

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2017

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

CRL.O.P.Nos.5277 and 5470 of 2013
and
M.P.Nos.1 and 1 of 2013

1.G.Pushpa

2.G.Menaka

3.A.Thamilarasi ...Petitioners in Crl.O.P.No.5277/2013

1.P.Gopalakrishnan

2.G.Ramachandran

3.R.Muthuraman ...Petitioners in Crl.O.P.No.5470/2013

-Vs-

M.Sudhakar ...Respondent in both petitions

Criminal Original Petitions filed under Section 482 of Criminal Procedure Code praying to call for records relating to the case in C.C.No.25 of 2013 on the file of learned Judicial Magistrate III, Vellore and quash the same.

For Petitioners: Mr.A.Ramesh, senior counsel
for Mr.V.Anandha Moorthy

For Respondent : Mr.N.S.Sivakumar

COMMON ORDER

Petitioners seek quash of proceedings in C.C.No.25 of 2013 on the file of learned Judicial Magistrate III, Vellore.

2. Petitioners in Crl.O.P.Nos.5277 and 5470 of 2013 are accused in case pending trial in C.C.No.25 of 2013 on the file of learned Judicial Magistrate III, Vellore. Court below has taken cognizance for offences u/s. 120 (B), 406 and 420 r/w 34 IPC. The three petitioners in Crl.O.P.No.5277 of 2013 are women folk informed to be partners of a concern by name M/s.Krishna

Textile Process, and are arrayed as accused Nos.2,3 and 6. Accused Nos.1,4 and 5 also are informed to be partners of the firm.

3. Respondent has preferred a complaint informing that their company, viz., M/s. East Asia Equipments, deals with supply of equipments for industrial waste water treatment and M/s. Krishna Textile Process, represented by its Partner, P.Gopalakrishnan, and General Manager, R.Muthuraman first and third petitioner in Crl.O.P.No.5470 of 2013, approached the respondent company during September 2006 towards installation of Zero Liquid Discharge Effluent Treatment System for their Unit. Being satisfied with the system, M/s.Krishna Textile Process placed orders vide EAE/KTP/43/2006 dated 20.09.2006 and an agreement was entered into on 16.05.2007. The said agreement was signed by first petitioner in Crl.O.P.No.5470 of 2013. As per the agreement, the equipment was supplied, installed and commissioned and had been functioning properly, which could be ascertained from the communications of M/s.Krishna Textile Process to the Tamil Nadu Pollution Control Board. The accusation is that M/s.Krishna Textile Process has not effected payment as per the terms agreed and as on date, a sum of Rs.26,71,522/- is due. Despite repeated requests, petitioners' company has not effected payment and was evasive in its replies. Moreover, third petitioner in Crl.O.P.No.5470 of 2013 to avoid payment has in letter dated 09.11.2011 made false allegations, contradictory of their communications to Tamil Nadu Pollution Control Board. The complaint has been taken on file in C.C.No.25 of 2013 on the file of learned Judicial Magistrate III, Vellore.

4. Heard learned senior counsel for petitioners and learned counsel for respondent.

5. Learned Senior counsel for petitioners submitted that the entire transaction between the parties had taken place at Perundurai. However, the complaint of the respondent made no mention thereof. Merely towards informing that the learned Judicial Magistrate, Vellore had jurisdiction the respondent/complainant has falsely stated that the place where the representations were made by the accused is Vellore. The partnership firm of which the petitioners were partners have not been arrayed as accused. The complaint informs no particulars on how the offences alleged stood committed. The transactions admittedly were of the year 2007 and the complaint had been preferred in 2012. Learned Senior counsel submitted that the respondent/complainant absolutely had no legs to stand upon and Court below has wrongly taken cognizance. Case in C.C.No.25 of 2013 on the file of learned Judicial Magistrate III, Vellore is to be quashed.

8. We have heard the learned counsel for the respondent.

9. A reading of the complaint informs nothing more than that which at best is a civil liability. Even the marital status of the women folk has not been mentioned in the complaint. Apparently they have been arrayed as accused only as an arm twisting measure. Five years after the transactions the complaint informing a sum of Rs.26,71,522/- as payable by the accused has been filed and the only imputation of criminality reads thus:

"8. It is submitted that but for the representations of P.Gopalakrishnan and G.Ramachandran that the payments will be made as per schedule, the complainant would not have supplied and commissioned the system. The complainant believed the representations made by them to be true. The complainant have been communicating through e-mail and they have been giving evasive replies and they are not willing to pay even the admitted amount and R.Muthuraman sent a letter dated 09.11.2011 with false allegations which is contradictory of their communications to Tamil Nadu Pollution Control Board to avoid payment. From the conduct of P.Gopalakrishnan and others it transpires that they never had any intention of making payments from the inception of the transaction and they had the intention to cheat."

Informing that the complaint falls woefully short of legal requirements and the Court below totally has gone wrong in taking cognizance, merely going by the head note complaint u/s. 156(3) Cr.P.C for offences u/s. 120B, 406, 420 r/w. 34 IPC and further that the complaint is nothing more than an attempt to give criminal colour to that which at best is a civil liability. These Criminal Original Petitions are allowed. The proceedings in C.C.No.25 of 2013 on the file of learned Judicial Magistrate III, Vellore, are quashed. Connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

/true copy/

Sub Asst. Registrar

gm/kpr

To

The Judicial Magistrate III,
Vellore.

+1cc to Mr.V.Anandha Moorthy, Advocate sr.no.45221

CRL.O.P.Nos.5277 and 5470 of 2013

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