IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2017

CORAM:
THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P.No.10288 of 2011
and
M.P.No.1 of 2011

1.Sudhir Lulla
2.Prathipa Lulla ...Petitioners

Vs.

Prahalad Textiles Private Ltd.,
Represented by accountant Mrs.Kavitha
Having registered at 1602,
Trichy Road, P.N.Pudur,
Coimbatore - 641 018. ... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records and quash the proceedings pending in C.C.No.28 of 2011 on the file of the Judicial Magistrate No.VI, Coimbatore.

For Petitioners : Mr.A.Ramesh, Senior Counsel for M/s.C.Arunkumar

For Respondent : Mr.Ashok Menon

ORDER

This criminal original petition is preferred by the Petitioners/Accused A1,A2 to call for the records pending in C.C.No.28 of 2011 on the file of the learned Judicial Magistrate No.VI, Coimbatore and quash the same.

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2.Brief case of the petitioners/accused A1 and A2:

The prosecution case is that Prahalad Textiles Private Limited, manufacturer of export garments at Coimbatore had authorized its accountant to set the criminal law in motion against their agent’s who placed orders with the complainant company for a foreign buyer, the petitioners/accused as partners of Heritage Exports, for offences under sections 409 and 420 of IPC.

3.After approval from foreign buyer on showing the samples, the complainant company started its production. Subsequently,

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the foreign buyer refused to accept the garments of the complainant company and after due negotiations and believing the representations of the petitioners/accused, the complainant company divided the products into two consignments. One half of the consignment was sent through air and other was sent through sea.

4.The foreign buyer paid the price agreed to the complainant company for the consignment sent through the air but refused to accept the consignment sent through sea and returned the same. Hence the forwarder directed the complainant company to take back the consignment which was lying at Tuticorin port after paying the demurrage. When this fact was brought to the notice of the agents, the petitioners/accused who collected their commission amount they did not show any interest since they have collected their commission in the form of garments. The complainant also had some earlier transactions with the petitioners/accused and also incurred loss to a tune of Rs.10 Lakhs in the transaction.

5.The 1st petitioner/accused is engaged in the business of procuring garments for several international buyers according to their needs in the name and style of Heritage Exports at Coimbatore. Out of the orders received some portion of the garments are exported directly and other are transferred to other exporters on receiving commission from them.

6.The complainant company approached the petitioner/accused company in the year 2008 to obtain orders from some foreign buyers. The 1st petitioner/accused agreed to periodically assign portion of orders also made crystal clear to the complainant company about the mode of shipment in the stipulated time frame directly to the above foreign buyer after receiving the payment directly from them. The complainant company accepts the same and started orders. Even in this situation there was no written agreement between the parties to obtain any approval by showing the sample to the 1st petitioner/accused even before production of and shipment of the goods. The complainant company failed to ship the manufactured goods to the foreign buyer in time. Out of the orders taken by the complainant company there was undue delay in shipping the goods to the foreign buyer. The aforesaid contracts have to be completed and shipped to the foreign buyer in the month of Jan.2010 rather it was not done by the complainant company. Hence the complainant company requested the petitioner/accused to convince the foreign buyer and extend the time for shipment. The time extended but the complainant company failed to ship the goods. Finally the foreign buyer agreed to take the goods of the complainant company with the conditions that 50% of the garments to be airlifted and the second half should be shipped with 20% discount in the price immediately. But the complainant company did not ship the goods in time, which ultimately rejected the goods shipped through sea after

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making the payment for the goods sent through air.

7.A legal notice dated 19.05.2010 was addressed to the petitioners/accused, demanding payment of the loss suffered. The petitioners/accused replied the same denying the contents of the legal notice and claim for the payment made by the complainant company to prefer a complaint before the learned Judicial Magistrate No.VI at Coimbatore against the petitioners for offences under section 409 and 420 of IPC. The learned trial Magistrate took the case on file in C.C.No.28 of 2011 and issued summons to the petitioners/accused. Aggrieved over the same, this quash petition is filed.

8.The learned counsel for the petitioners/accused submits that one of the charts in the complaint is for an offence under section 409 of IPC. For better appreciation of this ground certain relevant portions are extracted hereunder. The term criminal breach of trust has been defined u/s 405 of IPC.

9.The learned counsel for the petitioners/accused submits that the following ingredients are required to constitute an offence of criminal breach of trust can be listed in the following manner:

(1) Lawful entrustment of property or with any dominion over property to a person and

(2) Dishonest misappropriation of that property in contravention of the trust.

10.The learned counsel for the petitioners/accused submits that on reading the entire length and breadth of the complaint it is clear that there is no averment in the complaint spells about any entrustment made to the petitioners/accused. It is thus patently clear that the complainant has failed to make out the offence of criminal breach of trust under section 409 of IPC against the petitioner and the same needs to be quashed.

11.The learned counsel for the petitioners/accused submits that the petitioners have already failed to diligently complete the process, by defaulting the inspection deadlines and have also agreed to take the finished goods for Rs.10 Lakhs. This sort of allegation without any prima facie materials is nothing but the production of imagination of the complainant.

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12.The learned counsel for the petitioners/accused submits that the above narrated facts, the only inference that can be drawn is that the petitioner, at no point of time the petitioners/accused had any dishonest or fraudulent intention in transactions with the complainant company, the charge under sections 420 of IPC is unwarranted and deserves to be quashed at the threshold.

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13.The learned counsel for the petitioners/accused submits that the complainant after a lapse of 6 months from the date of reply notice have preferred a complaint before the jurisdictional Magistrate VI at Coimbatore is only to make the petitioners/accused yield and bend to the pressures of the complainant and also to extort money from them.

14.The learned counsel for the petitioners/accused submits that it is apparently clear on the face of it that the Magistrate has not applied his judicial mind before issuing summons to the petitioners/accused. The learned judicial magistrate has not applied the facts of the case to the legal propositions and identified whether the ingredients of the offences charged are made out. The Magistrate need not sieve the complaint with finest gauze at the time of taking the complaint on file but rather the complaint preferred should make out a prima facie case for the offences alleged. As such in this case even on plain reading of the complaint and the sworn statement it does not satisfy the basic ingredients of the offences charged.

15.The learned counsel for the petitioners/accused cited the following decisions in support of their contentions:

1. 2015 SCC Sharad Kumar Sanghi Vs Sangita Rane
2. MANU/SC/8183/2008 R.Kalyani Vs Janak C Mehta
3. 2008(5) SCC 668 Maksud Saiyed Vs State of Gujarat
4. 2008(5) SCC 662 S.K.Alagh Vs State
5. 2014 SCC Binod Kumar Vs State
6. 2009(11) SCC 203 Chunduru Sivaram Krishna Vs Peddit Ravindar Babu.

16.The learned counsel for the respondent opposed the contentions of the petitioner/accused and sought for dismissal of the criminal original petition.

17.I heard Mr.A.Ramesh, learned Senior Counsel for M/s.C.Arunkumar, learned counsel for the petitioners and Mr.Ashok Menon, learned counsel for the respondent and perused the entire materials available on record.

18.In the case on hand, the export company which had given its excess order to the complainant company had not been arrayed as an offender. Without adding the company as an offender, the instrumentality and another cannot be prosecuted. There is no averment in the complaint or in the sworn statement against the petitioner/accused. It is to be noted that there is no allegation that the petitioners are the partners.

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19.On reading the entire averments in the complaint, there is no entrustment of goods to the petitioners for prosecuting them under 409 or 420 of IPC. The commercial transactions should not be given a cloak of criminal colour. Therefore continuation of prosecution is nothing but an abuse of process warranting interference.

20.In the result, this Criminal Original Petition is allowed and the case in C.C.No.28 of 2011, on the file of the learned Judicial Magistrate No.VI, Coimbatore, is hereby quashed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vs

To

1.The XX Judicial Metropolitan Magistrate,
Ripon Building (Annexe),
Chennai-600 003.

2.The Judicial Magistrate -VI
Coimbatore.

3.The Chief Judicial Magistrate,
Coimbatore.

4.The Public Prosecutor,
Chennai.

+1cc to Mr.C.Arunkumar, Advocate, S.R.No.82371

Crl.O.P.No.10288 of 2011
and
M.P.No.1 of 2011

KAN(CO)

rrs 20/03/2019.

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