IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.06.2015
DELIVERED ON: 26.06.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. Nos.11359, 29651, 11358 and 32152 of 2013
and
M.P.Nos.1 to 7 of 2015

Sanjeev Narula ...Petitioner in Crl.O.P.11359/2013(A1)

1.Aman
2.Seemapuri ...Petitioners in Crl.O.P.29651/2013(A6 & A4)

Arun Jain ...Petitioner in Crl.O.P.11358/2013(A3)

Seemapuri ...Petitioner in Crl.O.P.32152/2013(A4)

Vs

1.State rep by
The Inspector of Police
District Crime Branch
Tiruppur
Tiruppur District ... R1 in Crl.O.P.Nos.11359/2013 & 11358/2013(Complainant)
(Crime No.4 of 2013)

1.Inspector of Police
Central Crime Branch
Tirupur. ... R1 in Crl.O.P.Nos.29651/2013 & 32152/2013(Complainant)

2.M.P.Suresh Kumar ... R2 in all Crl.O.Ps.(Defacto Complainant)

Crl.O.P.No.11359 and 11358 of 2013: These petitions have been filed under Section 482 Cr.P.C., to call for the records pertaining to Crime No.4 of 2013 on the file of the respondent police and quash the same, so far as the petitioners/accused, are concerned.

Crl.O.P.No.29651 and 32152 of 2013: These petitions have been filed under Section 482 Cr.P.C., to call for the records of the case pending investigation by the first respondent police in Cr.No.4 of 2013 on the file of the Inspector of Police, Central Crime Branch, Tiruppur and quash the same in so far as the petitioners are concerned.

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For Petitioner in Crl.O.P.No.11359 of 2013	:	Mr.D.M.Bhalla for Mr.E.K.Kumaresan
For 1st petitioner in Crl.O.P.29651/2013	:	Mr.G.P.Puhazh Gandhi
For 2nd petitioner in Crl.O.P.29651/2013	:	Mr.E.K.Kumaresan
For Petitioner in Crl.O.P.No.11358 of 2013	:	Mr.E.K.Kumaresan
For petitioner in Crl.O.P.No.32152/2013	:	Mr.G.P.Puhazh Gandhi
For R1 in all Crl.O.Ps.	:	Mr. C. Emalias, Addl.Public Prosecutor
For R2 in all Crl.O.Ps.	:	Mr.A.Ramesh SC for Mr.K.V.Muthuvisakan

COMMON ORDER

These petitions have been filed to call for the records pertaining to Crime No.4 of 2013 on the file of the respondent police and quash the same.

2. Though the FIR in this case has been registered on the complaint given by one M.P.Suresh Kumar, there are about 26 victims, all of whom have been cheated to a tune of Rs.32,30,35,220/- by the accused herein.

3. It is the case of the defacto complainant and the victims that, they are small time manufacturers of hosiery items in Tiruppur. During March 2011, one Aman claiming to be the local Branch Manager of M/s Lilliput Kidswear Ltd of New Delhi, placed huge orders with the victims for the manufacture and supply of hosiery items. It was represented by Aman that, Sanjeev Narula [A1/petitioner in Crl.O.P.No.11359/2013] is the Managing Director of the said Company and that, they have a chain of retail stores throughout India and that the payments will be promptly made. Believing the representation, the local manufacturers despatched the items. After receiving the goods, M/s Lilliput Kidswear Ltd did not make any payment to them nor returned the goods.

a] All the manufacturers who lost their merchandise, informally formed an Association and started demanding their dues.

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M.P.Suresh Kumar, the de facto complainant went to New Delhi and when he tried to meet Sanjeev Narula between 12.03.2012 and 16.03.2012, he was prevented from meeting him by Sanjeev Narula's armed security guards, who had even intimidated Suresh Kumar. After great efforts, the victims were able to meet Sanjeev Narula, who distributed cheques to each one of them towards their individual dues, which of course bounced. Admittedly, the victims have also initiated prosecution under Section 138 of Negotiable Instruments Act against Sanjeev Narula and M/s Lilliput Kidswear Ltd. The victims also came to know that Sanjeev Narula had collected all these goods and had sold it to M/s Anand International and made money out of it.

b] In this background, one of the victims M.P.Suresh Kumar lodged a police complaint on 13.03.2013, based on which a case in Cr.No.4 of 2013 for offences under Sections 406, 420 and 506(i) IPC was registered by the respondent police and the matter is under investigation. Sanjeev Narula and the other accused approached this Court in Crl.O.P.No.11912 of 2013 for anticipatory bail. During the hearing of the anticipatory bail application, Sanjeev Narula came forward to pay 30% of the total outstanding amount to each victim. This Court recorded this offer and granted all the accused anticipatory bail on 19.08.2013 on condition that, the accused shall settle 30% of the outstanding loan amount to the victims in two instalments.

c] After availing of pre-arrest bail, Sanjeev Narula and his group did not adhere to the commitment given to this Court and approached the Hon'ble Supreme Court in SLP (Crl)No.8558 -8559 of 2013. The petition filed by them before the Supreme Court was withdrawn by the accused on 01.11.2013 for reasons best known to them. Thereafter, suppressing all this, they filed an anticipatory bail application before the Sessions Court, New Delhi, which was dismissed on 18.12.2013 and thereafter, they approached the Delhi High court in Bail Application No.2433 of 2013, where also they did not disclose the earlier order passed by this Court. The Delhi High Court also did not grant them the relief. Now the accused are before this Court challenging the very FIR as abuse of process of law.

4. Mr.D.M.Bhalla, learned counsel submitted that, there is no prima facie case made out in the complaint warranting an investigation by the police, inasmuch as according to the learned counsel, it is purely a civil transaction which has been given a criminal colour for forcing a settlement on the accused. In support of this argument, he relied upon the following judgments of the Hon'ble Supreme Court:

1. M.A.A.Annamalai v. State of Karnataka & another [(2010) 8 SCC 524]
2. Kolla Veera Raghav Rao v. Gorantla Venkateswara Rao

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[(2011) 2 SCC 703]

3. Wolfgang Reim & Ors v. State & another [2012 (3) JCC 2014]

5. The learned counsel submitted that since the parties have initiated prosecution under Section 138 of the Negotiable Instruments Act, criminal prosecution under Section 420 IPC is not maintainable. In support of this proposition, he relied upon the second judgment cited supra. In the said judgment, the Hon'ble Supreme Court has held that, when a person has been acquitted for an offence under Section 138 of the Negotiable Instruments Act, he cannot be prosecuted on the same set of facts for an offence under Section 420 IPC, as that would amount to double jeopardy.

6. The law of cheating is fairly well settled. For sustaining a complaint of cheating, there should be materials to show that, there was a deception at inception. Mere failure by a party, who has had pecuniary advantage in a deal, to repay the amount, will not attract the provisions of Section 420 IPC. The judgments of the Supreme Court on the aforesaid aspects are in legion and requires no further elaboration. This Court has to test the FIR on the anvil of the aforesaid proposition that has been crystallised by judicial precedents. In this case, in and around the same time, huge orders have been placed running to several lakhs of rupees with 26 manufacturers and they were required to despatch the goods to Delhi, which they admittedly did. After the goods were received by the accused, no payment was made to anyone and there was no semblance of efforts by the accused to make payment. Had it been one isolated case of such a transaction, then this Court would have had no hesitation to quash the entire FIR in the light of the law on the subject. Here, there appears to be an ingenious attempt to gather huge quantities of materials and in one stroke, not make any payment to any of them. The guilty intention of a person can be inferred from future conduct. When the victims realised that they were duped, they formed themselves into an Association and started putting pressure on the accused. In order to buy time, the accused issued cheques to the victims, which also bounced resulting in they filing prosecution under Section 138 of Negotiable Instruments Act. This conduct of the accused also further strengthens the criminal element that, from the beginning the accused did not have the intention of paying any money. The illustration (f) to Section 415 IPC reads 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."

7. Here the victims were made to believe that, if the goods are supplied they will get money, but after receiving the goods, the accused neither paid the money nor returned them their goods.

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In the FIR it is clearly stated that, the first accused has sold the goods to Anand International. Learned counsel submitted that, when once the goods have been sold to the accused, he becomes the absolute owner of it and he has every right to sell it to anyone. I am unable to persuade myself to concur with this argument because, the accused can become the owner of the goods lawfully only when the sale consideration has been paid to the seller. The conduct of the accused in getting the goods from the victims and selling it to another Company and making a gain from it, is indeed an incriminating one. The guilty intention harbored in the mind of a person never manifest at the inception, but slowly comes into the open by subsequent conduct, which are relevant under Section 8 of the Evidence Act.

8. It may be apposite to refer to the recent three Judge Bench judgment of the Apex Court in Dashrath Rupsingh Rathod vs. State of Maharashtra 2014(4) CTC 666, wherein at paragraph no.18 the Supreme Court has held as follows:

> "18. We feel compelled to reiterate our empathy with a payee, who has been duped or deluded by a swindler into accepting a Cheque as consideration for delivery of any of his property; or because of the receipt of a Cheque has induced the payee to omit to do anything resulting in some damage to the payee. The relief introduced by Section 138 of the NI Act is in addition to the contemplations in the Indian Penal code. It is still open to such a payee recipient of a dishonoured Cheque to lodge a First Information Report with the Police or file a complaint directly before the concerned Magistrate. If the payee succeeds in establishing that the inducement for accepting a Cheque which subsequently bounced had occurred where he resides or ordinarily transacts business, he will not have to suffer the travails of journeying to the place where the Cheque has been dishonoured. All remedies under the Indian Penal code and Code of Criminal Procedure are available to such a payee if he chooses to pursue this course of action, rather than a complaint under Section 138 of the NI Act. And of course, he can always file a Suit for recovery wherever the cause of action arises dependent on his choosing."

9. From the above, it is clear that a payee has remedy both under Section 138 of the Negotiable Instruments Act and to approach the police for registering an FIR for an offence under Section 420 IPC.

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10. It should be remembered that the investigation is at a very nascent stage and it should not be stifled at the threshold. The guidelines for quashing an FIR has been laid down by the Supreme Court in Bajanlal vs. State of Haryana, [AIR 1992 SC 604] and State of Bihar vs. P.P.Sharma [AIR 1991 SC 1260]. The proposition laid down in these two judgments hold good even today and all subsequent judgments, be it of the Apex Court or the High Courts, have been predicated upon this.

11. As regards the accused Seemapuri [petitioner in Crl.O.P.No.32152 of 2013], this Court finds that she had earlier filed Crl.O.P.No.29651 of 2013 along with one Aman for quashing the FIR and has independently filed Crl.O.P.No.32152/2013 for the same relief. When her counsel was confronted with this, he submitted that, it was done inadvertently and that this was also brought to the notice of this Court as could be seen in the cause title of the order dated 21.03.2014 itself. This Court accepts the explanation offered by the learned counsel for Seemapuri. It is the contention of Seemapuri that, she had resigned from the Directorship of M/s Lilliput Kidswear Ltd. as early as 30.06.2010 and that, there are no specific allegations against her in the FIR. There is some force in this submission of the learned counsel for Seemapuri.

12. On a careful scrutiny of the FIR, there are no serious allegations against Seemapuri and vicarious liability under the Indian Penal Code cannot be fastened on her. Accordingly, the FIR in Cr.No.4 of 2013 as against Seemapuri is quashed and Crl.O.P.No.32152 of 2013 is allowed. Since there are sufficient materials against Sanjeev Narula, Arul Jain and Aman, the petitions in Crl.O.P.Nos.11359 of 2013 and 11358 of 2013 are dismissed. In Crl.O.P.No.29651 of 2013 which has been filed by Aman and Seemapuri, Seemapuri's name stands deleted and the petition as against Aman stands dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

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Sub Assistant Registrar

gms

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To

1.The Inspector of Police
  District Crime Branch
  Tiruppur
  Tiruppur District.

2.Inspector of Police
  Central Crime Branch
  Tiruppur.

3.The Public Prosecutor
  High Court, Madras.

+2cc's to Mr.K.V.Muthu Visakkan, Advocate, S.R.No.31417 & 31416

Crl.O.P. Nos.11359, 29651,
11358 and 32152 of 2013

GP(CO)
CA(21/07/2015)

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