

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.03.2016

CORAM

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

Crl.O.P.No.19407 of 2009
& M.P.No.1 of 2009

Kutty @ Paranthaman

.. Petitioner/Accused No.1

Versus

1.State by Inspector of Police,
Karungalpalayam Police Station,
Erode District.

2.K.Loganathan .. Respondents/Complainants

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the proceedings pending trial in C.C.No.2 of 2009 on the file of the learned Judicial Magistrate No.I, Erode and to quash the same.

For Petitioner : Mr.M.Vijayakumaran

For Respondent-1: M/s.Shabana
Government Advocate (Crl. Side)

O R D E R

The petitioner has come forward with this petition, challenging the proceedings in C.C.No.2 of 2009 on the file of the learned Judicial Magistrate No.I, Erode.

2.The petitioner is arrayed as A-1 in this case. The case of the prosecution is that the petitioner / A-1 and A-2 are yarn brokers and A-3 to A-5 are doing textile business in the name and style of Reyan Fab at Karur. The petitioner / A-1 along with other accused had conspired together to cheat the de facto complainant, namely, K.Loganathan by making him to believe that A-3 to A-5 are doing textile business at Karur and they are genuine buyers and thereby cheated the de facto complainant to deliver Kada clothes to the value of Rs.9,20,148/-. Hence, the case has been registered in Crime No.683 of 2007 for the alleged offences under Sections 120-B, 420 and 409 of IPC.

3.The learned counsel appearing for the petitioner would submit that the entire transaction is based on sale of cloth materials and the petitioner has been falsely implicated in this case. He further submitted that the case registered in Crime No.683 of 2007 under Sections 120-B, 420 and 409 of IPC is not at all warranted and none of the provisions are attracted to the facts of this case. In support of his contention, the learned counsel appearing for the petitioner has relied upon a decision of this Court reported in Ratanlal Sharma & others vs. Mangaram Ghanshymdas & another [1976 L.W. [Cr1.] 162] and the decision of the Hon'ble Apex Court reported in State of Gujarat vs. Jaswantlal Nathalal [1998 L.W. [Cr1.] 89].

4.I have heard the learned counsel appearing on either side and perused the materials available on record.

5.In this case, it is very clear that the clothes have been taken and the amount has not been paid to the de facto complainant. Any how, the disputed issues have to be tried before the appropriate Court where the case is pending in C.C.No.2 of 2009. The decision referred to by the learned counsel appearing for the petitioner reported in Jaswantlal Nathalal case cannot be applied to the facts of this case. The Court has considered with regard to the word "entrustment" found in Section 405 of IPC and the State has filed appeal against acquittal. In this case, trial is yet to commence and facts of each case has to be dealt with separately and the decision cannot be mechanically applied to this case.

6.Recently, the Hon'ble Supreme Court in the case of HMT Watches Ltd., Vs. M.A.Abida & Another reported in (2015 (2) CTC 446), has held that quashing of a criminal complaint on the disputed question of facts cannot be entertained and it is a matter for trial to proceed with the criminal complaints. Hence, I find no reason to entertain the relief, as sought for by the petitioner.

7.In the result, the Criminal Original Petition is dismissed. However, considering the facts and circumstances of the case, the Trial Court is directed to expedite the hearing of

the case in C.C.No.2 of 2009 and proceed with the matter on a day-to-day basis and the matter shall not be adjourned beyond two working days, at any point of time and take a decision, as expeditiously as possible. The petitioner is directed to appear before the Trial Court on all hearings. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(AS)

//True Copy//

Sub Assistant Registrar

To

- 1.The Inspector of Police,
Karungalpalayam Police Station,
Erode District.
- 2.The Government Advocate (Crl side
High Court of Madras,
Chennai - 600 104.
- 3.The Judicial Magistrate No.I
Erode.
- 4.The chief Judicial Magistrate,
Erode.

Crl.O.P.No.19407 of 2009
& M.P.No.1 of 2009

ak(CO)
srg(23/03/2016)

WEB COPY