

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.4.2016

CORAM:

THE HONOURABLE MS.JUSTICE R.MALA

Crl.O.P.No.12414 of 2009

Kalaivanan

: Petitioner

Vs.

1. State by the Inspector of Police,
Kallakurichi Police Station,
Villupuram District.
(Crime No.848 of 2004)

2. Mr.Lenin Rajaprabhu, : Respondents

PRAYER: Petition filed under Section 482 of the Criminal Procedure Code praying to call for the records, quash the proceedings pending as against the petitioner herein in C.C.No.8 of 2005 on the file of the learned Judicial Magistrate, Kallakurichi, Villupuram District.

For Petitioner : Mr.R.Jothimanian

For Respondent : Mr.C.Emalias
Addl. Public Prosecutor

ORDER

The petitioner has come forward with this petition under Section 482 of Code of Criminal Procedure, seeking to call for the records and quash the proceedings pending as against the petitioner herein in C.C.No.8 of 2005 on the file of the learned Judicial Magistrate, Kallakurichi, Villupuram District.

2. The petitioner has come forward with this petition for quashing the proceedings in C.C.No.8 of 2005 on the file of learned Judicial Magistrate, Kallakurichi, Villupuram District under Section 420 of IPC stating that the 2nd respondent and petitioner have entered into an agreement on 11.4.2004, under which, the petitioner has agreed that he is ready to repay the amount of 6 lakhs with interest at the rate of 12% per annum and also 60% of the profit to the defacto complainant/2nd respondent herein. But he neither repaid that amount, nor gave any share in the profit derived. When the defcto complainant

approached him, he issued a cheque to him and when the same was presented before the Bank for encashment, it was returned as insufficient funds. Thus the petitioner herein with an ill intention to cheat the defacto complainant, issued a cheque and thereafter failed to honour the cheque. Hence he preferred a complaint before the 1st respondent police on 11.8.2004. On that basis, a case in Crime No.848 of 2004 has been registered and after due investigation, charge sheet has been levied against this petitioner under Section 420 IPC, which was taken on file as C.C.No.8 of 2005.

3. Learned counsel appearing for the petitioner has challenged the filing of Charge sheet in two folds;

- (i) When it is only a civil liability, no criminal proceedings can be prosecuted.
- (ii) The entire amount has been paid while he filed the complaint under section 138 of Negotiable Instruments;

4. To substantiate his arguments, he relied upon the following decisions reported in ;

- (i) (2009) 3 Supreme Court cases 78 (V.Y.Jose and another Vs. State of Gujarat and another)
 - (ii) (2014) 10 Supreme Court Cases 663 (Binod Kumar and others Vs. State of Bihar and another)
- and thus he prayed for quashing of criminal proceedings against the accused.

5. Even though the 2nd respondent was served with notice, no representation for him either in person or through counsel.

6. The learned Additional Public Prosecutor submits that in the agreement dated 11.4.2004 itself, the petitioner undertakes that he is ready to face civil and criminal case. On the basis of the complaint given by the 2nd respondent, investigation has been done and as ingredients under section 420 IPC has been clearly made out, charge sheet was levied. He would further submit that merely filing of civil suit or repayment of entire amount will not exonerate the petitioner from criminal liability and further there was no proof filed before this court for repayment of the amounts in dispute. Thus he prayed for dismissal of this petition.

7. Considered the rival submissions made on both sides and perused the typed set of papers.

8. It is the case of the petitioner that there was an agreement entered into between the petitioner and the 2nd respondent on 11.4.2004 . In the complaint, itself, it was specifically stated that there as an agreement entered on 11.4.2004 and in that agreement , it was agreed that the petitioner received Rs.6 lakhs from the 2nd petitioner and he

is ready to repay the same with interest at the rate of 12% per annum and also ready to give 60% of profit to the 2nd respondent. AS he has neither repaid that amount, nor paid the profit, the 2nd respondent approached him and demanded back his money. Thereafter, he issued a cheque for Rs.5,00,000/- in favour of the 2nd respondent and when the same was presented before the Bank, it was returned as insufficient funds. When the 2nd respondents informed about the same and demanded his money, the petitioner had made a criminal intimidation on him. Therefore, the 2nd respondent gave a complaint against him, based on which, a case has been registered. After investigation, chge sheet has been levied against him.

9. The first limb of argument is since there was an agreement between the parties, the dispute is purely civil in nature and to substantiate the same, he relied upon the judgment of the Apex Court reported in) (2009) 3 Supreme Court cases 78 (V.Y.Jose and another Vs. State of Gujarat and another), wherein he relied upon paragraph 10, 16 and 21 which reads as follows;

"10. We have been taken through the complaint petition in its entirety. Indisputably, the parties entered into a contract in terms whereof the firm was to manufacture a machine to purify and desalt the dyes of a particular quality and quantity. The specifications for the machine were changed. The first appellant issued a letter dated 202.1998 to the complainant, stating;

"Further to our letter No.P:G:971:97 dated 2.2.1998 and subsequent visit of our Mr.Sunil Rao, please find enclosed herewith our revised offer for your reference. You may note that we are giving two modules extra, free of charge in the system so that the total number of modules becomes 105 nos. instead of the committed 103 nos. We are also enclosing herewith the detailed assembly drawing for your reference. Since the system is totally skid mounted the system can be installed on a levelled platform.

I am sure this will fulfill your predispatch requirement. In case you need any additional details kindly let us know so that we can provide the same."

.....

.....

16. There cannot, furthermore, by any doubt that only because civil law can be taken recourse to would not necessarily mean that criminal proceedings should be barred as has been opined by this Court in Pratibha Rani v.

Suraj Kumar.

21. There exists a distinction between pure contractual dispute of a civil nature and an offence of cheating. Although breach of contract per se would not come in the way of initiation of a criminal proceeding, there cannot be any doubt whatsoever that in the absence of the averments made in the complaint petition wherefrom the ingredients of an offence can be found out, the court should not hesitate to exercise its jurisdiction under Section 482 of the Code of Criminal Procedure."

and submitted that for cheating and dishonest inducement to deliver property , ingredients under section 420 IPC is not made out.

10. The above citation is not applicable to the facts of the present case. Further, in paragraph 10, though it was specifically mentioned that both parties have entered into a contractual agreement, the materials are not as if as per the specification, both in quality and quantity. The specification of the machines were denied . In the above judgment, it was specifically held it is a civil in nature. Further, in paragraph 16, it was specifically mentioned that mere pending of the civil suit is not a bar to file criminal case. So, it is not supporting the case of the petitioner, because here, it is not the case that the petitioner has committed breach of contract, but acted with a malafide intention to cheat him and he issued a cheque as if he is possessing sufficient money in his account. So the ingredients of Section 420 IPC prima facie has been made out.

11. Hence, I am of the opinion, the decision reported in (2009) 3 Supreme Court cases 78 (V.Y.Jose and another Vs. State of Gujarat and another), is not applicable to the facts of the case.

12. Learned counsel for the petitioner also referred to the decision of the Honourable Supreme Court reported in (2014) 10 Supreme Court Cases 663 (Binod Kumar and others Vs. State of Bihar and another) , in which, he has relied upon paragraphs 11 and 12, which read as under;

"11. Referring to the growing tendency in business circles to convert purely civil disputes into criminal cases, in paras 13 and 14 of Indian Oil Corpn. Case (Indian Oil Corpn v. NEPC India Ltd.,) (2006) 6 SCC 736, it was held as under : (SCC pp.748-49)

"13. 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. In G.Sagar Suri v. State of U.P. (2000) 2 SCC 636, this Court observed: (SCC p.643, para 8)

'8. ... 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 other wise to secure the ends of justice.'

14. while no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC., more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

12. Coming to the facts of this case, it is no doubt true that the dispute relates to the non-payment of bill amount of Rs.34,505 pertaining to the contract executed by respondent 2. It is also

pertinent to note that Respondent 2 preferred CWJC No.5803 of 1999 wherein an order dated 5.4.2015 (Mukesh Prasad Singh v. Tilka Manjhi Bhagalpur University, 2000 SCC On Line Pat 388 : (2000) 3 PLJR 734) was passed by the Patna High Court directing the Vice-Chancellor of Bhagalpur University to release the balance amount of Rs.34,505 with interest @ 18% w.e.f. 1-10-1994 till the date of payment and pay the interest @ 11% on the sum of Rs.14,000 from 1.10.1994 till 9.12.1996. Aggrieved by the said order, Bhagalpur University preferred LPA No.716 of 2000 wherein it was directed (Tilka Manjhi Bhagalpur University v. Mukesh Prasad Singh) that since it was not a statutory contract, no direction for payment of money could be issued and Respondent 2 can pursue other remedies available in law for the recovery of money. Aggrieved by the said order, Respondent 2 filed SLP (C) No. ... CC No.4832 of 2001 which was dismissed as withdrawn by this Court by the order dated 30.7.2001 (Mukesh Prasad Singh v. Tilka Manjhi Bhagalpur) granting him liberty to approach the appropriate forum. Respondent 2 thereafter filed Money Suit No.2 of 2002 before the Court of Sub-Judge, first Court, Lakhisarai on 20-4-2002 for recovery of Rs.69,010 i.e. double the amount of Rs.34,505 and the said suit is pending. The second appellant representing the University had also filed Money Suit No.2 of 2006 before the same court on 4.2.2006 claiming a sum of Rs.1,44,437 with interest against the second respondent contractor. These acts of the parties show that the parties have already had recourse to the civil remedies that are available to them in law."

In that also, the Indian Oil Corporation case has been held, but it is in respect of a business transaction, but here in the instant case on hand, the cheque has been issued with an intention to cheat this petitioner. Hence, prima facie, the ingredients under section 420 IPC has been made out. In such circumstances, I am of the view the above citation is not applicable to the facts of the present case.

13. As per the dictum of the Apex Court, merely filing of the civil suit will not exonerate the criminal liability. So I am of the view that merely there was an agreement between the petitioner and the 2nd respondent, the same will not exonerate this petitioner from the criminal liability. So the 1st ground raised by the learned counsel for petitioner that it is only a civil liability, no criminal proceedings can be prosecuted does

not merit acceptance.

14. The second ground is that the petitioner has already paid the entire amount in Section 138 of Negotiable Instruments proceedings and hence, he prayed for quash. But, the petitioner has not produced any scrap of paper before this Court to show that he has paid the entire amount. It is a well settled dictum of Apex Court that mere repayment of amount will not exonerate the criminal liability. In such circumstances I am of the view, the 2nd ground also fails.

15. Hence, I do not find any merits in this petition and this application is pending from the year 2009 onwards. Hence, the same is hereby dismissed with a direction directing the learned Judicial Magistrate, Kallakurichi to dispose of the case within a period of three months from the date of receipt of a copy of this order. It is pertinent to note the submission made by the learned Additional Public Prosecutor that the petitioner is not appearing before the trial Court from 2009 onwards. Therefore, the petitioner is also directed to appear before the learned Judicial Magistrate, Kallakurichi and cooperate with trial for earlier disposal of the case.

16. The observation made in the judgment will not, in any manner, influence the trial Court while disposing the case.

17. In fine, this Criminal Original Petition is dismissed with the above direction. Consequently, the connected M.P.Nos.1 and 2 of 2009 are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

msr

To

1. The Inspector of Police,
Kallakurichi Police Station,
Villupuram District.

2. The Judicial Magistrate,
Kallakurichi,
Villupuram District.

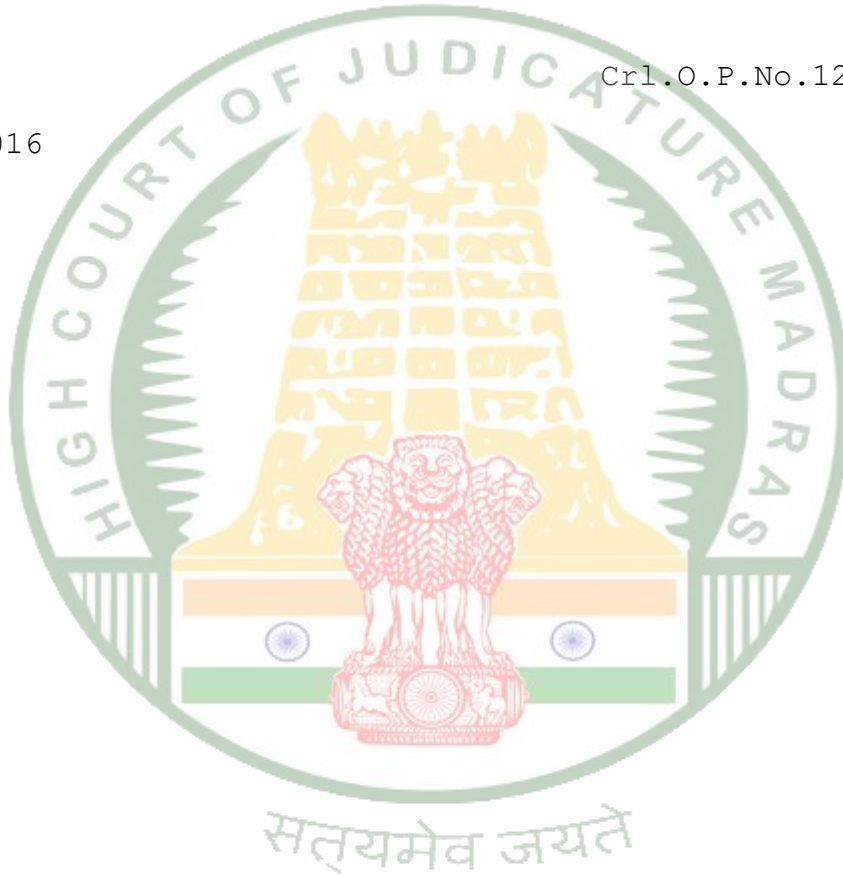
3. -do- Thro The Chief Judicial Magistrate
Villupuram

4. The Public Prosecutor,
High Court, Chennai.

+1 cc to Mr.M.R.Jothimanian Advocate sr.23507

rsy(co)
aa11/05/2016

Crl.O.P.No.12414 of 2009



WEB COPY