A.Perumal Vs. 1. State Rep. By

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Court : Chennai

Decided On : Feb-23-2015

Judge : S.Vaidyanathan

Appellant : A.Perumal

Respondent : 1. State Rep. By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED :23.02.2015 CORAM THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN Crl.O.P.(MD) Nos. 8765 of 2014 and Crl.O.P.(MD) Nos. 9787, 13817, 13827, 13953, 14505 and 14230 of 2014 M.P.(MD) No.1 of 2014 Crl.O.P.(MD) No.8765 of 2014 of 2014: A.Perumal .. Petitioner Versus 1. State rep. by The Director General of Police, Mylapore, Chennai.

2. The Inspector General of Police, South Zone, Madurai.

3. The Deputy Inspector General of Police, Madurai. 4.The Superintendent of Police, Madurai District, Madurai. 5.The Inspector of Police, Checkanoorani Police Station, Madurai District 6. The Inspector of Police, CBCID, Madurai District. 7.The Inspector of Police, Koodal Pudur Police Station, Madurai District. .. Respondents PRAYER Petitions filed under Section 482 of the Code of Criminal Procedure, for a direction to the respondents as prayed for respectively therein. !For Petitioner : Mr.R.Mathiyalagan For Respondents : Mr.A.P.Balasubramani Government

Advocate (Crl. Side) *** :COMMON

ORDER

The petitions in Crl.O.P.(MD)Nos.9787, 13817, 13827, 13953, 14505 and 14230 of 2014 have been filed under Section 482 of the Code of Criminal Procedure, praying to register the case based on the complaints lodged by the respective petitioners therein.

2. The petition in Crl.O.P.No.8765 of 2014 has been filed under Section 482 of the Code of Criminal Procedure, praying to withdraw the case in Cr.No.276/2013 on the file of the 5th respondent therein and transfer the same to 6th respondent, i.e. CBCID.

3. These petitions have been moved under Section 482 Cr.P.C., praying to direct the respondent police, to register the case against the accused persons based on the complaints made by them.

4. The factual matrix of these cases is, that the accused persons mentioned in the complaints, have falsely promised and assured the complainants to provide job and believing their words, the complainants said to have made payments and after receiving the same, the accused persons, have neither fulfilled their promise in getting the job nor returned their money. Having learnt that they were cheated, the complainants have lodged their respective complaints before the concerned respondent-police and since no action has been taken by the respondent-police, they came forward with the present petitions.

5. Mr.T.S.R.Venkataraman, has been appointed as Amicus Curiae in these matters.

6. The issue involved in these matters, is whether the respondent- police can be directed to register the case as sought for in the matter where the act of the complainants in offering the money for securing the job by unlawful method itself is illegal and when the act alleged would predominantly be a civil wrong, will it constitute a criminal offence?.

7. Learned Amicus Curiae would submit that though the contract in offering the money by the complainant for securing the job by unlawful method itself is illegal and when the act alleged would predominantly be a civil wrong, still constitute a criminal offence inasmuch as, the ingredients of Sections 415, 420 IPC are made out, the respondent-police are duty bound to register the case and investigate the same. He has enunciated the case law on the subject and the various news items regarding the fake recruitment scams taking place in the country.

8. Section 23 of IPC denotes ?.wrongful gain?., which means, gain by unlawful means of property to which the person losing it is not legally entitled. Section 24 of IPC denotes ?.Dishonestly?., which means, whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing ?.dishonestly?.. Section 25 of IPC denotes ?.Fraudulently?., which means, a person is said to have ?.reason to believe a thing, if he has sufficient cause to believe that thing but not otherwise. Section 40 of IPC denotes ?.offence?., which means, a thing made punishable by the Indian Penal Code. Therefore, whoever commits a thing by which, he gains wrongfully or with intention to cause wrongful loss to another and act in a fraudulent manner, will within the purview of the provisions as mentioned above under the Indian Penal Code and he is liable to be prosecuted accordingly.

9. Section 415 of IPC has defined the meaning of ?.Cheating?. and it reads as under: ?.415. Cheating.?.Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to ?.cheat?.. Explanation.?.A dishonest concealment of facts is a deception within the meaning of this section.

10. Section 417 of IPC provides the punishment for cheating, which is defined in Section 415, I.P.C. and it reads as under:

417. Punishment for cheating- Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

11. Section 420, I.P.C. deals with cases of cheating and dishonestly inducing delivery of property, which reads as under:

420. Cheating and dishonestly inducing delivery of property.?.Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

12. While analyzing the above provisions, the ingredients therein to the present case, wherein, the complaint was lodged by the complainant, alleging that they were cheated by the accused under the guise of providing the employment, this Court is of the view that a cognizable offence is made out to proceed against the accused person since the ingredients under the above sections are made out.

13. It is the specific allegation of the complainant that the accused person having received the money by making a promise that he would provide job, however, later committed breach of trust and thereby, fraudulently and dishonestly induced him since he did not provide any job nor returned the money.

14. In order to hold a person guilty of cheating as defined under Section 415 IPC, it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise with an intention to retain the property. In other words, section 415 IPC which defined cheating, requires deception of any person (a) inducing that person to, (i) to deliver any property to any person, or (ii) to consent that any person shall retain any property, or (b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person, anybody?.s mind, reputation or property.

15. Therefore, making false promise by the accused person by assuring that he would get job to the complainant on payment of amount itself establish the ingredient that at the time of making the promise, he had fraudulent and dishonest intention to deceive the complainant and to get gained wrongfully. Therefore, when the ingredients of the cognizable offences punishable under the Indian Penal Code prima facie are made out, it is the bounden duty of the Investigating Officer to register the complaint and proceed with the investigation.

16. Chapter XII of the Code of Criminal Procedure, 1973 relates to ?.Information to the Police and Their Powers to Investigate?.. Section 154 reads as follows: ?.154. Information in cognizable cases.?.(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. (2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant. (3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.?. Section 156 deals with ?.Police officer?.s power to investigate cognizable cases?. and the same reads as follows: ?.156. Police officer?.s power to investigate cognizable case.?.(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII. (2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

17. A reading of the above, it is clear that whenever any information is received by the police about the alleged commission of offence which is a cognizable one, there is a duty to register the FIR.

18. In ?.Aleque Padmasee and Others versus Union of India and others?. reported in (2007) 6 SCC171 a three-Judge bench of the Hon?.ble Supreme Court, while referring to the judgment in the case of ?.Ramesh Kumari v. State (NCT of Delhi) and Others (2006) 2 SCC677in paragraph 2 of the judgment, has observed as under:- "Whenever cognizable offence is disclosed the police officials are bound to register the same and in case it is not done, directions to register the same can be given."

19. It would be useful to refer to the judgment of the Supreme Court in the case of ?.Lalita Kumari v. Government of Uttar Pradesh & Others?. reported in (2014) 2 SCC1 The Constitution Bench of the Supreme Court noted the provisions of Sections 154, 155, 156 and 157 of the Cr.P.C. and considered whether it is mandatory for a police official to register an FIR on receipt of information disclosing an offence. While deciding the issue, the Supreme Court has referred to its earlier pronouncements and ultimately held as under in para 120:

"20. In view of the aforesaid discussion, we hold: i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation. ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not. iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In caseswhere preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further. iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence. v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence. vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under: a) Matrimonial disputes/ family disputes b) Commercial offences c) Medical negligence cases d) Corruption cases e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry. vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry. viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

20. Having regard to the above settled legal principles and in view of the facts and circumstances, this Court of the considered view that the Police Officer is duty bound to register the case based on the complaints lodged by the aggrieved persons, who were cheated by the accused and proceed with the investigation.

21. The very term ?.unemployment?. will sound the death knell for the future of the youth of this nation. Every individual would like to stand on his own legs to avert the reverberations of the said word ?.unemployment?.. Such untiring pursuit for employment by the youth is taken advantage of by certain sections.

22. It is unfortunate that, now-a-days, everywhere in the country, bogus manpower consultant agencies and fake recruitment agencies are mushrooming with the main illegal object of luring the unemployed youth with employment in government sectors as well as in foreign countries. The youth too, without knowing the hidden agenda, are falling prey to such temptations of lucrative jobs and paying huge

amounts even by selling the properties held by their families or availing loans from financial institutions with high rate of interest. While in some cases, the consultancies or agencies would disappear overnight with the amount collected from the victims, in some other cases, they used to issue fake appointment letters to the victims, who would know about the fraud played on them only at the time of joining the post. If ultimately, he is cheated, his entire future will be in peril and it is not easy to restore normalcy in life by overcoming from the situation. In my firm view, these white-collar crimes, which have drastic effects, should be dealt with iron hands and severe punishment should be awarded to the culprits. The innocent persons who, later realized that they were cheated, used to approach the concerned police only and ventilate their grievances by lodging the complaints and request to apprehend the persons and recover the amount.

23. Of-course, this Court is well aware of the legal proposition that the case of breach of trust or cheating are both a civil wrong and a criminal offence and where the act alleged would predominantly be a civil wrong, such an act does not constitute a criminal offence. However, considering the peculiar circumstances narrated above, wherein, the ingredients of the criminal offences are made out, this Court is of the view that it is the bounden duty of the police officer to register the case and investigate the matter. It is to be noted that already, the innocent complainants have lost their money and became the victims having been cheated and this would itself a punishment and a good lesson for them. As already stated above, the culprits who are indulged in these white-collar crimes should be dealt with iron hands and severe punishment should be awarded to them.

24. However, considering the gravity of the offence, which is having nation wide ramification, this Court is of the considered view that this is a fit and exceptional case wherein, the investigation can be ordered to be conducted by the CB-CID.

25. Accordingly, these Criminal Original Petitions are allowed. The concerned respondent-police are directed to register the case based on the complaints lodged by the petitioners, within a period of four weeks from the date of receipt of copy of this order and thereafter, to handover all the records of the cases to CB-CID, Chennai within two weeks thereafter. On receipt of the same, the CB-CID is

directed to investigate all aspect of the case and file a report before the concerned Court having jurisdiction, within a period of six months from the date of taking over of the investigation from the respondent police. This Court also direct the respondent police to cooperate with the CB-CID in conducting the investigation. For the service rendered by the learned Amicus Curiae, this Court would place its appreciation towards his assistance on record. Suk 23-02-2015 S.VAIDYANATHAN,J suk Crl.O.P.(MD) Nos. 8765,9787, 13817, 13827, 13953, 14505 and 14230 of 2014 M.P.(MD) No.1 of 2014 23.02.2015