

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL PETITION No.9433 OF 2015

ORDER:

1. This petition is filed by the petitioners-accused under Section 482 Cr.P.C. seeking to quash the proceedings against them in C.C.No.299 of 2015 on the file of the Judicial Magistrate of First Class, Gooty, Ananthapur District.

2. The case of the prosecution is as follows:

The complainant- Sree Rayalaseema Sugar and Green Energy is a company registered under Indian Companies Act having its corporate office at Sree Nilayam, Gooty. The company has industrial plants at several places including a sugar factory at Nandyal. The said Sugar mill is being managed from Corporate Office situated at Gooty. The petitioners-accused are holding administrative and managerial control over M/s. V.R.L. Automation Private Limited, Bangalore. The said company undertakes work or supply, erection and commissioning of machinery and equipment needed to attain steam economy for sugar factories. The complainant-company needed such machinery and equipment for its sugar unit for achieving steam consumption. After mutual consultations and discussions between the Chairman and Managing Director of complainant-company and the accused, provisional order was placed on 5.9.2008 for complete supply, erection and commissioning of steam economy scheme for total sum of Rs.2,34,30,000/- and also made full and complete payment as per the understanding. The accused supplied the machinery and equipment, installed and operated the same. It is alleged that the promised and assured results were not achieved. Though the technical personnel from the accused-company made efforts to set the machinery and equipment to

achieve the promised and assured results, they failed in their attempts. The complainant came to conclusion that the accused company supplied sub-standard equipment. The accused are not responding to the requests made by the complainant-company. Thus, the petitioners committed the offence punishable under Sections 420 and 406 r/w 34 IPC. The complainant filed a private complaint before the Judicial Magistrate of First Class, Gooty and the said complaint was referred to the police under Section 156(3) Cr.P.C. After completion of the investigation, the police filed the charge sheet and the same was taken cognizance and numbered as C.C.No.299 of 2015.

3. Heard and perused the material available on record.
4. Learned Additional Public Prosecutor opposed this petition.
5. The fact that remains undisputed is that the 1st petitioner is the Managing Director, 2nd petitioner is the Executive Director of M/s. VRL Automation Engineering & Projects Private Limited. It is their case that their company is well known in the circles of Sugar Industries for the supply of energy saving machinery throughout India as well in some places in the World like Latin America. It is the case of the petitioners that the order for the supply of machinery was placed by the complainant on 5.9.2008 for the purpose of erection and commissioning of the steam economy system and in pursuance of the same, special designs of machinery customized to suit the needs of the complainant-sugar industry were supplied, erected and commissioned. It is their case that from the year 2008 onwards their equipment was in operation and that the petitioners used to attend to the problems by deploying the technical teams of the petitioners' company at the request of the complainant. Further, it is the case of the petitioners that the complainant-company has yet to pay an amount of Rs.40 lakhs towards the balance of the cost of machinery supplied in the year 2008.

Since the complainant-company is becoming sick due to inefficient management, in order to avoid the payment of balance of the cost of the machinery, the complainant-company has filed the present complaint with a dishonest intention. It is further stated that the relationship between the complainant and the petitioners is contractual in nature and breach of terms of the said contract can only be worked out before an appropriate forum but not by way of initiation of criminal proceedings.

6. Learned Counsel for the petitioners while relying upon the judgment of the Apex Court in **M/s. Thermax Limited and others Vs. K.M. Johny and others**¹ submitted that the complaint of cheating and criminal breach of trust against the company and Board members in the present case, which has arisen out of contractual obligations, cannot be maintained as it amounts to abuse of process of law. He further submitted that since the present transaction between the petitioners and the complainant pertains to the contractual obligations, no adverse inference can be drawn against the petitioners as to the dishonest intention, if any, particularly in the light of the admitted meeting held by both the parties in the year 2010 as to the functioning of the machinery supplied in the year 2008. At the same time, in order to show that there are no ingredients of criminal breach of trust or cheating, the learned Counsel for the petitioners has drawn the attention of this Court to Sections 405, 406, 415 and 420 IPC.

7. It is the case of the petitioners that from the year 2008 onwards, their equipment was in operation and they used to attend to the problems in the machinery by deputing their technical teams at the request of the complainant whenever the problems arose and presently also, they have

¹ 2012 CrL.L.J. 438 (SC)

been attending to the problems, if any, in spite of the expiry of the guarantee period, which was for a period of only two crushing seasons. Further, it is their case that 'steam' is used in the sugar industry at its high pressure for turning the turbines to generate electric power and later at low pressure for processing sugar cane, crushing pulping etc., to generate sugar. For every hundred tons of sugarcane processed, traditionally more than 50 tons of steam would be expended. The major innovative technology of the petitioners' company is to bring down the usage of steam from above 50% to below 35% for producing sugar from sugar cane and for last 20 years, they have been designing, supplying, erecting and commissioning the 'Steam Saving Machinery' exclusively for sugar industries successfully and to the satisfaction of all their clients.

8. Further, it is the case of the petitioners that the testing done by the technical staff on 4.3.2010 to the machinery of the complainant, proved that the steam used in the complainant's factory came down to 33.89% after commissioning of the equipment supplied by the petitioners' company and that the minutes of the meeting of the third respondent-complainant's company proved the satisfactory functioning of the same. It is the further case of the petitioners that the complainant-company has yet to pay Rs.40 lakhs towards the balance of the cost of machinery and the same was acknowledged by the complainant-company and that since the petitioners are demanding for payment of the same, in order to avoid the said payment, the complainant lodged the present complaint with a malafide intention.

9. In contra, it is the case of the complainant that the petitioners supplied the defective machinery and thereby, they have cheated the complainant.

10. In order to ascertain as to whether there is a prima facie case or not, it is relevant to extract the provisions of Sections 405, 406, 415 and 420 IPC.

“Section 405 IPC-Criminal Breach of Trust: Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so do to, commits “criminal breach of trust”.

Section: 406 IPC: Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Ingredients: The section requires:

- (1) Entrusting any person with property or with any dominion over property;
- (2) The person entrusted (a) dishonestly misappropriating or converting to his own use that property; or
(b) Dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation
 - (i) of any direction of law prescribing the mode in which such trust is to be discharged, or
 - (ii) of any legal contract made touching the discharge of such trust.

This offence consists of any one of four positive acts, namely, misappropriation, conversion, user, or disposal of property. Neither failure to account nor breach of contract, however dishonest, is actually and by itself the offence of criminal breach of trust.

Section: 415 IPC: Ingredients:

- (1) Deception of any person.

- (2) (a) Fraudulently or dishonestly inducing that person
- (i) to deliver any property to any person; or
 - (ii) to consent that any person shall retain any property; or
- (b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

Section 420 IPC-Cheating and dishonestly inducing delivery of property: Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter, or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

11. In this case, it cannot be said that the petitioners were entrusted with any property or any dominion over any property. Therefore, the ingredients of Section 405 IPC would not attract in the present case.

12. Insofar as the offence under Section 420 IPC is concerned, it is alleged that the petitioners cheated the complainant by supplying the defective material. The ingredients of Section 415 IPC make it clear that there should be deception. But there is no averment of such deception in the present complaint. There must also be false representation in order to attract an offence under Section 420 IPC. But the present facts of the case and the minutes of the meeting dated 4.3.2010 falsify the very approach of the complainant.

13. Further, it is the case of the complainant that the petitioners supplied the defective machinery in the year 2008 whereas the present complaint was lodged in the year 2014 and apart from that, the minutes of the meeting held on 4.3.2010 would go to show that the performance of the machinery supplied by the petitioners was satisfactory and apart from that, the guarantee period of two crushing seasons also expired. Therefore, from this, it can be inferred that the very approach of the complaint by way of filing the present complaint, does not appear to be bonafide one.

14. Even if it is assumed that there is any such dispute between the parties arising out of the transaction with regard to the machinery, the remedy would be elsewhere for claiming damages or compensation, if any, but not by initiating criminal proceedings at this length of time, since the transaction involved in this case is purely a contract based.

15. Further, even the meeting that was held in the year 2010 with regard to the functioning of the machinery, does not depict any such alleged dishonest or cheating on the part of the petitioners from the date of supply of the machinery in question.

16. From the material on record, the fact that remains undisputed is that the petitioners acted in terms of the contract. Apart from that, with regard to the alleged supply of the defective machinery to the complainant, the material on record does not show as to whether there was any such exchange of legal notices between the parties. Therefore, the very approach of the complainant in the year 2014 i.e., after a lapse of 6 years from the date of supply of the machinery and after expiry of the guarantee period, by way of the present complaint, cannot be said to be with clean hands.

17. Insofar as the contention raised by the learned Counsel for the petitioners that no vicarious liability can be fastened against the petitioners, is concerned, in view of the discussion on the above aspects, the said contention does not warrant any finding.

18. In the above circumstances, this Court is of the view that there is no prima facie case against the petitioners and therefore, this is a fit case to quash the proceedings against the petitioners.

19. Accordingly, the Criminal Petition is allowed quashing the proceedings against the petitioners in C.C.No.299 of 2015 on the file of the Judicial Magistrate of First Class, Gooty, Ananthapur District. Consequently, miscellaneous petitions pending, if any, shall stand closed.

Date : 28.7.2016

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JUSTICE RAJA ELANGO

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DATED 28.7.2016

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