

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2015

CORAM:

THE HON'BLE MR.JUSTICE R.S.RAMANATHAN

CRL.O.P.No.3294 of 2015

S.Arumugam

.. Petitioner

Vs.

State rep. by
The Inspector of Police,
V-6, Kolathur Police Station,
Chennai - 600 099.

.. Respondent

Criminal Original Petition filed under Section 482 Cr.P.C., to direct the respondent to register the case on the complaint dated 05.04.2014 according to law.

For Petitioner : Mr.R.Balasubramanian
For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

O R D E R

This petition has been filed under Section 482 of Criminal Procedure Code seeking direction upon the respondent to register the case on the complaint dated 05.04.2014 according to law.

2. It is submitted by the learned counsel for the petitioner that the complaint discloses offences punishable under Section 420 of IPC and essential ingredients of cheating has been stated and relied upon the Judgment of the Hon'ble Supreme Court reported in 1999 CRI. L.J. 1833 (Rajesh Bajaj Vs. State NCT of Delhi and Others) and 2000 CRI.LJ. 1487 (M/s Medehl Chemicals and Pharma Pvt., Ltd., Vs. M/s Biological E.Ltd., and others) in support of his contention.

3. According to me, a reading of the complaint does not disclose any ingredient of offence punishable under Section 420 and they did not satisfy the requirement of Section 415 of IPC. It is stated in the complaint that the complainant/petitioner believed the accused when the accused told the complainant that he would construct a single bed room flat for Rs.20,00,000/- (Rupees twenty lakhs only) and requested the complainant to pay Rs.10,00,000/- (Rupees ten lakhs

only) as advance and the complainant also gave that amount with the intention that the same could be given to his daughter at a later point of time.

4. According to the complainant/petitioner on 30.01.2014, a sum of Rs.10,00,000/- was paid as advance and when he demanded the receipt, the accused told that the complainant was a working partner and therefore, there was no necessity for giving receipt. Thereafter, accused constructed building and when the complainant asked him to deliver the house and execute a sale deed, the accused gave promise that he would register the sale deed during the 1st week of March, 2014. However, when the complainant went to the property, he came to know that even on 05.03.2014, the apartments were purchased by various persons and when he questioned the accused, he was asked to come to his place on 01.04.2014 and thereafter, he was threatened by various persons and therefore, a case has to be registered against the accused for having committed offence under Section 420 IPC.

5. A reading of the above complaint would make it clear that there was no allegation that on the date of payment of Rs.10,00,000/-, the accused had fraudulent or dishonest intention to deceive the complainant and with that intention he made the complainant to part with Rs.10,00,000/- (Rupees ten lakhs only).

6. In the Judgment reported in 1999 CRI. L.J. 1833 (Rajesh Bajaj Vs. State NCT of Delhi and Others) the Hon'ble Supreme Court has held that it is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent and if factual foundation for the offence has been laid in the complaint the Court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details. It is further held that the crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not. The facts of that reported case were that there was inducement by the accused and the respondent believed that the accused would honour payment on receipt of invoices, and that the complainant realised later that the intentions of the respondent were not clear. It was also mentioned that the respondent after receiving the goods have sold them to others and did not pay money. With all these facts, the Hon'ble Supreme Court held that ingredients of Section 415 was made out.

7. As stated supra in this case, there was no allegation in the complaint that there was inducement by the accused which made the petitioner/complainant to make payment. Further, no material was

furnished by the complainant regarding the payment of Rs.10,00,000/- except the oral statement.

8. Similarly, the Hon'ble Supreme Court in the Judgment reported in 2000 CRI.LJ. 1487 (M/s Medehl Chemicals and Pharma Pvt., Ltd., Vs. M/s Biological E.Ltd., and others), the relevant paragraph no. 4 is extracted as follows:-

...4. The factual score depict that the respondents approached the petitioner for the purpose of securing Ethambutol Hydrochloride drug in bulk for sale and use in various pharmaceutical drugs and products being manufactured by the respondent-Company. It is at this juncture that the petitioner has come out with a definite case that by reason of a promise of maintaining continuous supply of raw materials to the respondents herein for the purpose of manufacturing Ethambutol Hydrochloride and in such a way so as not to cause any interruption or hindrance to the manufacturing activity of the complainant's factory, the Complainant-petitioner entered into an agreement dated 31st August, 1997, which inter alia records as below:-

"It is the responsibility of the party of the 2nd part to maintain sufficient inventory of the raw materials as described in the Annexure-I in order to maintain consistent supplies to the manufacturer and not to cause any interruption/hindrance with the manufacturing activity by the manufacturer. "

9. Having regard to the facts as stated above, the Hon'ble Supreme Court has held that it cannot be said that ingredients of offences under Sections 415, 418 and 420 cannot be said to be totally absent on the basis of the allegation raised in the complaint.

10. As stated supra, in this case, no proof has been produced by the petitioner/complainant for having paid the amount and even according to the complainant, there were earlier transactions and the accused had received the money, repaid the same and later, according to the complainant, the accused informed that he was constructing a single bed room flat for Rs.20,00,000/- and received Rs.10,00,000/- but there was no allegation that he was induced by the promise made by the accused and paid Rs.10,00,000/-. In the absence of any inducement by the accused, which prompted the petitioner to pay the amount, which are essential ingredients of Section 415 of IPC, it

cannot be stated that the case has been made under Section 420 IPC, hence the complaint does not disclose any criminal offence and the Criminal Original Petition is dismissed.

ssd

-s/d-

Assistant Registrar (CS-II)

Dt:18/2/2015

True Copy

Sub-Assistant Registrar

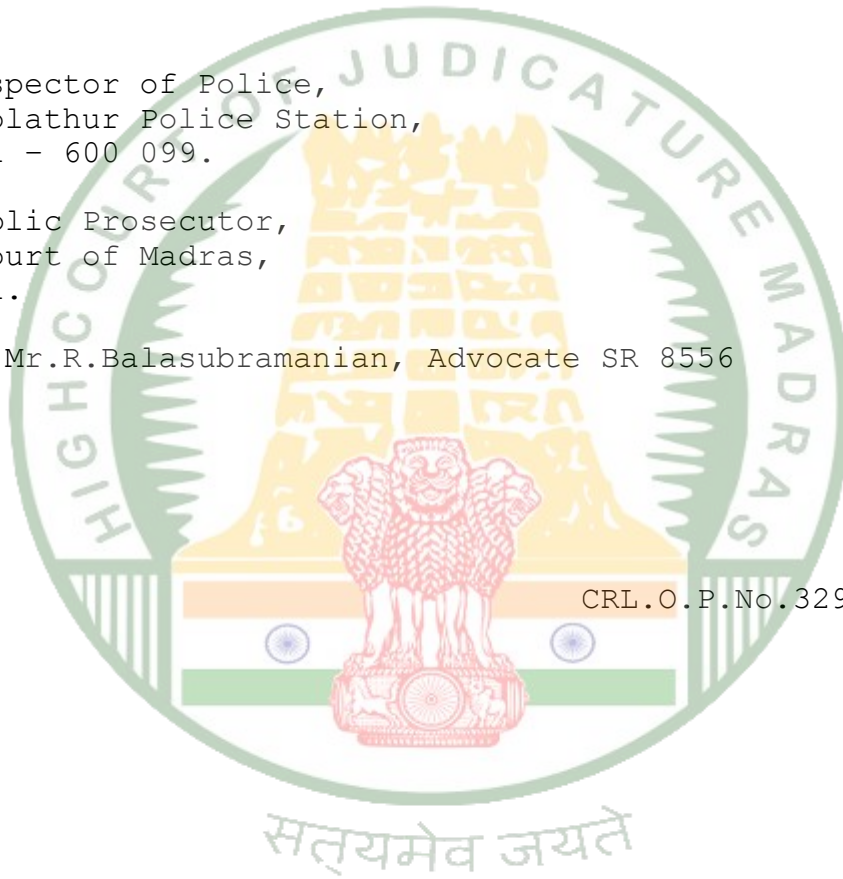
To

1. The Inspector of Police,
V-6, Kolathur Police Station,
Chennai - 600 099.

2. The Public Prosecutor,
High Court of Madras,
Chennai.

+ 1 cc to Mr.R.Balasubramanian, Advocate SR 8556

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