

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 21.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.O.P.No.20207 OF 2010 &

M.P.No.1 of 2010

Sripal Jain .. Petitioner/Accused

versus

1. State represented by
the Inspector of Police,
Central Crime Branch,
Chennai Suburban Police,
St.Thomas Mount,
Chennai-600 016.

2. Bhawarlal Choudry ... Respondents/Complainant/Defendant

Prayer: This petition is filed under Section 482 Cr.P.C.,
praying to call for the records in Crime No.37 of 2010 on the
file of the Inspector of Police, Central Crime Branch, Chennai
Suburban Police, St.Thomas Mount Chennai-600 016 and quash the
same.

For Petitioner : Mrs.Vedavallikumar
For Respondent No.1 : Mr.C.Emalias,
Addl.Public Prosecutor
For Respondent No.2 Mr.P.Krishnan

ORDER

This petition is filed, praying to call for the records in
Crime No.37 of 2010 on the file of the Inspector of Police,
Central Crime Branch, Chennai Suburban Police, St.Thomas Mount
Chennai-600 016 and quash the same.

2. For the sake of convenience, the parties will be referred
to their names.

3. M/s.Surana Industries Limited, represented by Mr.Bhawarlal Choudry, lodged a complaint with the respondent police, based on which, a case in Crime No.37 of 2010 was registered on 19.03.2010 for the offences under Sections 406 and 420 IPC against Mr.Sripal Jain, the petitioner herein. Challenging the same, Mr.Sripal Jain is before this Court, seeking to quash the same.

4. Heard the learned counsel appearing for Sripal Jain and the learned Addl.Public Prosecutor for respondent No.1.

5. The allegations and averments made in the complaint by Mr.Bhawarlal Choudry, are extracted follows:

"...Sri Sripal Jain, Proprietor of M/s.Khushi Enterprises came to our office in the month of January, 2009 approached and expressed his willingness to do business with Surana Industries Ltd. For supplying Ferro alloys, Iron ore and buying Sponge Iron, he informed that he already supplied several tons of Iron ore and Ferro Alloyes to several industries. He placed orders to supply of sponge Iron to us and promised to supply Iron ore to Surana Industries. He induced us to supply the sponge Iron to him and he also promised to supply Iron ore materials to Surana Industries Ltd. Sri Sripal Jain entered into two transactions on 23.1.2009 and 30.1.2009 by supplying Ferro Alloys value Rs.2,70,266/- and Rs.12,06,862/- respectively to Surana Industries Ltd. Believing his two transactions and his representation, we accepted his orders and supplied sponge iron to him from 2.2.2009 to 24.2.2009, we supplied 699.380 MT of sponge Iron valued Rs.1,05,21,145/- for the supplied sponge Iron. Whenever we requested to repay the balance amount, he has evaded to repay with an intention to cheat us, he further threatened us to face dire consequence with intention to deceive Surana Industries Ltd., Sri Sripal Jain fraudulently and dishonestly induced us to supply materials (Sponge Iron) Mr.Sripal Jain and others approached Surana Industries Ltd and took delivery of materials worth about Rs.1,05,21,145/-. Simultaneously Mr.Sripal Jain failed supply of Iron ore to Surana Industries Ltd., Mr.Sripal Jain and others failed to keep the representation, did not repay the balance amount of Rs.97,75,945/-. Mr.Sripal Jain falsely pretending to supply the Iron ore to Surana Industries Ltd., thus he cheated Surana Industries Ltd. ..."

6. A reading of the above, it is crystal clear that there were business dealings between M/s.Surana Industries Limited and M/s.Khushi Enterprises, under which, M/s.Khushi Enterprises agreed to supply Iron Ore and in turn, M/s.Surana Industries Ltd. had agreed to supply sponge iron. In such business transaction, according to Bhawarlal, M/s.Khushi Enterprises failed to repay a sum of Rs.97,75,945/-.

7. Learned counsel appearing for Bhawarlal would submit that having promised to pay the amount due, Sripal Jain, has failed to repay the same with an intention to cheat Surana Industries and out of the total outstanding, Sripal Jain is still due for a sum of Rs.13,00,000/- for which, Khushi Enterprises issued a post-dated cheque, however, later, they issued stop payment order to the bank and therefore, the FIR cannot be quashed at the threshold.

8. On the other hand, Mrs.Vedavallikumar, learned counsel appearing for Sripal Jain, would contend that of the total outstanding of Rs.1,05,21,145/- M/s.Khushi Enterprises had repaid Rs.5,47,726/- in excess and after noticing the same, they issued order to stop payment to the bank. She would further contend that it is only a civil transaction and there is nothing in the complaint to show that there was fraudulent and dishonest inducement by M/s.Khushi Enterprises to M/s.Surana Enterprises and as such, the ingredients of Section 420 IPC being absent, the proceedings should be quashed.

9. Heard the learned counsel appearing for both sides and the learned Addl.Public Prosecutor.

10. In order to maintain a prosecution against the accused person under Section 420 IPC, there should be deception/misrepresentation and fraudulently or dishonestly inducement of any person to deliver any property, which are miserably missing in the complaint lodged by Bhawarlal against M/s.Khushi Enterprises. The only allegation made in the complaint against Sripal Jain is that having promised to repay the amount due, he has not paid the amount with an intention to cheat Bhawarlal. A mere failure to keep up promise subsequently, cannot be presumed as an act of cheating. Therefore, in the considered view of this Court, the FIR does not disclose any cognizable offence.

Accordingly, the Criminal Original Petition is allowed and the FIR in Crime No.37 of 2010 on the file of the first respondent, is hereby quashed. Connected Mp.No.1 of 2010 is Closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

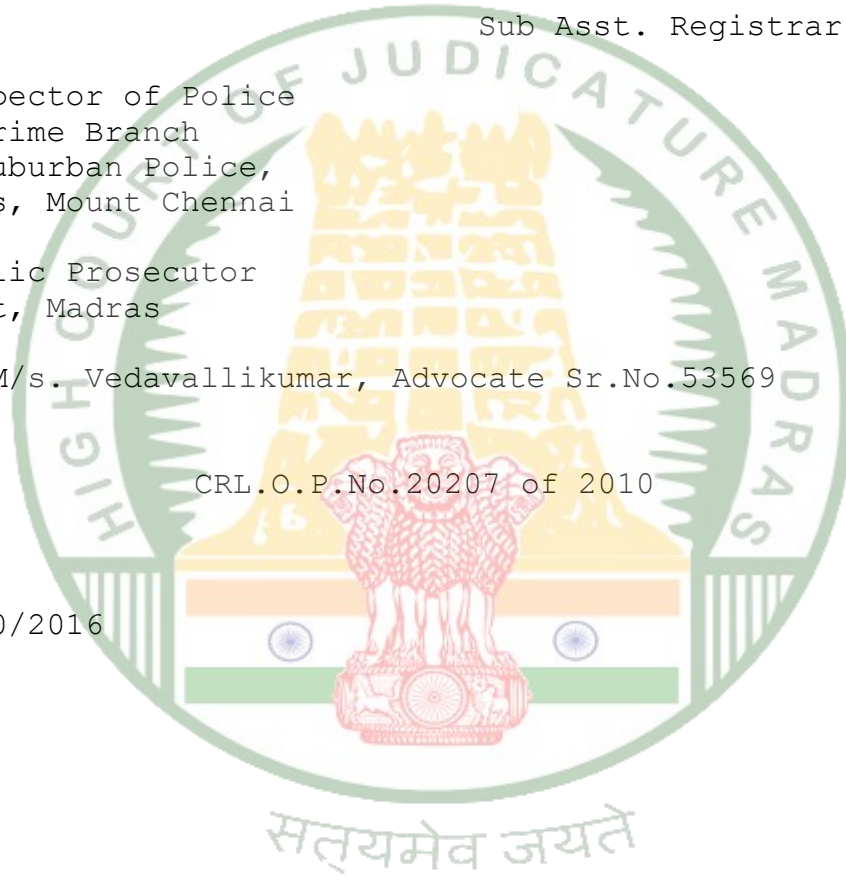
To
1 The Inspector of Police
Central Crime Branch
Chennai Suburban Police,
St. Thomas, Mount Chennai

2 The Public Prosecutor
High Court, Madras

+1 CC to M/s. Vedavallikumar, Advocate Sr.No.53569

CRL.O.P.No.20207 of 2010

RK (CO)
MD : 20/10/2016



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