

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 600 of 2016**

Vinod Verma S/o Kailashchand Verma, aged about 44 years, R/o House No. 49/9, Avanti Vihar, Talibandha, Raipur, Chhattisgarh.

---- Petitioner**Versus**

1. Amit Gupta S/o Tarashankar Kaithwas, aged about 42 years R/o 7/135, Vidyadhar Nagar, Jaipur, Rajsthan Factory address - Daisa, Transformer Pvt. Ltd. G-37 & G-37a Road No. 18, V.K.I. Area, Aker, Dungar, Japur, Rajsthan.
2. Tarashankar Kaithwas S/o Not Known R/o 7/135, Vidyadhar Nagar, Jaipur, Rajsthan Factory Address - Daisa, Transformer Pvt. Ltd. G-37 & G-37a Road No. 18, V.K.I. Area, Aker, Dungar, Japur Rajsthan.
3. State of Chhattisgarh through District Magistrate, Raipur, Chhattisgarh.
4. Superintendent of Police, Raipur, Distt. Raipur, Chhattisgarh.
5. Station House Officer, Police Station Telibandha, Raipur, District Raipur, Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Sayed Imtiaz Ali, Advocate
For Respondents/State	:	Smt. M. Asha, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****17/06/2016**

Challenge in the instant petition is the order dated 18.05.2016 passed in Criminal Revision No.352/2015 by the Special/Additional Sessions Judge, Raipur whereby the Sessions Judge has upheld the order dated 11.09.2015 passed by the Judicial Magistrate First Class, Raipur in an unregistered case filed by the petitioner against the respondents 1 & 2.

2. The factual matrix of the case necessary for deciding the present petition is that the petitioner is said to have engaged in the business of manufacturing of transformers in the name of V. K. Engineering having its head office at Raipur. It is said that the respondents 1 & 2 who are the

authorized persons on behalf of the Dausa Transformer Pvt. Ltd., Jaipur, Rajasthan and the office of the petitioner agreed to purchase transformers from petitioner's firm. From 25.02.2014 to 19.03.2014, the respondents 1 & 2 took delivery of five transformers from the petitioners valuing Rs.51,39,576 on the basis of mutual agreement between them. The respondents 1 & 2 are said to have paid money to the petitioner in installments firstly Rs.1,50,000 on 29.03.2014 and Rs. 13,00,000 on 07.06.2014. The respondents 1 & 2 later on provided a cancelled cheque of Rs. 11,71,800 to the petitioner without there being any name and date on it. Thereafter it is said that the petitioner made considerable correspondence and talk with the respondents 1 & 2 for clearing the balance dues. However, the respondents 1&2 did not clear the dues and therefore the petitioner filed an application under Section 156 (3) of Cr.P.C. before the JMFC, Raipur for registering a complaint against the respondents 1 & 2 for the offence under Section 420 of IPC.

3. The learned JMFC taking into consideration the entire averments put forth by the petitioner/complainant reached to the conclusion that it was purely a contractual transaction between the parties wherein the part compliance of the the contract seems to have been undertaken in as much as there is an admission on the part of the petitioner of having provided transformers five in number to the respondents. It was further held that as per the petitioner himself he has received an amount of Rs.14,50,000 and there is an outstanding dues of Rs. 36,89,576 yet to be recovered from the respondents 1 & 2 for which the petitioner filed the application under Section 156 (3) CrPC for registering a complaint against the respondents for the offence under Section 420 of IPC. Considering all these facts, the Court below vide its order dated 11.09.2015 rejected the claim of the petitioner holding it to be a dispute of purely civil nature where the allegations levelled fall within the category of breach of contract.

4. This order dated 11.09.2015 was challenged in a revision registered as Criminal Revision No.352/2015. The Revisional Court also took the same stand after perusing the entire submissions and contentions of the petitioner and reached to the conclusion that the entire dispute reflects to be of purely civil in nature and it is a case where there was a contractual transaction between the two parties and one of the parties is said to have committed breach of contract. Accordingly, Revisional court also rejected the criminal revision preferred by the petitioner.

5. Counsel for the petitioner submits that a perusal of Section 420 IPC would reveal that the ingredients as required for constitution of an offence under Section 420 IPC is made out against the respondents 1 & 2 and the two Courts below have committed an error of law in not registering a case against them under Section 420 IPC.

6. However, a perusal of the provisions of Section 420 IPC would show that the present nature of transaction which has been undertaken between the petitioner and respondents 1 & 2 does not show that the respondents 1 & 2 had in any manner induced the petitioner for delivering of any property. Rather it was a case of purely commercial transaction between the purchaser and a seller wherein the seller i.e. the present petitioner sold his transformers after making negotiation with the respondents 1 & 2 with a clear understanding on the mode of payment. All these submissions clearly indicate that it is not a case which would fall within the ambit of an offence under Section 420 of IPC. Thus, in the opinion of this Court, the two courts below have not committed any illegality or error of law in rejecting the application under Section 156 (3) of Cr.P.C.

7. The Supreme Court in the case of G. Sagar Suri and Another Vs. State of U.P. And Others reported in (2000) 2 SCC 636 in paragraph 8 held as under:

“Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.”

8. Similarly, in the case of Indian Oil Corpn. Vs. NEPC India Ltd. and Others reported in (2006) 6 SCC 736 the Supreme Court in paragraph 13 held as under:

“While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.”

9. Recently again relying upon the above judgment the Supreme Court in some what an identical situation as that of the present petitioner in the case of Binod Kumar and Others Vs. State of Bihar and Another reported in (2014) 10 SCC 663 has held that civil liability cannot be converted to criminal liability and the same would amount to abuse of process of court. Criminal proceedings are not shortcut for other remedies. The mere fact that the appellants did not pay the balance money to the complainant does not amount to Criminal breach of trust.

10. Accordingly, the present Cr.M.P. being devoid of merit deserves to be and is rejected.

11. However, reluctance of this Court should not come in the way of the petitioner while availing other legal remedies under the other provisions of law.

**Sd/-
(P. Sam Koshy)
JUDGE**