

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 12.07.2016

PRONOUNCED ON: 15 .07.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Cr1.O.P. No.9088 of 2013

Paul F. Morris

Petitioner

vs.

1 State represented by
Inspector of Police
F-1, Chintadripet Police Station
Arunachala Naicken Street
Anna Salai
Chennai - 600 002

2 Eravikumar
Managing Director of Five Star
Marine Exports Pvt. Ltd.
having office at No.70 (Old No.35)
Venkatesa Street
Chintadripet
Chennai - 600 002

Respondents

Criminal Original Petition filed under Section 482, Cr.P.C. to call for the records pertaining to Crime No.108 of 2013 on the file of the first respondent, F1, Chintadripet Police Station, Chennai and to quash the same.

For petitioner Mr. P.H. Manoj Pandian
for M/s. AVV Partners

For R1 Mr. C. Emalias,
Addl. Public Prosecutor

For R2 Mr. C. Saravanan

ORDER

This Criminal Original Petition has been filed to call for the records pertaining to Crime No.108 of 2013 on the file of the first respondent police and to quash the same.

2 The Managing Director of M/s. Five Star Marine Exports Private Ltd. (hereinafter would be referred to as "de facto complainant") filed a private complaint in CrI.M.P. No.276 of 2013 before the XIV Metropolitan Magistrate, Egmore, Chennai against Paul F. Morris, President of M/s. Sea Wealth Products Inc. and others (hereinafter would be referred to as "accused") alleging offences under Sections 406 and 420 IPC. The XIV Metropolitan Magistrate, Egmore, Chennai referred the complaint under Section 156(3) Cr.P.C. to the first respondent police, pursuant to which, a case in Crime No.108 of 2013 was registered on 03.02.2013 for offences under Sections 406 and 420 IPC, challenging which, one of the accused, Paul F. Morris, is before this Court.

3 Heard the learned counsel for the accused, the learned Additional Public Prosecutor appearing for the first respondent and the learned counsel for the de facto complainant.

4 The learned counsel for the accused submitted that the complaint which forms the basis of the First Information Report does not even disclose the commission of a cognizable offence and that a purely civil transaction has been given a criminal colour by the de facto complainant, which allegation is strongly refuted by the learned counsel for the de facto complainant.

5 In support of their respective contentions, both sides relied upon several decisions of the Supreme Court. The law governing exercise of powers under Section 482, Cr.P.C. for quashing a First Information Report is no longer res integra and has been settled by the Supreme Court in State of Haryana vs. Bhajan Lal, which is a locus classicus on the subject and holds the fort even today.

6 It is the contention of the learned counsel for the accused that the First Information Report does not even disclose the commission of a cognizable offence and that the case falls within the ambit of paragraph 102 (1) and (3) of Bhajan Lal's case which read as under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an

exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;"

7 Per contra, the learned counsel for the de facto complainant relied on the following judgments:

i Delhi Development Authority vs. Skipper Construction Co. (P) Ltd. and another, [(1996) 4 SCC 622]

ii Rajesh Bajan vs. State NCT of Delhi and others, [(1999) 3 SCC 259]

iii Trisuns Chemical Industry vs. Rajesh Agarwal and others, [(1999) 8 SCC 686]

iv Mohammed Ibrahim and others vs. State of Bihar and another, [(2009) 8 SCC 751]

v Arun Bhandari vs. State of Uttar Pradesh and others, [(2013) 2 SCC 801]

vi Ganga Dhar Kalita vs. State of Assam and Others, [(2015) 9 SCC 647]

8 In order to appreciate the rival contentions, it may be necessary to extract the following averments in the First Information Report:

"4. The petitioner has supplied consignments of frozen shrimps to the 1st named person in respect of which the 1st named person had not made payments after taking delivery of the same. The 2nd named person is the President of the 1st named person and the 3rd named person is the Manager of the 1st named person in India.

5. The petitioner has been exposed to a total loss of Rs.2,50,55,879.65 (mentioned as

Rs.2.57.06.875 in the) on account of the fraud played by the above named person.

6. Repeated purchase orders were placed with a view to build confidence in the mind of the petitioner to make it seem as if they were serious about developing business with petitioner, when indeed they wanted to trap the petitioner.

7. The above named person have been dodging payment for last six months despite repeated call and reminders. Details of respective purchase order in respect of which payments are due are as follows:

(The purchase order and payment due details are omitted)

8. As against the 1st ten consignment, the 1st named person has to pay the petitioner a sum of Rs.46,90,926/- (US \$ 86869). Apart from the above amount, the petitioner has been made to incur banking and other charges by its banker on account of the failure of the 1st named person to make payment to it. Thus, a sum of Rs.48,32,617 is due from the 1st named person.

9. As against 12th consignment, no amount has been paid by the 1st accused despite taking delivery on account of this, petitioner is entitled to 1,13,17,464.65. apart from the above amount, the petitioner has been made to incur banking and other charges by its banker on account of the failure of the 1st named person to make payment to the petitioner amounting Rs.8,15,591/-. The bank has charged on over due interest of Rs.6,67,726 to the petitioner. The petitioner has further lost export incentive of Rs.7,74,720/- from the Government of India. Thus, a sum of Rs.1,35,75,501.65 is due from the 1st named person on the said transaction.

10. Apart from the above consignment payments are also due in respect of the following two consignments which were returned as the 1st named person was not able to sell the consignments which were exported against purchase orders. Details of the consignment exported as are as follows:"

9 The summum bonum of the de facto complainant's case is that he did business with the accused from 20.12.2011 to 14.05.2012 in which, totally, 13 transactions have been catalogued. Even according to the learned counsel for the de facto complainant, of the 13 transactions, the accused made

several payments and the accused also returned two consignments covering purchase orders dated 20.12.2011 and 05.04.2012 on the ground that the de facto complainant had supplied goods of inferior quality. The grievance of the de facto complainant is that, for the tenth consignment covered by purchase order dated 05.04.2012, the accused had not paid the amount and therefore, an offence of cheating has been made out.

10 The learned counsel for the accused placed strong reliance upon the judgment in Anil Mahajan vs. Bhor Industries Ltd. and another [(2005) 10 SCC 228], wherein, a 3 Judge Bench of the Supreme Court has held as follows:

"6. A distinction has to be kept in mind between mere breach of contract and the offence of cheating. It depends upon the intention of the accused at the time of inducement. The subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent, dishonest intention is shown at the beginning of the transaction.

8. The substance of the complaint is to be seen. Mere use of the expression "cheating" in the complaint is of no consequence. Except mention of the words "deceive" and "cheat" in the complaint filed before the Magistrate and "cheating" in the complaint filed before the police, there is no averment about the deceit, cheating or fraudulent intention of the accused at the time of entering into MOU wherefrom it can be inferred that the accused had the intention to deceive the complainant to pay. . . . "

11 The learned counsel for the de facto complainant placed strong reliance upon the following passage in the judgment in Trisuns Chemical Industry vs. Rajesh Agarwal and others [(1999) 8 SCC 686]:

"7. Time and again this Court has been pointing out that quashing of FIR or a complaint in exercise of the inherent powers of the High Court should be limited to very extreme exceptions (vide State of Haryana v. Bhajan Lal and Rajesh Bajaj vs. State of NCT of Delhi).

8. In the last referred case this Court also pointed out that merely because an act has a civil profile is not sufficient to denude it of its criminal outfit. We quote the following observations:

"10. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions."

12 The Supreme Court, in Mohammed Ibrahim and others vs. State of Bihar and another, [(2009) 8 SCC 751] which has been relied upon by the learned counsel for the de facto complainant, has struck the following note of caution:

"8. This Court has time and again drawn attention to the growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes. But, at the same time, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes. (See Sagar Suri vs. State of U.P. and Indian Oil Corporation vs. NEPC India Ltd.). . . ."

13 Bearing the aforesaid principles in mind, if the allegations in the First Information Report are analysed, it is obvious that the de facto complainant and the accused were having business transactions for over a period of time and that one transaction had unfortunately ran into rough weather, resulting in the accused not being able to pay the money to the de facto complainant. Even accepting the averments made in the complaint as true, in the considered opinion of this Court, there is no deception at inception in this case. Even according to the de facto complainant, he did business with the accused from 20.12.2011 to 14.05.2012 involving 13 transactions of which, even according to the de facto complainant, the accused had made several payments and had also returned two consignments covered by purchase orders 20.12.2011 and 05.04.2012, as they were found to be of inferior quality. Even in paragraph no.8 of the complaint, the de facto complainant has stated that as against 10 consignments, the accused has to pay a sum of Rs.46,90,926/-. The learned counsel for the de facto complainant submitted that the sum of Rs.46,90,926/- has been arrived at

after deducting the amounts that were paid by the accused to the de facto complainant. Only with regard to the consignment covered by the purchase order dated 05.04.2012, the accused was not able to make payment to the de facto complainant. In *Alpic Finance Ltd. vs. P. Sadasivan and another*, [2001 AIR SCW 823], the Supreme Court has held that just because a person has accepted pecuniary advantage, if he had no intention to cheat at the inception, he cannot be prosecuted for an offence under Section 420 IPC. The said judgment applies in all its fours to the facts and circumstances of this case.

14 While dealing with an application to quash a prosecution, this Court should not rely upon any document produced by the accused. But, the following two email correspondence between the accused and the de facto complainant (upon which the de facto complainant is placing reliance) would itself show that there was no deception at inception.

"From: Paul Morris [paul@seawealthproducts.com]
Sent: 12 June 2012 23:54
To "Five Star Marine"
Subject RE: Business

Dear Ravi

I waited for your call till now. It is about 11.30.
Present position:

"1. I have 2 full loads of Blue Ross brand
HO sitting in the warehouse.

2. The sales are just a big "O". If you have a customer for 1 load, please discuss so that we can ship it to them or look at some joint marketing.

3. The black tiger container is coming next week. We can/plan to sell most of the load and WT at lease 100K next Friday.

4. Meanwhile we are experiencing problems in collecting the money from the customers who took your old stock. But we will continue to remit the money on a weekly basis.

This is the best options we have."

Paul Morris
From Paul Morris [paul@seawealthproducts.com]
Sent 07 November 2012 23:58

To "Five Star Marine"
CC 'Umang SeaWealth'
Subject Balance of payments

Dear Ravi

You must understand first and foremost that I am not your enemy and I have no reason to not pay what we owe to you. According to our books, we owe you a total of \$192,067.12. We are in a terrible situation as far as cash flow is concerned and I am trying my best to seek a plan by which I could start paying you. If you and your family comes to the US, it is not going to make any difference, but, I would always welcome you both. Please give me few days' time more to put a payment plan in place for our discussion.

I will also call you soon in this regard.

Best regards,

Paul Morris"

15 Even according to the de facto complainant, he lodged a complaint with the police and since the police did not register a First Information Report, he filed a complaint before the Magistrate, on which, the Magistrate directed registration of First Information Report under Section 156(3) Cr.P.C., pursuant to which, the present First Information Report has been registered.

16 In the considered opinion of this Court, this is a fit case to quash the First Information Report as it is clearly an abuse of process of law, inasmuch as the de facto complainant is seeking to use the police machinery to settle a simple and straightforward civil dispute.

In the result, this petition is allowed and the First Information Report is quashed.

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Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

cad

To

1 The Inspector of Police
F-1 Chintadripet Police Station
Arunachala Naicken Street
Anna Salai
Chennai - 600 002

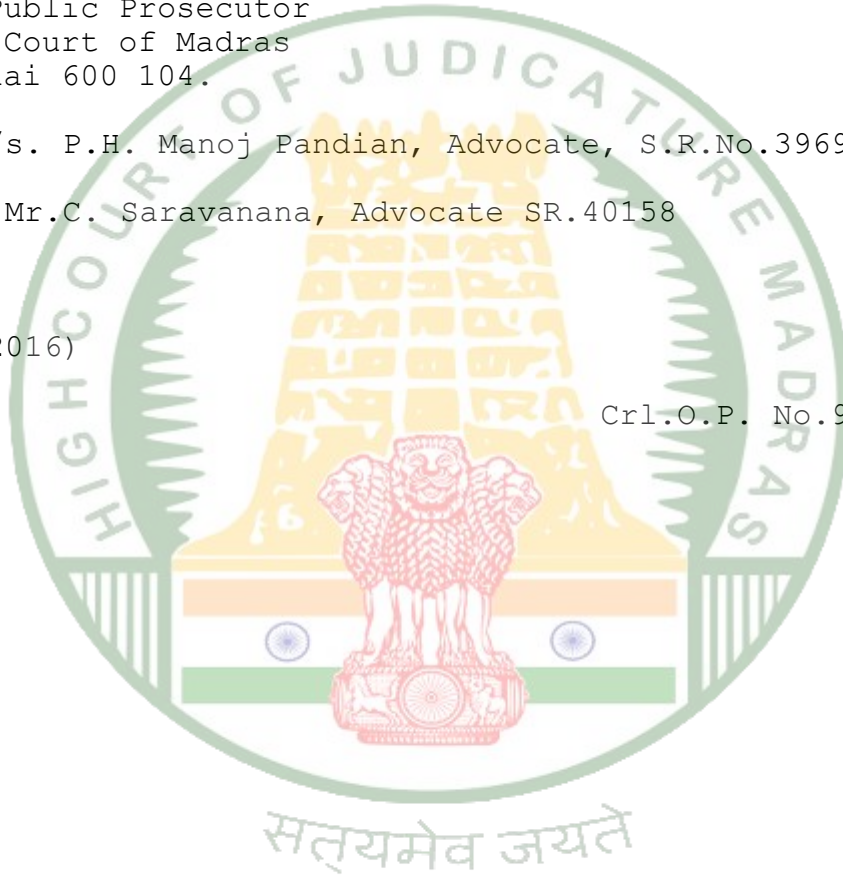
2 The Public Prosecutor
High Court of Madras
Chennai 600 104.

+1cc to M/s. P.H. Manoj Pandian, Advocate, S.R.No.39692

+ 1 cc to Mr.C. Saravanana, Advocate SR.40158

RP(CO)
EU(01/08/2016)

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