IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 24.04.2017
CORAM:
THE HON'BLE MR.JUSTICE C.T. SELVAM
Crl.O.P.Nos.23614 and 25879 of 2014
and
M.P.Nos.1 and 1 of 2014

1. Kalanithi Maran
S/o. Late Murasoli Maran ..Petitioner in Crl.OP.No.23614

2. Bala @ Balasubramanian
S/o.N.Ramanthan ..Petitioner in Crl.OP.No.25879

Vs.

1. The State
by the Inspector of Police
Central Crime Branch
IV Team EDF II
Vepery, Chennai 600 007.

2. P.V.Sivaprasad
S/o.Nageswara Rao. ..Respondents in both the Crl.OPs'

COMMON PRAYER:
Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to call for records in Crime.No.333 of 2014 on the file of the first respondent and quash the same.

For Petitioner in Crl.OP.No.23614 of 2014 : Mr.Vijay Narayan, SC for Mr.J.Ravindran

For Petitioner :Mr.K.P.AnanthaKrishna in Crl.OP.No.25879 of 2014

For R 1 in both Crl.O.Ps.:Mr.Rajarathinam, Public Prosecutor

For R2 in Crl.OP.No.23614 of 2014 : Mr.E. Vijay Anand

For R2 in Crl.OP.No.25879 of 2014 : Mr.K.G. Senthil Kumar

COMMON ORDER

Petitioners seek quash of First Information Report in Crime No.333 of 2014 on the file of first respondent.

2. Heard learned senior counsel and learned counsel for petitioners, learned Public Prosecutor for first respondent/State and learned counsel for second respondent.

3. The complaint in Crime No.333 of 2014 on the file of the first respondent, Inspector of Police, Central Crime Branch, Chennai-600 007, has been registered for offences under Sections 341, 406, 420, 506(i) IPC. The complaint of the second respondent, addressed to the Commissioner of Police, Greater Chennai, Vepery, Chennai, has been preferred as early as on 21.07.2014 and the same is reproduced herein below:

> "The Commissioner of Police,
> Greater Chennai,
> Vepery,
> Chennai.
>
> Respected Sir,
>
> Sub: Complaint against Mr.Kalanithi Maran, Managing Director of M/s.Sun TV Network limited for cheating to the tune of Rs.1,03,79,855/- in connection with subscription commission for Gemini Telugu Channels for the entire Krishna District in Andhra Pradesh.
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> -----
>
> We are the Distributors of Gemini Telugu Channels for the entire Krishna District in Andhra Pradesh from April 2007 till December 2009 which was carried out in the name and style of "Channel Plus-Andhra Pradesh" (A Unit of Kal Comm Pvt.Ltd.).
>
> During our period of business has distributors for Gemini Telugu Channels we were carrying out the same in the name of "A Video Today" a Sole Proprietor concern represented by Mr.P.V.Sivaprasad, having office at Door No.27-19-57, Durgaiah Street, Governorpet, Vijayawada 520002, Krishna District, Andhra Pradesh.
>
> M/s. Channel Plus-Andhra Pradesh used to make the billing on monthly basis directly in the name of "Multi System Operators" (MSO). Our operation of work is to monitor

the telecasting of all the Gemini Telugu Channels in good quality for the subscribers in the entire Krishna District and to collect the payments from the MSO on behalf of the company and to forward the respective payments to the head office at Chennai. We have been assigned to do this job on a commission basis for the collection of amounts from the MOS.

At the time of April 2007, when we were appointed as the Distributors of the company, the business revenue was for a sum of Rs.51,01,602/- which was substantially increased due to our hard work and sincere efforts to the tune of
Rs.56,18,205/- during December 2009 at the point of our being relieved from the distributorship. Infact, we have made a roaring business for the company from April 2007 till December 2009 for a total sum of Rs.18,02,36,384/- and had collected the subscription amount of Rs.17,76,33,469/-.

When we had improved the business rapidly for the entire Krishna District, on one fine morning without even assigning any specific or proper reason they have terminated our services of distributorship for the Gemini Telugu Channels for the entire Krishna District vide their email dated 16.12.2009.

We have made several requests to them to provide us the details of subscription collection commission working and the account copy for the period of our distributorship. So far we have not received the same but whereas they have issued a statement showing the amount which has been paid to us and the balance to be payable.

Out of the entire collection of Rs.17,76,33,469/- we had to get a subscription collection commission of Rs.88,81,673/- as per the statement given by the company, whereas we have so far received only Rs.38,91,358/- leaving a balance of Rs.49,90,315/-. The same has been accumulated to Rs.1,03,79,855/-(49,90,315/-

plus 53,89,540/-along with interest @24% per annum)

All along I had contacted and discussed about commission modalities only with Mr.Kalanithi Maran. When I asked for payment personally on 5th May, 2014 at about 11.52 a.m., they told me to come on 14.07.2014.

In fact, M/s.Kal Comm Private Limited has never replied to any of our earlier letters but we have received a reply letter dated 14.07.2014 from them for our letter dated 07.07.2014 informing that the commission payable to us has already been settled and there are no amounts due and payable to us and the claim made by us is malicious, misleading, baseless and false.

When I went on 14.07.2014 as informed by them, I was not allowed inside the office and was asked to be in the lobby. Suddenly Mr.Bala(Balasubramainem finance dept), and other came and cornered me stating that this company belongs to Mr.Kalanithi Maran and that they would not make the payment to me. If at all I am taking up the matter to the police then you and your entire family would be wiped out and that I would to face dare consequences".

4. Learned Senior counsel for petitioner submitted that even on a bare reading it is apparent that the dispute, if any, is civil in nature.

5. The second respondent specifically had informed of having met the petitioner/first accused on 05.05.2014 at 11.52 a.m. Referring to the Passport entries of the petitioner in Crl.O.P.No. 23614 of 2014, learned counsel submitted that the same informs his departure from India on 26.04.2014 and his return on 08.05.2014. Submitting that even if there be commission of any incidental offences in respect of that which is entirely a civil liability, there could be no vicarious liability attached to petitioner, since he had resigned from Directorship of the Company M/s. Kal Comm Pvt. Ltd. as early on 08.12.2005. With regard to the allegations in the complaint of offences under Section 341,406,420,506 (i) IPC, learned senior counsel submitted that there was no allegation against petitioner/first accused.

6. Learned senior counsel referred to the following decisions of the Apex Court (i) Ajay Mitra vs.State of M.P and Others, (2003 (3) SCC 11) :

> 16. A guilty intention is an essential ingredient of the offence of cheating. In other words 'mens rea' on the part of the accused must be established before he can be convicted of an offence of cheating. (See Jeswantrai Manilal Akhaney v. The State of Bombay AIR 1956 SC 575). In Mahadeo Prasad v. State of West Bengal AIR 1954 SC 724, it was held as follows : "Where the charge against the accused is u/s.420 in that he induced the complainant to part with his goods, on the understanding that the accused would pay for the same on delivery but did not pay, if the accused had at the time he promised to pay cash against delivery an intention to do so, the fact that he did not pay would not convert the transaction into one of cheating. But if on the other hand he had no intention whatsoever to pay but merely said that he would do so in order to induce the complainant to part with the goods then a case of cheating would be established."
>
> 17. In Hari Prasad Chamaria v. Bishun Kumar Surekha & Ors. AIR 1974 SC 301 it was held that unless the complaint showed that the accused had dishonest or fraudulent intention at the time the complainant parted with the money, it would not amount to an offence u/s.420 IPC and it may only amount to breach of contract. In G.V. Rao v. L.H.V. Prasad & Ors. 2000 (3) SCC 693, it was reiterated that guilty intention is an essential ingredient of the offence of cheating and, therefore, to secure conviction 'mens rea' on the part of the accused must be established. It has been further held that in order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was offered.
>
> 18. So far as the present appellants are concerned, they came into picture much later in July 1999, when various

trademarks and brands of A-1 were purchased by A-6. The appellants were not at all in picture at the time when the complainant claims to have spent money in improvement of its bottling plant on the basis of the agreement executed with Cadbury Schweppes Beverages India Pvt. Ltd. (A-1). Since the appellants were not in picture at all at the time when the complainant alleges to have spent money in improving the bottling plant, neither can any guilty intention be attributed to them nor can there possibly be any intention on their part to deceive the complainant. No offence of cheating can, therefore, be said to have been committed by the appellants on account of the fact that a notice was given to the complainant that the bottling agreements will not be renewed any further after expiry of the initial term. Thus, even if the allegations made in the complaint are accepted to be absolutely true and correct, the appellants cannot be said to have committed any offence of cheating as provided in Section 420 IPC.

19. The High Court has held that the Petitions filed by the appellants for quashing the complaint and the FIRs registered against them are pre-mature. The question which arises is that where the complaint or the FIR does not disclose commission of a cognizable offence, whether the same can be quashed at the initial stage ? This question was examined by this Court in State of West Bengal v. Swapan Kumar Guha AIR 1982 SC 949 and it was held that the First Information Report which does not allege or disclose that the essential requirements of the penal provision are prima facie satisfied, cannot form the foundation or constitute the starting point of a lawful investigation. It is surely not within the province of the police to investigate into a Report (FIR) which does not disclose the commission of a cognizable offence and the Code does not impose upon them the duty of inquiry in such cases. It was further held that an investigation can be quashed if no cognizable offence is disclosed by the FIR. The same question has been considered in

State of Haryana v. Bhajan Lal AIR 1992 SC 604 and after considering all the earlier decisions, the category of cases, in which the Court can exercise its extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 Cr.P.C. either to prevent abuse of the process of any Court or to secure the ends of justice, were sumarised in AIR para 108 of the Report and sub- paras 1 to 3 thereof are being reproduced hereinbelow :

"1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/S. 156(1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

3.Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused."

20. As mentioned earlier, the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute any offence as against the appellants. Therefore, the complaint filed by the respondent and the FIRs registered in pursuance thereof are liable to be quashed. Trisuns Chemical Industry v. Rajesh Agarwal 1999(8) SCC 686 cited by learned counsel for the complainant is clearly distinguishable as in the said case the allegation in the complaint was that the complainant had paid in advance a price higher than the market price for purchasing "toasted soyabean extracts" but the accused sent the commodity

which was of most inferior and substandard quality due to which the complainant suffered a loss of Rs.17 lakhs. In view of the allegations made in the complaint, the matter required investigation and the proceedings could not have been quashed on the ground that the dispute was of a civil nature.

(ii) Thermax limited and others vs K.M. Johny and others, (2011 (13) SCC):

37) It is settled law that the essential ingredients for an offence u/s.420, which we have already extracted, is that there has to be dishonest intention to deceive another person. We have already quoted the relevant allegations in the complaint and perusal of the same clearly shows that no such dishonest intention can be seen or even inferred inasmuch as the entire dispute pertains to contractual obligations between the parties. Since the very ingredients of Section 420 are not attracted, the prosecution initiated is wholly untenable. Even if we admit that allegations in the complaint do make out a dispute, still it ought to be considered that the same is merely a breach of contract and the same cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction. Inasmuch as there are number of documents to show that appellant Company had acted in terms of the agreement and in a bona fide manner, it cannot be said that the act of the appellant Company amounts to a breach of contract.

38) Though Respondent No.1 has roped all the appellants in a criminal case without their specific role or participation in the alleged offence with the sole purpose of settling his dispute with appellant-Company by initiating the criminal prosecution, it is pointed out that appellant Nos. 2 to 8 are the Ex-Chairperson, Ex-Directors and Senior Managerial Personnel of Appellant 1 Company, who do not have any personal role in the allegations and claims of Respondent 1. There is also no specific allegation with regard to their role.

39) Apart from the fact that the complaint lacks necessary ingredients of Sections 405, 406, 420 read with Section 34 IPC, it is to be noted that the concept of `vicarious liability' is unknown to criminal law. As observed earlier, there is no specific allegation made against any person but the members of the Board and senior executives are joined as the persons looking after the management and business of the appellant Company.

40) It is useful to demonstrate certain examples, namely, Section 141 of the Negotiable Instruments Act, 1881 which specifically provides that:

"141. Offences by companies - (1) if the person committing an offence u/s.138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:"

41) Likewise, Section 32 of the Industrial Disputes Act, 1947 provides that:

"32. Offence by companies, etc.- Where a person committing an offence under this Act is a company, or other body corporate, or an association of persons, (whether incorporated or not), every director, manager, secretary, agent or other officer or person concerned with the management thereof shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence."

42) We have already noted that the offence alleged in the criminal complaint filed by respondent No.1 is under Sections 405 and 420 IPC whereunder no specific liability is imposed on the officers of the company, if the alleged offence is by the Company. In the absence of specific details about the same, no person other than Appellant 1 Company can be prosecuted under the alleged complaint.

43) The Courts below failed to appreciate an important aspect that the complaint came to be filed in the year 2002 when the alleged disputes pertain to the period from 1993-1995. As rightly pointed out, the Courts below ought to have appreciated that respondent No.1 was trying to circumvent the jurisdiction of the Civil Courts which estopped him from proceeding on account of the law of limitation.

(iii) Vesa holding private limited and another Vs. State of Kerala and others (2015(8) SCC):

12. From the decision cited by the appellant, the settled proposition of law is that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In other words for the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence u/s. 420 of the Penal Code, 1860 can be said to have been made out.

7. Learned Senior counsel contended that following the rationale of the decisions cited would require this Court to quash the F.I.R in the case.

8. Learned counsel for petitioner in Criminal O.P.No.25879 of 2014 submitted that allegation of the complainant against petitioner/ A2 was that when the defacto complainant went to the accused's office on 14.07.2014, he was not allowed inside and asked to be in the lobby. Referring to Sec. 341 IPC, learned counsel submitted that no offence under such section would stand attracted in the circumstance informed. As regards offence u/s. 506(i) IPC alleged against petitioner,

learned counsel referred to decision of this Court viz., Rajan Vs.State rep. by Inspector of police, Central Crime Branch, Tiruppur, (2008 (3) MLJ (Crl) 776) wherein after referring to the observation of the Punjab & Haryana High Court in Usha Bala Vs. State of Punjab (P&H) in (2002) 2 C.C.Cases (P&H) 320 that,

> ' Empty threats does not prima facie mean that the case u/s. 506 I.P.C. is made out against the petitioner. Hence, in face no case is made out against the petitioner '

it was observed as follows ,

> ' 11. It is seen even in the instant case, except a vague and bald allegation of criminal intimidation, the de facto complainant has not stated that there was any threat to his life or sought for any police protection. Therefore, this Court is of the considered view that even the offence u/s. 506(i) I.P.C is not maintainable.'

10. Learned counsel also relied on judgment of Apex Court in Manik Taneja and another Vs. State of karnataka and another (2015 CRI.L.J.1483) wherein it is held thus:

> 13. Section 506, IPC prescribes punishment for the offence of criminal intimidation. "Criminal intimidation" as defined in Section 503, IPC is as under:-
>
> "503. Criminal intimidation.- Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as means of avoiding the execution of such threat, commits criminal intimidation.
>
> Explanation- A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this Section".
>
> 14. A reading of the definition of "Criminal intimidation" would indicate that there must be an act of threatening to another person, of causing an injury to the person, reputation, or property of the person threatened or to the person in whom the threatened person is interested and the threat must be with the intent to cause alarm

to the person threatened or it must be do to any act which he is not legally bound to do or omit to do an act which he is legally entitled to do.

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.

11. Learned counsel would submit that the petitioner/A2 would be entitled to the relief of quash of the case registered against him.

12. Learned counsel for second respondent submitted that in support of the petition seeking quash, the second accused in para 7 had informed as follows:

> "The de-facto complainant came on his own into the building and left on his own. There was no use of force even to send him out. There exist CCTV footage which clearly proves that the whole episode was very smooth with the de-facto complainant speaking to this petitioner in the presence of 2 other colleagues and the de-facto complainant quietly walking away without any murmur. Further, the defacto complainant was in a private office building and he cannot claim right of way inside the building. He was asked to sit in the lobby where normally outsiders are attended to by office staff. These would demonstrate that his movement was never curtailed and hence invoking of this Section 341 IPC is misplaced and ill-conceived".

13. He contended that the presence of second respondent at the office premises of the accused was not denied and the complaint allegations are matters for trial. Petitioners were highly influential people. Learned counsel has nothing to say with regard to the first accused and particularly, the contention of learned senior counsel of petitioner/first accused not being in the country on the date of the second respondent/defacto complainants alleged meeting with him.

14. Learned Public Prosecutor contended that the complaint allegations prima facie spell out cognizable offences. Investigation was at an initial stage and upon completion thereof, first respondent may or may not file a positive final report. Presence or absence of first petitioner in/from India was a matter for investigation. He prays for dismissal of the petitions.

15. On consideration of the rival submissions this Court finds as follows:

(i). The dispute between the parties essentially is civil in nature. The transactions between the parties are between 2007 and 2009. Period for enforcement of Civil right having long expired, respondent has sought to breathe life into the matter by alleging actions criminal of 14.07.2014. While learned Senior counsel for petitioner has submitted that the passport entries of the first petitioner reveal that such petitioner was not even in the country at the relevant time, learned counsel for 2nd respondent has nothing to say in answer. As rightly contended by learned counsel for petitioner/A2, the allegations even if presumed to be true do not attract Sections 341 and 506(i) IPC. According to the 2nd respondent/complainant he was not allowed inside the office and was asked to be in the lobby. He further states that the petitioner/A2 and others came and cornered him. Admittedly he was in the company premises of the accused. One cannot seek access to every nook and corner of another's premises and complain of wrongful restraint punishable u/s.341 IPC. Again, as repeatedly held, in the absence of complainant not informing that he had been alarmed on the conduct of the accused, no offence of criminal intimidation punishable u/s. 506 IPC would be attracted.

16. This Court is in no doubt whatsoever that what is essential Civil in nature is sought to be given criminal colour. The Apex Court in Dalip Singh vs. State of U.P. Others, 2010 (2) SCC 114 has informed:

> "1. For many centuries, Indian society cherished two basic values of life i.e., `Satya' (truth) and `Ahimsa' (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain

these values in their daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system. The materialism has over-shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final."

The Criminal Original petitions stands allowed. Consequently, connected miscellaneous petitions are closed. The proceedings in Crime.No.333 of 2014 on the file of the first respondent shall stand quashed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sli/bri/kpr

To

1.The Inspector of Police,
Central Crime Branch,
IV Team EDF II,
Vepery, Chennai 600 007.

2. Public Prosecutor,
High Court,
Madras.

3. The Record Keeper
Criminal Section
High Court, Madras-104

+1cc to M/s.K.P.Anantha Krishna, Advocate SR.NO.24723
+1cc to Mr.J.Ravindran, Advocate SR.No.24871

Crl.O.P.No.23614 and 25879 of 2014

RR(CO)
sm:21.12.2017