protest petitions before the learned III Metropolitan Magistrate, George Town, Chennai. In the protest

petitions, the de facto complainants have alleged as follows:

The investigation is normally carried out only by the Inspector of Police. The Assistant Commissioner of Police, second respondent had no

authority whatsoever to file the final report classifying the cases as mistake of fact. The accused were shielded by the investigating official. The

investigating official failed to note that all the ingredients of the offences have been made out clearly in both the cases. The closure report reflects

flawed investigation embarked upon by the second respondent.

8. The court below, having adverted to the allegations found in the complaint, materials collected by the investigating official and the closure report,

arrived at a decision that sufficient grounds do not exist for taking the case on file and as a consequence, it accepted the closure reports filed by the

second respondent.

9. Learned Counsel appearing for the petitioners/de facto complainants would vehemently submit that the important records pertaining to the case

were not called for by the investigating agency to find the truth or otherwise of the claim made by the accused that gold was delivered to the de

facto complainants and certain important aspects were not thoroughly probed into by the investigating team. It is his further submission that when

the accused had taken a stand that there was delivery of gold by Surana Corporation to the de facto complainants, the investigating officer should

have directed the accused to produce the relevant account books viz., stock book, delivery note, sales tax returns and income tax returns of the

Corporation to decide whether there was delivery of gold by Surana Corporation to the accused. It is his further submission that the investigating

officer''s finding that invoices themselves are proof of delivery cannot be legally accepted. Even after the investigating officer comes to know from

the records that the de facto complainants have respectively remitted a sum of Rs. 25,00,000/= and Rs. 35,00,000/=, he was not so serious to

find out the truth revolving around such remittances made by the de facto complainants to the account of Surana Corporation. The second

respondent should not have dealt with the matter as his conduct was seriously criticized by this court while dealing with Criminal O.P.Nos.2142

and 5042 of 2007. The learned Trial Magistrate has come to a decision that the transaction was of civil nature when the investigating officer had

not found so in his closure report. It is his last submission that only during the course of trial, the de facto complainant could establish by calling for

records from the person concerned that there was criminal breach of trust and cheating committed by the accused.

10. Learned Government Advocate (Criminal Side) appearing for respondents 1 and 2 would submit that the de fact complainants could not

substantiate their allegations with prima facie materials that they were cheated by the accused. The investigating official has rightly filed the closure

report and the learned Metropolitan Magistrate, having adverted to the entire findings arrived at by the investigating official, held that it was a fit

case for closure.

11. The learned Senior Counsel appearing for respondents 3 to 6 would submit that the de facto complainants could not come out with any source

to part with the huge amount of Rs. 1.25 crores and Rs. 84.40 lakhs respectively. The details of payments made were not adverted to either in the

complaint or in the protest petition filed by the de facto complainants. The de facto complainants have come out with a version that the

unaccounted black money was pumped into the account of Surana Corporation. The court should not go to the rescue of such persons who

allegedly transacted business with black money. It is his further submission that the learned III Metropolitan Magistrate has rightly come to a

decision that the complaints lodged by the de facto complainants deserve closure.

12. Unless sufficient grounds exist for proceeding further in the criminal case, the learned Metropolitan Magistrate is not supposed to take

cognizance of the offences. The learned Metropolitan Magistrate is duty bound to see whether or not there is sufficient ground for proceeding

against the accused. Of course, meticulous appreciation of evidence collected by the investigating agency is outside the scope of the learned

Judicial Magistrate while taking cognizance of the offences. He must also carefully distinguish between civil and criminal liability. No one should be

allowed to take recourse to criminal process to mount enormous pressure on the accused in order to redress his civil claim.

13. On filing the final report by the investigating official for dropping the proceedings four courses are left open to him:

(1) He may agree with the conclusions arrived at by the investigating official. Consequently, he may expedite the report and drop the whole

criminal proceedings. He is duty bound to give an opportunity of hearing to the complainant before ever he decides to drop the proceedings.

(2) He has every authority to take cognizance u/s 190(1)(b) and issue process straightway to the accused untrammelled by the conclusions arrived

at by the investigating agency in a case where he is satisfied that there are sufficient grounds to proceed against the accused.

(3) He may also order further investigation in case he comes to a decision that there had been a perfunctory investigation done by the investigating

official.

(4) He may also without taking recourse to issuing process or dropping proceedings, decide to take cognizance u/s 190(1)(a) of the Code of

Criminal Procedure upon the original complaint or upon the protest petition treating the same as complaint and proceed to act u/s 200 and 202 of

the Code of Criminal Procedure and thereafter, he may decide whether the complaint should be dismissed or process should be issued.

14. The learned Judicial Magistrate has got the aforesaid discretions. He can choose one of the above courses which is justifiable. The court will

have to find whether the option exercised by the Metropolitan Magistrate in dropping the proceedings accepting the final report filed by the second

respondent is proper.

15. The first and foremost charge levelled by the de facto complainant is that Surana Corporation engaged their sub agent Dinesh Baghmar to

approach the de facto complainant in order to persuade them to invest their money in bullion traders business in gold and silver. The materials

collected by the second respondent would go to show that there was no material to substantiate the allegation that Dinesh Baghmar was engaged

by Surana Corporation as their sub agent. The de facto complainant Pradeep Jain has come out with a serious charge that he credited a sum of Rs.

1.05 crores to the ICICI bank account held by Surana Corporation through 28 remittances. The investigating officer had exerted himself and

verified the transactions that took place between the de facto complainant Pradeep Jain and Surana Corporation. It was found that only nine

remittances alone had been made by the de facto complainant Pradeep Jain with ICICI account held by Surana Corporation. The records

collected by the investigating agency would disclose that only a sum of Rs. 25,00,000/= was remitted to the ICICI account of M/s. Surana

Corporation by the de facto complainant Pradeep Jain and a sum of Rs. 35,00,000/= was remitted by the de facto complainant Vinoth Kumar

Mehta. There is no material shown before the investigating agency that the remaining amount was paid by the de facto complainants to Surana

Corporation.

16. The sales bills were recovered by the investigating agency to satisfy itself that Surana Corporation delivered gold worth Rs. 27,43,249/= to the

de facto complainant Pradeep Jain and gold worth Rs. 35,16,096/= to the de facto complainant Vinoth Kumar Mehta. As there was serious

allegation that the delivery note, stock book, sales tax returns and income tax returns were not produced by the accused to establish the delivery of

the aforesaid gold to the de facto complainants, the investigating official, in order to satisfy itself that the delivery of gold is transacted only through

sales bills, examined reputed Jewellers like Nathella Sampathu Chetty, Lalitha Jewellers, Prakash Gold House, etc. They have categorically stated

before the investigating official that the gold is delivered only through sales bills and the said practice is in vogue in the bullion trade. Therefore,

necessity had not arisen for the investigating agency to go in search of the stock register, the delivery note, the sales tax returns and income tax

returns. The accused have satisfactorily explained the practice in vogue before the investigating official. But, the de facto complainants have not

produced any material to show that some amount was due as alleged by them from the accused.

17. The investigating official chose to go deep into the source for the huge fund mobilised by the de facto complainants. Firstly, such a huge amount

did not find a place in the account books of the complainants. They have come out with a cock and bull story that they generated the fund through

dealing in diamonds. The investigating agency laboured to despatch letters to diamond merchants with whom the de facto complainants claim to

have had trade but, to the shock and surprise, the investigating agency received returned covers addressed to those traders with the endorsement

no such person exists"". To top it all, they have admitted that the money paid to Surana Corporation is only black money.

18. At this juncture, it is relevant to refer to the observation made by the Supreme Court in G. Pankajakshi Amma and Others Vs. Mathai Mathew

(D) thr. L.Rs. and Another, as follows:

There is any reason also why the impugned judgment cannot be upheld. According to the 1st respondent these transactions were to be

unaccounted transactions. According to the 1st respondent, all these amounts are paid in cash. If these are unaccounted transactions then they are

illegal transactions. No court can come to the aid of the party in an illegal transaction. It is settled law that in such cases the loss must be allowed to

lie where it falls. In this case as these are unaccounted transactions, the Court could not have lent its hands and passed a decree. For these reasons

also the suit was required to be dismissed.

19. That was a suit laid for recovery of dues from the defendants based on illegal transactions. The Supreme Court has come down heavily upon

the shady transaction and held that unaccounted transactions cannot have the blessings of the court and the court shall not lend its hands by passing

a decree as prayed for. Here, in the instant case, the complainants, who allegedly remitted the black money to the account of Surana Corporation,

cannot set the law in motion saying that their black money circulated was defrauded by Surana Corporation. At any rate, there is no evidence to

show that such a huge amount as alleged by the de facto complainant was pumped into the accounts of Surana Corporation. A sum of Rs.

25,00,000/= and Rs. 35,00,000/= remitted to the account of Surana Corporation was also repaid through delivery of gold as per the documents collected by the investigating agency. The de facto complainants have come out with concocted documents to show the source for generation of

such amounts. There is no material that could be collected by the investigating agency to show prima facie before the court that the accused

betrayed the trust posed by the de facto complainants and committed criminal breach of trust and cheating.

20. As regards the competency of the Assistant Commissioner of Police, CCB, Chennai to investigate the case, it is found that he was directed

specifically in writing by the Commissioner of Police to take up the investigation on transfer of the erstwhile investigating officer Mr. Edward.

Therefore, there is nothing wrong in entrusting the investigation to a higher official by the competent authority.

21. Though the investigating official has not concluded that it was a commercial transaction, the facts and circumstances would disclose that the

transaction between the de facto complainant and Surana Corporation was only a commercial one. The de facto complainants could not come out

with sufficient materials to enable the investigating officer to file a charge against the accused. The source of money could not be accounted by the

de facto complainants. Only a part of the amount was paid into the account of Surana Corporation. The said amount also was returned by delivery

of gold by Surana Corporation. Even otherwise, the transaction being a commercial one, the de facto complainants should have approached the

civil court. But, unfortunately, there was no agreement between the parties.

22. The investigating officer has rightly taken a decision that no materials are available to substantiate the prima facie case of the de facto

complainants. Therefore, he has filed a closure report. The learned III Metropolitan Magistrate also, having adverted to the findings of the

investigating officer, arrived at a right decision that it was a fit case for dropping the proceedings accepting the closure report filed by the

investigating officer. The order passed by III Metropolitan Magistrate dropping the proceedings accepting the closure report is not tainted with

impropriety or illegality.

23. In view of the above, both the revision cases fail and they stand dismissed.

