(2009) 09 MAD CK 0220

Madras High Court

Case No: Criminal O.P. No. 8077 of 2009 and M.P. No. 1 of 2009

R. Govindaraj	APPELLANT
Vs	
State and G. Seetha Devi	RESPONDENT

Date of Decision: Sept. 11, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 195, 195(1), 340, 482
- Penal Code, 1860 (IPC) - Section 120B, 172, 173, 174, 175

Hon'ble Judges: P.R. Shivakumar, J

Bench: Single Bench

Advocate: J. Franklin, for the Appellant; I. Paul Nobel Devakumar, Government Advocate (Crl. Side) for R1 and P.M. Duraiswamy, for R2, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P.R. Shivakumar, J.
The present petition has been filed u/s 482 Cr.P.C for quashing the first information report registered on the file of Central Crime Branch, Tiruppur as Cr.No.6/2009 for alleged offences punishable under Sections 468, 471, 120-B, 520 and 506(i) IPC.

2. Though the petition, at the first instance, was filed against the investigating officer, namely the first respondent alone, subsequently, the de-facto complainant Smt. G. Seetha Devi got herself impleaded as the second respondent by filing a miscellaneous petition M.P. No. 2 of 2009 and obtaining an order on 09.06.2009 for her impleadment in the criminal OP.

3. The petitioner herein is none other than the brother of the second respondent herein (de-facto complainant). Both of them jointly purchased properties in the years 1989 and 1990. The properties, thus purchased by both of them were in their joint enjoyment till differences arose between them leading to the filing of a suit by

the second respondent herein in O.S. No. 303/2008 on the file of Sub-court, Tiruppur in the month of August 2008 for partition and separate possession. The suit was resisted by the petitioner herein, who figured as the defendant in the said suit by filing a written statement containing allegation to the effect that the second respondent herein had executed a general power of attorney in respect of her half share in the properties purchased by her jointly with her brother (the petitioner herein) in favour of one V. Bhaskaran and in exercise of the power conferred upon him, the said Bhaskaran executed a registered sale deed in favour of the petitioner herein on 25.04.2008; that the petitioner, after having purchased the same for a valuable consideration of Rs. 4,50,000/-, made improvements to the property spending huge amount and that the second respondent, with some ulterior motive to gain unlawful enrichment and as an abuse of process of court, had filed the above said suit.

4. Pursuant to the filing of the said written statement by the petitioner herein on 23.12.2008, the second respondent herein filed a reply statement denying the allegations found in the written statement and specifically denying the allegation that she had executed a power of attorney in favour of the above said V. Bhaskaran and contending that the petitioner herein was liable to be prosecuted in a criminal court, as he had fabricated documents. The said reply statement was signed on 03.01.2009 and filed on 23.01.2009. Under such circumstances, on 12.01.2009 itself, the second respondent herein lodged a complaint with the Central Crime Branch, Tiruppur alleging conspiracy between the petitioner herein and V. Bhaskaran, pursuant to which they forged the signature of the second respondent (de-facto complainant), fabricated a document styled as the power of attorney and created a document on the basis of the forged power of attorney as a sale deed in favour of the petitioner on 25.04.2008. It was also alleged in the complaint that, when the second respondent (de-facto complainant), after coming to know that they had forged documents, in order to stake claim to the property of the second respondent, she questioned the petitioner regarding the same on 05.01.2009, for which he replied that the second respondent/de-facto complainant could do anything she wanted to do and caused intimidation by causing a threat to kill her in case she could claim her property. Though the complaint was lodged by her on 12.01.2009, the police, probably considering the bar provided u/s 195 Cr.P.C., assigned it a C.S.R. No. (C.S.R. No. 4/2009) and later on registered a case on 05.03.2009 as Cr. No. 6/2009 on the file of Central Crime Branch, Tiruppur for offences punishable under Sections 468, 471, 120-B, 420 and 506(i) IPC after obtaining legal opinion from the Assistant Public Prosecutor.

5. Pursuant to the registration of the said case, the petitioner herein has come forward with the present petition for quashing the FIR. The petitioner has sought for an order quashing the FIR on the grounds that a civil dispute between the petitioner and the second respondent, who are brother and sister, is sought to be given a criminal colour by lodging a false complaint with ulterior motive; that the said

complaint nonetheless will amount to an abuse of process of law and that there is a clear bar for taking cognizance of the offence otherwise than on a complaint in writing given by a court in which the suit was filed as the offences under Sections 468 and 471 IPC were allegedly committed in respect of a document produced in a proceeding pending in a court of law, namely the Sub-court, Tiruppur.

6. The petition is resisted by the respondents 1 and 2 contending that there was no impediment for the police to take cognizance of the offence based on the complaint of the second respondent/de-facto complainant and that the contention of the petitioner that a pure civil dispute is sought to be converted into a criminal case with ulterior motive in order to achieve unlawful gain, is quite untenable since the said ground has been raised for the sake of raising a ground in a petition seeking quashing of the first information report.

7. Mr. J. Franklin, learned Counsel for the petitioner solely relies on a judgment of a learned single judge of this court in M. Sadasivam and Ors. v. K. Duraisamy reported in (2008) 1 MLJ (Crl) 9. It is true that in the said case, after referring to the judgments of the Hon''ble Supreme Court in Surjit Singh v. Balbir Singh reported in 1996 SCC (Cri) 521 and in Gopalakrishna Menon v. D. Raja Reddy reported in AIR 1983 SC 1052, the learned single judge has observed that there is a total bar u/s 195(1)(b)(ii) of Cr.P.C for taking cognizance of the offences mentioned in the said provision unless the complaint in writing is filed as per the procedure described u/s 340 of the Code of Criminal Procedure by or on behalf of the court in which the document relating to which the offence was allegedly committed had been filed or given in evidence.

8. The learned Counsel for the petitioner relying on the above said observations made by a learned single judge of this court in the above said case, has argued that the document, which is alleged to have been forged is one filed in a civil suit pending before the Sub-court, Tiruppur and that hence the bar provided u/s 195(1)(b)(ii) of Cr.P.C., would squarely apply to the complaint preferred by the second respondent herein and that the first information report registered based on the complaint of the second respondent in Cr. No. 6/2009 on the file of the Central Crime Branch, Tiruppur is liable to be quashed in exercise of the inherent powers of the High Court.

9. In addition to the above said legal contention relying on an earlier judgment of this court as a precedent, the learned Counsel for the petitioner has also contended that the very fact that the second respondent has chosen to prefer a complaint after filing the civil suit for partition in which the genuineness of the documents in question was also challenged by her and without waiting for the result of the civil case will amount to an abuse of process of law and that hence for that reason also the first information report in Cr. No. 6/2009 on the file of Central Crime Branch, Tiruppur is liable to be quashed.

10. Per contra, it is contended on behalf of the respondents that the bar provided u/s 195(1)(b)(ii) is not attracted to the case on hand in so far as the forgery is not alleged to have been committed after the document was produced in a court of law and since the case of the de-facto complainant is that the forgery was committed before the said document was produced in a court of law in the civil proceedings and that hence the prayer made by the petitioner for quashing the first information report relying on the above said provision should be rejected as untenable.

11. It is the further contention raised on behalf of the respondents that there was no latches on the part of the second respondent/de-facto complainant, who came forward with the complaint within a reasonable time after the written statement containing allegation to the effect that the second respondent had executed a power of attorney in favour of V. Bhaskaran, who in turn executed a sale deed in favour of the petitioner on the strength of such power of attorney; that when the complaint contains sufficient allegations disclosing commission of cognizable offences, the first information report registered based on the complaint cannot be quashed simply because a civil case is pending regarding the genuineness of the document, which is alleged to be forged; that every case of alleged forgery shall contain elements of disputes of civil nature as well as criminal nature and that when clear and unambiguous averments are made in the complaint, the court cannot quash the complaint by evaluating the allegations made in the complaint.

12. Let us now take up the legal plea raised on behalf of the petitioner to the effect that Section 195(1)(b)(ii) is a bar for taking cognizance of the offences u/s 468 and 471 IPC, for which reliance has been made on a judgment of this court in M. Sadasivam and Ors. v. K. Duraisamy reported in (2008) 1 MLJ (Crl) 9. Section 195(1) reads as follows:

(1) No court shall take cognizance-

(a)(i) of any offence punishable under Sections 172 - 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit, such offence, or except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b)(i) of any offence punishable under any of the following Sections of the Indian Penal Code (45 of 1860), namely, Sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any court, or

(ii) of any offence described in Section 463, or punishable u/s 471, Section 475 or Section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any

Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in Sub-clause (i) or Sub-clause (ii), except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.

13. Of course it is true that there is no explicit stipulation in the said Section that the forgery relating to a document filed in a proceedings before a court of law or given in evidence in a court should have been committed after the said document was filed or given in evidence in the said court. Section 195(1)(b)(ii) Cr.P.C. simply states that, if any such offence described in Section 463 or punishable u/s 471, Section 475 or Section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court, no court shall take cognizance of such offence otherwise than on a written complaint given by the court concerned or on his behalf. The said Section has been interpreted by the learned single judge of this court, of course relying on two earlier judgments of the Hon''ble Supreme Court in Surjit Singh v. Balbir Singh reported in 1996 SCC (Cri) 521 and in Gopalakrishna Menon v. D. Raja Reddy reported in AIR 1983 SC 1052, to mean that any offence of forgery allegedly committed in respect a document produced or given in an evidence in a proceeding before a court in respect of which such forgery is alleged to have been committed either prior to such production in the court or subsequent to its production, the bar u/s 195(1)(b)(ii) will be attracted.

14. With due respect to the Hon''ble judge, I am not able to concur with the view expressed by the learned single judge in the above said judgment cited by the learned Counsel for the petitioner. The same does not have a binding effect since subsequent judgments of the Hon''ble Supreme Court in which a contrary view has been expressed, were not adverted to by the learned single judge in arriving at the said conclusion. In fact, the Hon''ble Supreme Court in Sachidanand Singh and Anr. v. State of Bihar and Anr. reported in (1998) 2 SCC 493, a larger bench of the Supreme Court consisting of a three Hon''ble judges has made the following observation:

The sequitur of the above discussion is that the bar contained in Section 195(1)(b)(ii) of the Code is not applicable to a case where forgery of the document was committed before the document was produced in a court.

15. When the very same question was raised before the constitutional bench consisting of five Hon''ble Judges of the Supreme Court in Iqbal Singh Marwah and Another Vs. Meenakshi Marwah and Another, . The said view expressed by the three judge bench of the Supreme Court in Sachidanand Singh and Anr. v. State of Bihar and Anr. reported in (1998) 2 SCC 493, was approved and the constitutional bench of the Hon''ble Supreme Court made the following observation:

An enlarged interpretation to Section 195(1)(b)(ii), whereby the bar created by the said provision would also operate where after commission of an act of forgery the document is subsequently produced in court, is capable of great misuse. As pointed out in Sachida Nand Singh and Anr. v. State of Bihar and Anr. reported in (1998) 2 SCC 493, after preparing a forged document or committing an act of forgery, a person may manage to get a proceeding instituted in any civil, criminal or revenue court, either by himself or through someone set up by him and simply file the document in the said proceeding. He would thus be protected from prosecution, either at the instance of a private party or the police until the court, where the document has been filed, itself chooses to file a complaint. The litigation may be a prolonged one due to which the actual trial of such a person may be delayed indefinitely. Such an interpretation would be highly detrimental to the interest of the society at large.

....

....

Judicial notice can be taken of the fact that the courts are normally reluctant to direct filing of a criminal complaint and such a course is rarely adopted. It will not be fair and proper to give an interpretation which leads to a situation where a person alleged to have committed an offence of the type enumerated in Clause (b)(ii) is either not placed for trial on account of non-filing of a complaint or if a complaint is filed, the same does not come to its logical end. Judging from such an angle will be in consonance with the principle that an unworkable or impracticable result should be avoided.

It was also observed therein as follows:

In view of the discussion made above, we are of the opinion that Sachidanand Singh and Anr. v. State of Bihar and Anr. reported in (1998) 2 SCC 493, has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) Cr.P.C would e attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any court i.e. during the time when the document was in custodia legis.

16. The same was followed by a recent judgment of the Hon''ble Supreme Court in P. Swaroopa Rani v. M. Hari Narayana Alias Hari Babu reported in (2008) 3 SCC (Cri) 79.

17. These three judgments which brought about a change in law by the judicial interpretation were not taken note of by the learned single judge while making the observations in the judgment cited on behalf of the petitioner herein in support of his contention that there is a bar u/s 195(1)(b)(ii) Cr.P.C for taking cognizance of the offences alleged in the complaint. As the said view expressed by the learned judge was not only in ignorance of the above said subsequent judgments of the Hon''ble

Supreme Court but also is diametrically opposite to the view expressed by the Hon''ble Supreme Court. The same is per incuriam and can never be a binding precedent since reliance was made on a judgment which was subsequently overruled by larger benches including a constitutional bench of the Hon''ble Supreme Court.

18. The said judgments squarely apply to the case on hand. In view of the said observation of the Hon''ble Supreme Court in the latest cases, this court accepts the contention raised on behalf of the respondents that only when forgery and tampering with the documents are alleged to have been committed in respect of a document produced in a court after the same was produced in the court or given in evidence in the proceedings, the bar u/s 195(1)(b)(ii) will be attracted and that the said bar is not attracted to the cases of forgery or tampering with the documents allegedly committed prior to the production of the said documents in the court.

19. It is the clear case of the second respondent/de-facto complainant that the power of attorney was forged in her name before the production of the same in the civil suit and that hence the bar provided u/s 195(1)(b)(ii) is not attracted to the case on hand.

20. So far as the other two contentions of the petitioner are concerned, this court is of the considered view that they are also liable to be rejected, as there is no substance in them. The contention of the petitioner that the second respondent having chosen to file a civil suit in which the question of genuineness of the document is raised, should not have chosen to prefer the complaint alleging forgery of the document without waiting for the result of the civil case, does not have any substance in it. It is unnecessary to cite all the precedents, which go to show that when an act giving rise to a cause of action for criminal prosecution as well as a civil remedy, the criminal prosecution launched cannot be quashed simply because a civil remedy is available or that proceedings for such civil remedy has been initiated. Suffice it to cite a judgment of the Hon''ble Supreme Court in Vitoori Pradeep Kumar Vs. Kaisula Dharmaiah and Others, . It is traite law that the availability of the civil remedy and the fact that proceedings in a civil court has been initiated for such civil remedy is not a bar for seeking criminal prosecution of the offender.

21. The next contention of the petitioner that the second respondent has chosen to prefer the complaint with some latches and as an afterthought also deserves to be rejected as untenable. As pointed out supra, within a reasonable time after she came to know the fact of commission of the alleged offences through the written statement of the petitioner herein in the suit filed by the second respondent, she has not only filed a reply statement denying the genuineness of the document in question, but also chose to prefer the complaint setting the criminal law in motion against the petitioner herein. Allegations indicating the absence of knowledge of the document till the filing of the written statement by the petitioner in O.S. No. 303/2008 are also found in the complaint. Therefore, it cannot be said that there are

latches on the part of the second respondent/de-facto complainant and the plea of the petitioner that the complaint was the result of an afterthought also deserves to be rejected as untenable.

22. The next contention of the petitioner is to the effect that the lodging of the complaint by the second respondent/de-facto complainant is an example of abuse of process of law. Except a bald allegation on the ground that the petitioner and the de-facto complainant are brother and sister that it is an example of abuse of process of law and that the complaint has been lodged before the disposal of the civil case instituted by the de-facto complainant against the petitioner, no other ground has been raised in support of the petitioner''s contention that the complaint of the de-facto complainant is an example of abuse of process of law. We have already seen that the pendency of the suit is not a bar for preferring a complaint to set the criminal law in motion. Therefore, the petitioner''s contention that during the pendency of the parallel proceedings in a civil court, lodging of the complaint and setting the criminal law in motion shall amount to abuse of process of law, does not have any substance in it and the same deserves to be rejected.

23. When the de-facto complainant has emphatically contended in the complaint that she did not execute any power of attorney in favour of V. Bhaskaran who executed the sale deed in favour of the petitioner herein as the power agent of the second respondent, the complaint cannot be quashed on the sole ground that the transaction has taken place in favour of the petitioner, who is none other than the brother of the de-facto complainant. If at all the sister wanted to convey her property to his own brother, there was no need for her to allow the intervention of the third person as an agent by executing a power of attorney in his favour for the purpose of executing a sale deed in favour of the petitioner, the learned Counsel for the second respondent pointed out. Though there is substance in the contention raised by the learned Counsel for the second respondent, it shall not be proper to express any opinion regarding the said contention as doing so will amount to appreciation of evidence and evaluating the same, which cannot be done in a petition filed u/s 482 Cr.P.C.

24. After considering all the points raised on behalf of the parties, this court comes to a definite conclusion that it is not a fit case in which this court can exercise its inherent power for quashing the first information report registered on the basis of the complaint of the second respondent/de-facto complainant. There is no merit in this petition and the same deserves to the dismissed.

25. Accordingly, this criminal original petition is dismissed. Consequently, the connected miscellaneous petition is closed.