

CrI.O.P.No.29284 of 2015
and
CrI.M.P.No.10849 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :20.10.2023

Pronounced on :31.10.2023

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.O.P.No.29284 of 2015

and

CrI.M.P.No.10849 of 2022

Jameela Kingsly

...Petitioner/A2

/versus/

1.The Inspector of Police,
Crime Branch CID Tirupur.

.. Respondent/Complainant

2.G.Srinivasan

.. Respondent/
defacto complainant

Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records and quash the proceedings in C.C.No.81 of 2005 on the file of the Chief Judicial Magistrate Court, Tirupur in so far as the petitioner is concerned.

For Petitioner

:Mr.A.E.Ravichandran

For Respondent

:Mr.S.Udaya Kumar

Government Advocate (CrI.Side)
for R1

Mr.S.D.Venkateswaran for R2



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ORDER

This Criminal Original Petition filed under Section 482 of Cr.P.C by the second accused in C.C.No.122 of 2022 on the file of the Judicial Magistrate No.1, Tiruppur. The petition is filed to quash the pending criminal case which is launched against this petitioner and 4 others for the alleged offences under Sections 120 (B), 420, 468, 471, 344 r/w 109 IPC, Sections 380, 451 r/w 109 IPC. The case registered by DCB, Tiruppur in Cr.No.22/2011, Later investigated by CB CID, Tiruppur. On completion of investigation, the final report was laid against five persons. Pardon was granted to one Suburathinam and he is taken as approver in this case.

2. The sum and substance of the final report laid by the prosecution is as under:-

Thiru C. Srinivasan, in his complaint dated 28/07/2011 addressed to the superintendent of Police Tiruppur District had stated that one Suburathinam approached him with a sale proposal of a paper mill by name M/s Zion Paper Mills Private Limited at Kaduvettipalayam in Coimbatore district. Kingsley, his wife Jamila Kingsley representing the Company as its Directors negotiated with



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the defacto complainant and entered into an MoU on 01/05/2008 fixing the sale consideration for the mill at Rs.12.10 crores . The entire shares of the company was handed over to the defacto complainant with consent to transfer the shares in the name of the complainant. On receipt of Rs.2 crores as advance the possession of the mill and its administration was handed over to the complainant. Thereafter, the complainant invested Rs.five crores for upgrading the machines to increase the production capacity from 10 tons to 40 tons. He also paid a sum of Rs.2 crores to the Union Bank of India, where the Accused A-1 and A-2 had borrowed loan hypothecating the machineries and creating collateral security of their property. He paid the balance sale consideration of Rs.2.69 crores to Kingsley (A-1) with holding Rs.1.91 crore for clearing the issue related to transfer of shares of the other two Directors. The complainant has alleged that the Kingsley and his wife Jamila Kingsley had forged the signatures of other two Directors and therefore, there was difficulty in getting the company shares transferred to the name of the complainant.

3. In spite of paying substantially towards the agreed sale consideration for the purchase of the Paper Mill, the complainant was not able



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to get the shares transferred in his name. While so, during the month of July 2009, the said Kingsley along with one Ayyappan, who is the henchman of Hansraj Saxena (A-4) /Chief Executive Officer of Sun Pictures, Chennai and Mr.Anbalagan MLA/DMK District Secretary (South Zone) conspired to misappropriate the property of M/s Zion Paper Mills Private Limited which was entrusted to the defacto complainant by Kingsley(A-1) and others after receiving substantial sale consideration as per the MoU dated 01/05/2008. Pursuant to the said conspiracy, on 29/07/2009, the defacto complainant was forced to sign documents which was already prepared by the persons named above. Using the men and money power backed by the MLA of the ruling party (A-5), he was dispossessed from the Mill premise.

4. Later the defacto complainant learnt that the ownership and management were transferred back to Kingsley (A-1) as per the document, which claims to be the cancellation of earlier MoU. Based on the so called cancellation of MoU document obtained under threat and criminal intimidation the defacto complainant been dispossessed.

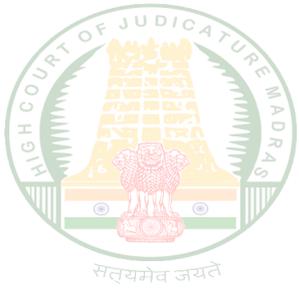


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5. With these facts, FIR registered by the Inspector of Police, DCB on 28/07/2011 in Cr.No. 22/2011 under Sections 342, 387,406, 418, 420, 468,471, 506 (1) IPC read with 120(b) IPC. Later on, the investigation was taken over by CBCID, Tiruppur and on completion of investigation, final report filed against 5 persons as accused sent for trial. One Suburathinam shown as approver.

6. Initially, the final report was taken on file by the Chief Judicial Magistrate, Tiruppur in C.C.No.81 of 2015. Since one of the accused by name J.Anbalagan (A-5) was a Member of the State Assembly, the case was classified as case against sitting/former MLA's, MP's and a petition was filed to transfer the case to the designated Court (i.e) The Principal Sessions Court, Tiruppur. Meanwhile, the fifth accused filed discharged petition and the same came to be dismissed by this Court. He preferred SLP before the Hon'ble Supreme Court. Pending SLP he died.

7. The case on the death of the 5th accused (MLA) lost its special character, so the Chief Judicial Magistrate, Tiruppur, transferred the case to



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8. These facts are brought to the notice of this Court by the petitioner herein in her Miscellaneous petition No.10849/2022 to carry out amendment to the prayer substituting the present C.C.No:122/2022 (on the file of Judicial Magistrate No.1, Tiruppur, instead of C.C.No.81/2015 on the file of Chief Judicial Magistrate, Tiruppur) and in the synopsis filed by the Investigating Officer.

9. That apart, when the petition was taken up for final disposal, the death of A-3 [Ayyappan] was also placed on record. Further, it was also brought to the notice of the Court that the defacto complainant Srinivasan had entered into a compromise with one of the accused by name Hansraj Saxena (A-4) and the quash petition (CrI.O.P.No. 7213/2021) filed by Hansraj Saxena, when came up for consideration by this Court, the defacto complainant Mr. Srinivasan son of Gokul Dass, appeared before the Court in person and reported



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that he has compromised with A-4 [Hansraj Saxena]. Though the charges against the accused persons including A-4 are non-compoundable, this Court referring the Judgments of the Hon'ble Supreme Court made in *Shiji and others -vs- Radhika and others reported in [AIR 2012 SC 499]* and *Gian Singh -vs- State of Punjab reported [(2012)10 SCC 303]* dropped further proceedings against A-4 vide order dated 01/11/2021.

10. The position as on date, the petitioner who is A-2 and her husband who is A-1 alone are facing trial. The persons [A-3 to A-5], who were accused of criminal conspiracy to get the cancellation deed of MoU, forgery and criminal intimidation along with A-1 and A-2 are either dead or action against them dropped.

11. Contention of the petitioner:

The learned counsel for A2, who is the petitioner herein contented that based on the MoU, the parties agreed to transfer the ownership and Management of the paper mill by name M/s Zion Paper Mill Private Limited. The entire share certificates were handed over to the defacto complainant along



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with the possession of the mill with permission to run the mill. The defacto complainant agreed to clear the loan availed from Union Bank of India (about Rs.4.66 crores) and also to pay the balance sale consideration. It was agreed to transfer the shares proportionate to the money paid towards sale consideration. The defacto complainant having failed to pay the balance sale consideration, distorting the fact and alleges that the signatures of other two Directors of the M/s Zion Paper Mills were forged by the petitioner and her husband. In fact, there is no complaint from the other two Directors alleging forgery of their signatures, no material evidence available to attract offence under Sections 468 and 471 IPC.

12. Under the MoU dated 01/05/2008, though the Management of the mill was transferred to the the defacto complainant, he was not permitted to sell machines before completion of the sale transaction. However, the complainant had removed machines worth more than Rs.5.5 crores and he was unable to pay the balance sale consideration. In such circumstances, he voluntarily came forward to cancel the MoU and settle the accounts. Thus, the deed dated 01/07/2008 came into force. This document was executed by the complainant



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13. Nearly after about two years, the defacto complainant filed the complaint dated 28/07/2011 which was taken up for investigation in crime number No.22/2011 by Tiruppur District Crime Branch naming eight persons as accused. The final report came to be filed on 12/06/2015 as against 5 persons. One Suburathinam is shown as approver and he had been granted pardon. The complaint and the final report clearly show that it is purely a civil transaction arising from the MoU entered between the parties. The terms of MOU provides for arbitration in case of any dispute. Without resorting to the arbitration proceedings, the defacto complainant had belatedly filed the complaint after two years and for political reasons, civil dispute been given a criminal colour and the malafide prosecution been launched.

14. The learned counsel also contended that the defacto complainant having reported before this Court that he has compromised with A-4 and



conceded to drop further proceedings against A-4, he cannot sustain the case against the petitioner. The reason for compromise with A-4 shall also apply to A2.

15. **Contentions of the State and the Defacto complainant:-**

Per contra the Government Advocate (Crl.Side) appearing for the State representing the state submitted that as far as the petitioner is concerned material collected during the course of investigation and placed before the Court indicates that about Rs.2 cores been transferred to the account of this petitioner as part sale consideration of the paper mill in which she and her husband (A-1) are the Directors. Further the investigation had also revealed that the signatures of the other two directors been forged and therefore, when the shares sought to be transferred in the name of defacto complainant, same could not be effected.

16. After receiving substantial part of the sale consideration by forging the signatures of the co-Directors, this petitioner and her husband with help of the MLA of the ruling party under threat created document by captioning it as



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cancellation of MoU and forcefully taken possession of the property. Due to failure to pay the debts to the Union Bank of India, the property of the Mill now taken possession by the Bank and sold out in the public auction. Thus, the criminal intention of cheating the defacto complainant and misappropriating the money is made out against this petitioner. Therefore, case against her cannot be quashed.

17. The defacto complaint through his learned counsel submitted that the fact of forgery of the signatures of other two Directors by this petitioner and her husband is clearly made out and due to the said forgery, the defacto complainant was not able to get the shares transferred in his name. The withdrawal of the complaint as against A-4, who came into picture when the MoU got cancelled forcible cannot be a reason to quash the case against this petitioner who is directly benefited by the crime of cheating, forgery, and misappropriation. Suburatinam, the approver in this case had in his statement recorded under Section 164 Cr.P.C had narrated the role of this petitioner in the crime and the offence being against the State, the compromise between the defacto complainant and one of the accused, which has been entertained by the



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High Court for peculiar facts and circumstances cannot be a rule or precedent to quash the case against the petitioner, who is the prime accused in this case.

18. Heard the Learned Counsels and records perused.

19. Before averting to the other facts, this Court is of the opinion that it is necessary to record an important fact, which has given a chequered history to this case. The alleged incident had happened during the year 2008 while DMK party was in power. One of the suspected accused was the sitting MLA of the ruling party and also holding District Secretary Post in the party. The complaint came to be registered in the year 2011 after the party to which the fifth accused belongs was ousted from power. The discharge petitions filed by A-5 was dismissed by the High Court and his SLP was pending, when A-5 lost his breath. The petition filed by A-4, the CEO of SUN Pictures, after DMK party returned to power in the year 2021 was considered favourably by the High Court, in view of the compromise reported.



WEB COPY 20. Depending on the political scenario, launching of prosecution, filing of final report, if trial not commenced conducting further investigation and filing further report stating 'mistake of fact' or if trial already commenced, recalling its own witness and make them turn hostile to sabotage the criminal trial or forcing the defacto complainant to enter into compromise and get the case quashed even if the offences which are not compoundable under the Code are all not new to this Court. What is disheartening is, this attitude which was rare earlier slowing becoming a regular feature whenever politicians, who are highly connected with the political power centre are involved.

21. The case under consideration obviously fall under one of the above category. The complaint, which was registered in the year 2011, after completion of investigation, reached the Court for taking cognizance in the year 2015. Even after 8 years, the trial not yet commenced. The fact which is crystallized after investigation indicates that A1 and A2, without consent of other two Directors of the company had entered into MoU with the defacto complainant and received substantial part of sale consideration from the complainant. The shares could not be transferred to the defacto complainant in



view of alleged forgery. The dishonest intention to cheat the defacto complainant by A1 and A2 is made out from the fact that the no valid consent from other two Directors were obtained before entering into the MoU with the defacto complainant on 01/05/2008. In addition, the petitioner, her husband and others with the help of the District Secretary of the Ruling Party and a Chief Executive Officer of a Media Company (Sun Pictures) who was known to be close to the ruling party, had forced the defacto complainant to cancel the MoU and execute a document based on which the property has been taken back by A1 and A2. As the result, the defacto complainant is presently left without any scope of remedy to get back his money. One Ayyappan (A-3) and J.Anbalagan (A-5) who were named as accused and facing trial had left this world to an unknown world. Their associate A-4 relieved from prosecution, in view of the so called compromise entered between him and the defacto complainant.

22. The above fact in respect of the other accused persons have no impediment to continue the prosecution against the petitioner, since charges against her are forgery, cheating and misappropriation. The defacto complainant for reason best known had compromised with A-4, after the



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political party to which A-4 once closely associated returned back to power.

Whatever be the reason, the said compromise will not inure any benefit to this accused, who along with her husband are the direct beneficiaries of the crime alleged.

23. Without adverting any further, except recording there are *prima facie* materials available for trial and the case cannot be branded as a malicious prosecution or a pure civil dispute, the Criminal Original Petition to quash the case is dismissed. Consequently, connected Miscellaneous Petition is closed.

24. The observations made are restricted to the quash petition based on the litmus test laid by the Hon'ble Supreme Court in ***State of Haryana v. Bhajan Lal reported in [1992 SCC (Cri) 426]***. There shall be no bar for the petitioner to avail these defences in the course of the trial.

31.10.2023

Index:yes
Speaking order/non speaking order
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To:

- 1.The Chief Judicial Magistrate Court, Tirupur.
2. The Inspector of Police, Crime Branch CID Tirupur.
- 3.The Public Prosecutor, High Court, Madras.



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Dr.G.JAYACHANDRAN, J.

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Delivery Order made in
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