

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Judgment: 18.11.2016	Date of pronouncing the Judgment: 02.12.2016
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CORAM :

THE HONOURABLE MR. JUSTICE S.BASKARAN

Crl.O.P.No.3867 of 2010
and M.P.No.1 of 2010

T.P.Karunakaran .. Petitioner/1st Accused

Vs.

1. Pannalal Rathore .. 1st respondent/complainant

2.Vinay Kumar Gu gnani .. 2nd respondent/2nd Accused

Petition filed under Section 482 of Crl.P.C., 1973, praying to call for the records in C.C.No.19 of 2007 pending on the file of the Judicial Magistrate No.III, Salem and quash the same.

For Petitioner : Mr.Rajinish Pathiyil
for M/s.D.Raja
For Respondents : Mr.S.Kalyanaraman, for R1
FRESH PRIVATE NOTICE SERVED
ON R2- No appearance.

ORDER

The petitioner, who is the 1st accused in C.C.No.19 of 2007 pending on the file of Judicial Magistrate No.III, Salem, has come forward with this petition seeking to quash the said complaint.

2. The petitioner states that he is the 1st accused in C.C.No.19 of 2007 on the file of Judicial Magistrate No.III, Salem, for the alleged offence punishable under Section 420 of IPC read with 34 IPC and 2nd accused is the 2nd respondent herein. The petitioner states that he is the Garment Exporter and doing business at New Delhi; he do not have any transaction with the complainant, who is the 1st respondent herein.

3. According to the complaint lodged by the 1st respondent herein, he was having business transaction with the 2nd accused/2nd respondent herein and in that connection, the 2nd accused agreed to pay Rs.8 lakhs as compensation in respect of cancellation of the order placed by him with the 1st respondent

herein; accordingly, the 2nd respondent/2nd accused gave cheque dated 30.05.2006 drawn by the petitioner/1st accused to the 2nd respondent/2nd accused and the same was allegedly made over by the 2nd respondent/2nd accused to the 1st respondent/complainant, in connection with the business transaction between them, with due endorsement by the 2nd respondent/2nd accused in favour of the complainant/1st respondent herein.

4. It is averred in the complaint that the complainant was requested by the 2nd respondent/2nd accused herein not to present the cheque and the same should be returned once cash was paid in lieu of the cheque since no cash was paid till November 2006 and on instruction of the 2nd accused/2nd respondent herein, the said cheque was presented on 27.11.2006 and the same was returned on 02.12.2006 with the endorsement as "out of date". In such circumstances, it is stated by the complainant/1st respondent that the notice dated 04.01.2007 was issued to both the accused and the averments in the notice was denied by the petitioner/1st accused by his reply dated 15.01.2007.

5. According to the complainant, both the accused promised to pay the amount and only on the instruction of both the accused, the complainant presented the cheque to the Bank and the same was dishonoured. It is the contention of the complainant that both the accused cheated him in a preplanned manner and therefore, sought for a direction to the Police to register and investigate the complaint or in the alternative, to enquire the complaint under Section 202 of Cr.P.C., by the court concerned.

6. According to the petitioner, the complaint dated 31.01.2007 lodged by the 1st respondent was taken cognizance by the trial court on 01.02.2007 and the same was done without appreciation of facts in the proper manner. According to the petitioner/1st accused, there is no material to show that the 1st accused committed any offence and in such circumstances, taking cognizance of the complaint by the trial court against the petitioner/first accused, is improper. According to the petitioner, there is nothing in the complaint to disclose the contract or otherwise business relationship existed between the petitioner/1st accused and the complainant/1st respondent herein. Further it is contended that there is no material produced by the complainant to disclose any culpability against the petitioner herein. Likewise, it is pointed out that there is nothing on record to suggest existing of common intention to commit offence under Section 420 of IPC among the accused. It is pointed out that the averments in the complaint only stated about transactions between the complainant and the 2nd accused/2nd respondent and the endorsement made by the 2nd accused on the cheque issued by the 1st accused to the complainant and this

itself would go to show that there is no privity of contract and there is no culpability between the petitioner/1st accused and the complainant/1st respondent herein. The petitioner further states that he is neither the associate of the 2nd accused nor in any way connected with the offence between the complainant and the 2nd accused. It is also pointed out that the action of the complainant is malafide and no commission of offence is disclosed in the complaint and therefore, the petitioner pleads to call for the records in C.C.No.19/2007 and to quash the same as prayed for by him.

7. On the other hand, opposing the above contentions, it is contended by the 1st respondent/complainant that the petitioner colluded with the 2nd respondent/2nd accused and cheated by issuing a cheque, which was subsequently dishonoured. It is also contended that both the accused colluded together and acted in a manner prejudicial to the interest of the complainant/1st respondent herein and thereby committed an act punishable under Section 420 of IPC and therefore, stated that complaint lodged by the complainant is just and proper and there is no material to substantiate the stand taken by the petitioner/1st accused that he has not committed the offence as stated by the complainant/1st respondent and therefore, at this stage, there is no need to quash the complaint given by the complainant/1st respondent and accordingly, the learned counsel for the complainant/1st respondent pleads for dismissal of the petition.

8. The learned counsel appearing for the petitioner pointed out that nothing is averred in the legal notice issued by the complainant on 04.01.2007 about any business transaction between the petitioner and the complainant. It is also pointed out that no culpability can be made out against the petitioner as per the averments in the legal notice as well as the complaint. It is also pointed out that in the legal notice dated 04.01.2007 as well as in the complaint dated 31.01.2007, nothing is disclosed about the contractual or otherwise relationship between the petitioner and the 1st respondent herein. Likewise, it is pointed out that no material is placed along with the complaint before the trial court to show that the petitioner is in association with the 2nd respondent or is connected with the business of the complainant, had with the 2nd respondent/2nd accused.

9. On a perusal of the legal notice dated 04.01.2007, which has been issued by the complainant at the earliest point of time, it is clear that the 2nd accused is alleged to have agreed to pay Rs.8 lakhs as compensation for abruptly cancelling the order placed by him by the 1st respondent herein and in that regard, the 2nd respondent/2nd accused endorsed the cheque issued by the 1st respondent in favour of the complainant/1st respondent

herein.

10. The learned counsel appearing for the petitioner contended that even with regard to the civil liability for him in respect of the above said allegation, nothing placed before this court to show that there was common intention to commit an offence as alleged by the complainant and no culpability is alleged against the petitioner with substantiative material. It is also pointed out that there is nothing in the legal notice about the business transaction or otherwise relationship of the petitioner with the 1st respondent and other related issues in the legal notice dated 04.01.2007. In such circumstances, the learned counsel for the petitioner contends that the averments in the complaint does not disclose the offence and in such circumstances, this court is having power under Section 482 of the Cr.P.C., to quash the proceedings pending on the file of Judicial Magistrate No.III, Salem, as far as the petitioner is concerned. In support of the same, he relied upon the following rulings:-

(1) All Cargo Movers (I) Pvt.Ltd., and Ors., Vs. Dhanesh Badarmal Jain and Anr., reported in (2007) 14 SCC 776 [Criminal Appeal No.1443 of 2007(Arising out of SLP(Crl.) No.1547 of 2007)], wherein, in paragraph No.16, it is held as follows:-

"We are of the opinion that the allegations made in the complaint petition, even if given face value and taken to be correct in its entirety, do not disclose an offence. For the said purpose, This Court may not only take into consideration the admitted facts but it is also permissible to look into the pleadings of the plaintiff-respondent No.1 in the suit. No allegation whatsoever was made against the appellants herein in the notice. What was contended was negligence and/or breach of contract on the part of the carriers and their agent. Breach of contract simpliciter does not constitute an offence. For the said purpose, allegations in the complaint petition disclose the necessary ingredients therefore. Where a civil suit is pending and the complaint petition has been filed one year after filing of the civil suit, we may for the purpose of finding out as to whether the said allegations are prima facie correct, take into consideration the correspondences exchanged by the parties and other admitted documents. It is one thing to say that the Court at this juncture would not consider the defence of the accused but it is another thing to say that for exercising the inherent jurisdiction of this

Court, it is impermissible also to look to the admitted documents. Criminal proceedings should not be encouraged, when it is found to be mala fide or otherwise an abuse of the process of the Court. Superior Courts while exercising this power should also strive to serve the ends of justice."

Likewise, the learned counsel for the petitioner contended that it must be shown by the complainant that the petitioner/accused acted with fraudulent and dishonest intention and committed an offence. According to him, there is nothing in the legal notice issued by the complainant nor in the averments in the complaint given by him alleging that the petitioner/1st accused wilfully misrepresented and induced the complainant to receive the cheque and presented the same in the Bank. In the absence of any allegation or fraud or dishonest inducement against the petitioner herein, it is contended that the complaint lodged against the petitioner is unsustainable and the same has to be quashed. In support of the same, the learned counsel for the petitioner relied upon the Ruling of the Supreme Court of India in the case of *Alpic Finance Ltd., Vs. P.Sadasivan and Another* reported in (2001) 3 SCC 513, wherein, in paragraph No.10, it is stated as follows:-

" Here the main offence alleged by the appellant is that respondents committed the offence under Section 420 I.P.C., and the case of the appellant is that respondents have cheated him and thereby dishonestly induced him to deliver property. To deceive is to induce a man to believe that a thing is true which is false and which the person practicing the deceit knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence. There is no allegation that the respondents made any willful misrepresentation. Even according to the appellant, parties entered into a valid lease agreement and the grievance of the appellant is that the respondents failed to discharge their contractual obligations. In the complaint, there is no allegation that there was fraud or dishonest inducement on the part of the respondents and thereby the respondents parted with the property. It is trite law and common sense that an honest man entering into a contract is deemed to represent that he has the present intention of carrying it out but if, having accepted the pecuniary advantage involved in the transaction, he fails to pay his debt, he does not necessarily evade the debt by deception.

11. Moreover, the appellant has no case that the respondents obtained the article by any fraudulent inducement or by willful misrepresentation. We are told that respondents, though committed default in paying some installments, have paid substantial amount towards the consideration.

12. Having regard to the facts and circumstances, it is difficult to discern an element of deception in the whole transaction, whereas it is palpably evident that the appellant had an oblique motive of causing harassment to the respondents by seizing the entire articles through magisterial proceedings. We are of the view that the learned judge was perfectly justified in quashing the proceedings and we are disinclined to interfere in such matters. "

11. It is pointed out by the learned counsel for the petitioner that no material is placed before the trial court by the complainant about any willful representation or deception or any fraudulent inducement committed by this petitioner/1st accused, to induce the complainant /1st respondent to enter into any business transaction or to receive the alleged dishonoured cheque from the 2nd respondent/2nd accused herein. In such circumstances, it is clear that there is no sufficient material placed by the complainant to link the petitioner to the alleged offence stated in the complaint filed by him.

12. On the other hand, the learned counsel for the complainant contended that it is for the trial court to look into and substantiate the nature of allegation at the stage of trial and at this stage, this court should not interfere with the matter and there is no need to entertain the present petition.

13. Refuting the same, the learned counsel for the petitioner, contended that it is necessary that the complainant should place sufficient material to show that the 1st accused had the intention much less prima facie notion, to cause harm to the complainant by cheating him. In the absence of any material to show that the petitioner acted with the malafide intention to cause harm to the complainant, this court is bound to entertain the petition and give relief sought for by the petitioner herein. In support of the same, the learned counsel for the petitioner relied on the Ruling of the Supreme Court of India in the case of Manik Taneja Vs. State of Karnataka reported in Manu/SC/0056/2015, wherein, in paragraph No.15, it is stated as follows:-

"15. In the instant case, the allegation

is that the appellants have abused the complainant and obstructed the second respondent from discharging his public duties and spoiled the integrity of the second respondent. It is the intention of the accused that has to be considered in deciding as to whether what he has stated comes within the meaning of "Criminal intimidation". The threat must be with intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. But material has to be placed on record to show that the intention is to cause alarm to the complainant. From the fact and circumstances of the case, it appears that there was no intention on the part of the appellants to cause alarm in the minds of the second respondent causing obstruction in discharge of his duty. As far as the comments posted on the Facebook are concerned, it appears that it is a public forum meant for helping the public and the act of appellants posting a comment on the Facebook may not attract ingredients of criminal intimidation in Section 503 Indian Penal Code.

16. Of course, in exercise of its jurisdiction Under Section 482 Code of Criminal Procedure, the court should be extremely cautious to interfere with the investigation or trial of a criminal case and should not stall the investigation, save except when it is convinced beyond any manner of doubt that the FIR does not disclose commission of offence and that continuance of the criminal prosecution would amount to abuse of process of the court. As noted earlier, the page created by the traffic police on the Facebook was a forum for the public to put forth their grievances. In our considered view, the Appellants might have posted the comment online under the bona fide belief that it was within the permissible limits. As discussed earlier, even going by the uncontroverted allegations in the FIR, in our view, none of the ingredients of the alleged offences are satisfied. We are of the view that in the facts and circumstances

of the case, it would be unjust to allow the process of the court to be continued against the Appellants and consequently the order of the High Court is liable to be set aside. "

14. Therefore, it is clear from the Rulings relied on by the petitioner that there must be sufficient material placed by the complainant before the court prima facie to show that the accused acted with fraudulent or dishonest intention at the time of making any promise or representation. Further, there must be culpable intention on the part of the accused and then alone any offence under Section 420 of IPC can be said to be made out. However, as rightly contended by the learned counsel for the petitioner, in the case on hand, there is no such material available before the trial court and no averments is found in the legal notice issued by the complainant or in the complaint lodged by him about any business transaction between the petitioner and the 1st respondent/complainant or about any culpable intention on the part of the petitioner/1st accused to make a culpable offence under Section 420 IPC.

15. In the light of the above said discussion, and having regard to the facts and circumstances of the case, it is difficult to hold that the averments in the whole transaction alleged by the complainant in the complaint make out a prima facie case under Section 420 IPC. As stated above, none of the ingredients necessary to make out an offence under Section 420 of IPC is satisfied in the averments stated in the complaint. Therefore, in the facts and circumstances of the case, it would be unjust to allow the process of the court to continue against the petitioner/1st accused herein and as such, this petition is to be allowed and the proceedings in C.C.No.19 of 2007 has to be quashed against the petitioner/1st accused only and accordingly the same is quashed.

16. This Criminal original Petition is allowed on the above terms.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Judicial Magistrate No.III, Salem

+lcc to Mr.R. Palanisamy, Advocate, S.R.No.71327

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Crl.O.P.No.3867 of 2010



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