

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 28-09-2007

CORAM

THE HONOURABLE MR.JUSTICE S.PALANIVELU

CRIMINAL ORIGINAL PETITION No.30459 OF 2006

1.D.Basanthkumar Ranka

2.B.Kapil

3.B.Sachin

...

Petitioners

-vs-

1.State, represented by  
the Inspector of Police,  
C-2 Police Station,  
Elephantgate,  
Chennai-79.

2.T.T.Sekhar

...

Respondents

Petition under Section 482 of the Code of Criminal Procedure for the relief as stated therein.

For petitioners : Mr.V.B.Thirupathikumar

For respondent 1 : Mr.A.Saravanan,  
Govt.Advocate (Criminal Side).

For respondent 2 : Mr.M.Satyanarayanan

सत्यमेव जयते  
O R D E R

This petition has been filed to call for the records relating to the proceedings in F.I.R. in Crime No.501 of 2006 on the file of first respondent and quash the same.

2. Petitioners are accused and second respondent is the de facto complainant. On the basis of the complaint, the F.I.R. was registered in Crime No.501 of 2006, for the offences under Sections 420 and 506 (ii) IPC.

3. The gist of the F.I.R. is thus :

De facto complainant is a resident of Salem, who is engaged in the profession of making silver ornaments and selling them to

businessmen. All the petitioners approached him and represented that they were in need of silver ornaments, for which they would pay good price. From the year 1997 onwards, the de facto complainant was supplying silver ornaments to them. In January 1998, the petitioners had to pay a sum of Rs.6.00 lakhs towards making charges as well as the value for 1850 kgs. of silver. Since the de facto complainant was pressurising the petitioners to pay the above said amount, on 10.04.2002, the first accused executed two receipts in favour of the de facto complainant and since the accused had not returned back as agreed, he lodged the complaint.

4. The main stay of the learned counsel for the petitioners is that allegations in the F.I.R. do not constitute any offence; the dispute is only of civil nature, and, hence, the F.I.R. is liable to be quashed. His contentions are three folded, which are as follows :

(i) First respondent police can investigate only the offences which would involve the money value below Rs.5.00 lakhs and since the claim of the de facto complainant exceeds the said amount, they have no pecuniary jurisdiction.

(ii) Since the allegations in the complaint, which show the transaction between the parties, are of civil nature and that remedy too is barred by limitation, the present complaint could not be pressed into service.

(iii) A complaint was already lodged with the same allegations before the Inspector of Police, Flower Bazar Police Station, and it was duly deferred, after enquiry.

5. With reference to the first contention, the argument of the learned counsel for the petitioners is that the first respondent lacks pecuniary jurisdiction.

6. Repelling the said contention, the learned Government Advocate (Criminal Side) would submit that fixing the pecuniary limits is only for administrative reasons, which would not bind the first respondent police to take up the present matter for investigation, and there is no settled procedure.

7. In fact, there is no rule or prescribed procedure, limiting the powers of the first respondent police to investigate the matter, which involves money value above Rs.5.00 lakhs, and, hence, the contention of the petitioners cannot be countenanced.

8. The next limb of contention of the learned counsel for the petitioners is that going by the allegations in the F.I.R., it would only reveal a civil remedy, available to the de facto complainant, for which also, he is not entitled, since the claim got time barred. It is his further contention that once a civil remedy is available to the parties, they cannot seek the remedy under criminal law. On this aspect, he relied upon a decision of this Court in M/s.Pasumai Irrigation Limited v.

M/s.Mansi Finance (Chennai) Limited, 2003 (2) CTC 270, in which it is held that 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 bargains so as to usurp the civil jurisdiction in misuse of the power given to them by law.

9. On the said aspect, learned Government Advocate would submit that mere pendency of a civil dispute between the parties would not constitute the basis for quashing the criminal proceedings and if it is permitted, such practice would be an easy way out for accused to avoid criminal proceedings. To strengthen his contention, he relied upon a decision of the Hon'ble Supreme Court in M.Krishnan v. Vijay Singh and Another, 2001 (8) Supreme Court Cases 645, wherein Their Lordships have held as follows :

"5....In a criminal court, the allegations made in the complaint have to be established independently, notwithstanding the adjudication by a civil court. Had the complainant failed to prove the allegations made by him in the complaint, the respondents were entitled to discharge or acquittal but not otherwise. If mere pendency of a suit is made a ground for quashing the criminal proceedings, the unscrupulous litigants, apprehending criminal action against them, would be encouraged to frustrate the course of justice and law by filing suits with respect to the documents intended to be used against them after the initiation of criminal proceedings or in anticipation of such proceedings. Such a course cannot be the mandate of law. Civil proceedings, as distinguished from the criminal action, have to be adjudicated and concluded by adopting separate yardsticks. The onus of proving the allegations beyond reasonable doubt, in a criminal case, is not applicable in the civil proceedings, which can be decided merely on the basis of the probabilities with respect to the acts complained of...."

10. As per the view of the Apex Court, civil proceedings have to be distinguished from criminal action and the merits in both the categories of matters have to be weighed on their own circumstances and evidence and that a single yardstick could not at all be utilised for the proof.

11. As for the criminal proceedings, it is well settled that the prosecution is bound to establish that the guilt is proved beyond reasonable doubt. The onus may not be upon the accused to establish his innocence. If certain portions of the evidence either oral or documentary are in favour of the prosecution, when a court entertains a doubt as to the correctness or genuineness of the versions of the prosecution, the criminal jurisprudence lays down a rule that benefit of doubt shall be extended to the accused. In criminal law, strict proof of charges is mandatory. The circumstances, which would weaken the case of prosecution, could be taken advantage of by the defence and the scope of shifting of burden upon the accused by the prosecution is remarkably limited. The presumption is that unless the guilt is proved beyond reasonable doubt by the prosecution, the accused can be said to be innocent.

12. The principles formulated and laid down in the illuminating judicial pronouncements, which are applicable to the proceedings in a criminal case, may not be made available to the benefit of any of the parties in a civil case.

13. In a criminal case, the ingredients to be established by the prosecution are (i) mens rea, that is the animus on the part of the accused to commit the crime and (ii) its execution, by physical overt acts. In order to find out the intention on the part of the accused prior to the commission of offence, the oral evidence on record is sufficient. In so far as the commission of offence by his physical act is concerned, again, the oral testimonies on record of witnesses concerned ought to be appreciated. The proof required in a criminal case, subject to certain exceptions, is two folded, as adverted to supra. If either of the stages remain unestablished, the benefit will be pointed towards the accused.

14. In most of the matters, barring certain exceptions, the testimony of the key witnesses requires corroboration, which proof is not at all needed in a civil action. In a civil case, mode of proof would be otherwise. In a criminal case, proof of guilt of the accused shall be beyond reasonable doubt, whereas in a civil case, preponderance of probabilities is for consideration. By no stretch of imagination, it could be stated that an individual should choose only one action either on civil side or on criminal side, the reason being the proof of relief available in both the jurisdictions is absolutely different.

15. Merely because a civil remedy is available to a person in a matter against the other person, the contention that the criminal proceedings should not be initiated cannot be encouraged. Failure on the part of the second respondent to proceed on civil side for certain years is not an embargo for him to initiate criminal proceedings against the petitioners. Whether his claim under civil law is time barred or not is immaterial and it is his option to avail any of the remedies. Just



because the claim under civil law got time barred, it could not at all be termed that criminal action would not lie. Further, no question of limitation would arise in this case, because a written undertaking was given by the petitioners 1 and 3 on 25.09.2006 and they also partly complied with the terms of the said undertaking.

16. Learned counsel for the petitioners also cited a decision of this Court in Y.S.Shah v. G.Srinivasan, 2004 (5) CTC 189, wherein the learned Judge followed a decision of the Hon'ble Supreme Court, which portion has been culled out as under :

"15. It is also useful to refer about the decision of the Apex Court in Haridaya Ranjan Prasad Verma and others v. State of Bihar and another, 2000 (4) SCC 168, which proceeds as hereunder :

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 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. (Emphasis supplied)"

17. In view of the decision of the Hon'ble Apex Court, the dishonest intention on the part of the accused should be gathered even at the time of making promise and the said mala fide intention is the gist of the offence.

18. As far as the present case is concerned, the allegations in the F.I.R. unequivocally show that at the time of making the promise itself, the accused had entertained dishonest intention, as seen from the words "believing the promise of the accused as true, the second respondent/de facto complainant supplied the silver ornaments to them from first week of January, 1997." Their promise was to give the silver ingots or their value and making charges as well towards the finished silver ornaments handed over to them.

19. A reading of the F.I.R. goes to the effect that the accused are not strangers to the de facto complainant and they are known to one another for a long time prior to the transaction. Hence, there is every chance for the de facto complainant to repose confidence on them and enter into the transaction. These circumstances would definitely go to show that even at the time of making the promise at the inception, the accused had entertained the mala fide intention. However, it is for the trial Court to appreciate the same, with reference to the other available circumstances, after recording of oral evidence.

20. The learned Government Advocate would also draw attention of this Court to the illustrations (f) and (g) of Section 415 I.P.C., which are as follows :

(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money. A not intending to repay it. A cheats.

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract."

21. Based on the said illustrations, the learned Government Advocate contends that even though a reading of the explanations aforementioned appears to be of civil nature, when the intention on the part of the accused is inferred, it would squarely come within the ambit of Section 415 IPC.

22. Another contention of the learned counsel for the petitioners is that already complaint was laid before the Flower Bazar Police Station with the same allegations, where further action was deferred in the said complaint and, hence, initiation of proceedings under the present complaint would amount to double jeopardy.

23. In this regard, learned Government Advocate would submit that the Flower Bazar Police Station, without registering the case, on the first complaint, enquired the matter and since the petitioners agreed to pay the amount to the complainant, the petition was closed and that since the cause of action differed on default of the petitioners, the present complaint may proceed. I find substance in the said submission of the learned Government Advocate.

24. Much was said by both sides about the powers of the High Court to exercise the inherent powers under Section 482 Cr.P.C.

25. In *Medchal Chemicals & Pharma (P) Ltd. v. Biological E.Ltd. and Others*, 2000 (3) Supreme Court Cases 269, the Hon'ble Supreme Court has held that to exercise power under Section 482 of the Code, the complaint in its entirety will have to be examined on the basis of the allegation made in the complaint and the High Court at that stage has no authority or jurisdiction to go into the matter or examine its correctness. Whatever appears on the face of the complaint shall be taken into consideration without any critical examination of the same, but the offence ought to appear *ex facie* on the complaint. The truth or falsity of the allegations would not be gone into by the Court at the earliest stage. Whether or not the allegations in the complaint were true is to be decided on the basis of the evidence led at the trial.

26. In *Union of India v. Prakash P.Hinduja and Another*, 2003 Supreme Court Cases (Cri) 1314, it is observed as follows :

"The legal position is absolutely clear and also settled by judicial authorities that the court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the first information report till the submission of the report by the officer in charge of the police station in court under Section 173 (2) Cr.P.C., this field being exclusively reserved for the investigating agency."

27. In *State of Punjab v. Subhash Kumar and Others*, 2006 (1) Supreme Court Cases (Cri) 324, the Apex Court observed that curiously, the High Court, by entering into the factual arena, has passed the impugned order, quashing the FIR, and, such a course is wholly impermissible and that the High Court acted more as an investigating agency at a stage when the FIR was under investigation, which course may prejudice the parties.

28. In *State of Karnataka v. Pastor P.Raju*, 2006 (3) Supreme Court Cases (Cri) 179, it is held that Section 482 Cr.P.C. saves inherent powers of the High Court and such a power can be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice. This power can be exercised to quash the criminal proceedings pending in any court but the power cannot be exercised to interfere with the statutory power of the police to conduct investigation in a cognizable offence.

29. Following the principles laid down by the Supreme Court, it is to be held that the inherent powers, conferred under Section 482 Cr.P.C. on the High Court, as far as the quashing of F.I.R. is concerned, should be exercised in rare cases and with great circumspection and that

unless there is any abuse of process of law, the Court cannot interfere with the investigation.

30. So far as the facts of the present case are concerned, the criminal proceedings are not at all barred and the investigation has to proceed on its own direction and this Court need not disturb the same. Hence, no ground is made out for quashing the F.I.R.

31. In view of what is stated above, this petition fails and is dismissed. Consequently, the connected Criminal M.P.Nos.1 of 2006 and 1 of 2007 are closed.

Sd/-  
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To  
1. The Inspector of Police,  
C-2 Police Station,  
Elephantgate,  
Chennai-79.

2. The Public Prosecutor, High Court, Madras.

+ 2 CCs To Mr.V.B.Tirupathi Kumar, Advocate SR NO.60575

+ 2 CCs To Mr.Sathyanarayanan, Advocate SR NO.60627

CRL.O.P.No.30459 OF 2006

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