IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on: 14.09.2017

Orders Pronounced on: 10.10.2017

CORAM

THE HON`BLE MR.JUSTICE **A.D. JAGADISH CHANDIRA**

Crl.O.P.No.28771 of 2013 and M.P.No.1 of 2013

K.Suresh Babu ... Petitioners/Accused

Vs

1. State by
   Sub-Inspector of Police,
   C3, Manimangalam Police Station

2. M.E.Sathya Narayanan ... Respondents/Complainants

Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records in C.C.No.756 of 2013, on the file of the learned Judicial Magistrate, Tambaram and quash the same against the petitioner.

For Petitioner : Mr.M.Jaikumar

For Respondent-1 : Mr. B.Ramesh Babu,
Government Advocate (Crl. Side)

ORDER

This petition has been filed by the Petitioner/Accused seeking to quash the proceedings in C.C.No.756 of 2013, on the file of the learned Judicial Magistrate, Tambaram, for the offence under Section 420 IPC.

2. The allegation in the Charge Sheet is that the complainant Thiru.M.E.Sathya Narayaan is working as a driver in the State Government Bus and he owns land at Manimangalam. In the said land he prepared to construct a house. He is the member of Prevention of Crime and Corruption Organization at Adambakkam. In the said organization through one of the member Sundaram, a retired Sub-Inspector of Police Suresh Babu, the petitioner herein was introduced. The said person is a building contractor and an Agreement for construction was entered between the complainant and the accused on 20.05.2011 to construct house to the extent of 1099.2 Sq.feet for the value of Rs.13,25,000/- and each copy of the agreement was with the complainant and the accused. On the month of June 2011, work was started and part by part Rs.4,50,000/- by way of cash was given to the accused by the complainant and based on the said agreement, house was not constructed but only basement was finished. The first respondent had examined 6 witnesses and had laid the charge sheet for the offence under Section 420 IPC.

3. The learned counsel for the petitioner vehemently contended that even assuming for a moment that the entire allegations in the complaint and the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the petitioner for cheating and further the complaint does not disclose the essential ingredients of an offence of cheating which is alleged against the petitioner. The learned counsel further submitted that the complaint and statement does not make any averment as to infer any fraudulent or dishonest inducement having been made by the petitioner pursuant to which the second respondent parted with the money. It is not the case that the petitioner had not made any construction and even as per complaint it has been admitted that the basement was completed as per the agreement and that it cannot be said that the petitioner has cheated the respondent. No case for prosecution under Section 420 is made out even prima facie.

4. The learned counsel for the petitioner further submitted that as per clause-6 of the agreement, it was agreed that the initial advance of Rs.4,50,000/- is to be paid and at the basement level, Rs.3,00,000/- had to be paid by the second respondent, but with the

intention to cheat the petitioner, the second respondent did not pay the said amount and hence, the work could not be continued, whereas to avoid making payment the false complaint had been given with the influence of L.W.3 who is a retired Sub-Inspector Police and the first respondent is attending to arm twist the petitioner to settle a civil dispute.

5. In the counter filed by the second respondent it is contended that believing the words of the petitioner, the defacto complainant entered into an agreement and has paid Rs.4,50,000/- and then the petitioner/accused raised the construction up to basement only and thereafter, stopped continuation of the construction and absconded. The first respondent has also filed a counter stating that based on the complaint a case in C-3 Manimangalam Police Station Crime No.223 of 2012, under Section 420 IPC was registered on 24.04.2012 by the Sub-Inspector of Police and thereafter, the Inspector of Police taken up the case for investigation and examined 5 witnesses and recorded their statements and after completion of investigation they filed a charge sheet before the Judicial Magistrate, Tambaram, Chennai and it was taken on file in C.C.No.756 of 2012 on 21.06.2013 and now the case stands posted to 23.10.2017 for issuing copies to the petitioner.

6. Heard the counsel for the petitioner and perused the complaint and the copy of the agreement. The police had filed a counter stating that the petitioner received Rs.4,50,000/- and failed to continue with further construction and thereby cheated the defacto complainant.

7. Taking into consideration the case on hand and perusal of records it is seen that an agreement was entered into between the petitioner and the second respondent/defacto complainant on 20.05.2011 to construct house to the extent of 1099.2 Sq. feet for the value of Rs.13,25,000/- and that it is the admitted case as per clause 6 of the agreement entered into between the parties, construction had been done up to the basement level and an amount of Rs.4,50,000/- had been paid to the petitioner and thereafter when further amounts have been claimed by the petitioner a dispute had arisen between the petitioner and the defacto complainant thereby leading to the accused not continuing with the construction. The question that arises for consideration whether the averments and the statement of the witnesses taken to be true would make out a case for the offence under Section 420 IPC.

8. In this context, it would be beneficial to refer to the following Judgments of the Apex Court reported in ***(2004) 4 SCC 168 (Hridaya Ranjan Prasad Verma vs. State of Bihar)*** and ***(2009) 14 SCC 696 (Dalip Kaur vs. Jagnar Singh)***.

9. In the judgment reported in ***(2004) 4 SCC 168 (Hridaya Ranjan Prasad Verma vs. State of Bihar)*** the Hon' ble Apex Court has held as follows:-

> *"15.In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time to inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the*

beginning, that is, when he made the promise cannot be presumed."

10. In the judgment reported in ***(2009) 14 SCC 696 (Dalip Kaur vs. Jagnar Singh)***, the Hon'ble Apex Court has held as follows:

"8.Sections 405 and 415 of the Indian Penal Code defining `criminal breach of trust' and `cheating' respectively read as under:

"405 - 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 to do, commits "criminal breach of trust".

"415. Cheating--Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived 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, is said to `cheat'."

An offence of cheating would be constituted when the accused has fraudulent or dishonest intention at the time of making promise or representation. A pure and simple breach of contract does not constitute an offence of cheating.

9. The ingredients of Section 420 *of the Indian Penal Code are :*

"(i) Deception of any persons;

(ii) Fraudulently or dishonestly inducing any person to deliver any property; or

(iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit."

10. The High Court, therefore, should have posed a question as to whether any act of inducement on the part of the appellant has been raised by the second respondent and whether the appellant had an intention to cheat him from the very inception. If the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating. Similar is the legal position in respect of an offence of criminal breach of trust having regard to its definition contained in Section 405 *of the Indian Penal Code. {*See Ajay Mitra v. State of M.P*. [(2003) 3 SCC 11]}."*

11. In the judgment reported in ***(2001) 3 SCC 513 (Alpic Finance Ltd., vs. P.Sadasivan)***, the Hon'ble Apex Court has held as follows:

> *"10. The facts in the present case have to be appreciated in the light of the various decisions of this Court. When somebody suffers injury to his person, property or reputation, he may have remedies both under civil and criminal law. The injury alleged may form basis of civil claim and may also constitute the ingredients of some crime punishable under criminal law. When there is dispute between the parties arising out of a transaction involving passing of valuable properties between them, the aggrieved person may have right to sue for damages or compensation and at the same time, law permits the victim to proceed against the wrongdoer for having committed an offence of criminal breach of trust or cheating. Here the main offence alleged by the appellant is that respondents committed the offence under Section 420 I.P.C. and the case of the appellant is that respondents have cheated him and thereby dishonestly induced him to deliver property. To deceive is to induce a man to believe that a thing is true which is false and which the person practicing the deceit knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest*

intention at the time of commission of the offence. There is no allegation that the respondents made any willful misrepresentation. Even according to the appellant, parties entered into a valid lease agreement and the grievance of the appellant is that the respondents failed to discharge their contractual obligations. In the complaint, there is no allegation that there was fraud or dishonest inducement on the part of the respondents and thereby the respondents parted with the property. It is trite law and common sense that an honest man entering into a contract is deemed to represent that he has the present intention of carrying it out but if, having accepted the pecuniary advantage involved in the transaction, he fails to pay his debt, he does not necessarily evade the debt by deception.

11. Moreover, the appellant has no case that the respondents obtained the article by any fraudulent inducement or by willful misrepresentation. We are told that respondents, though committed default in paying some installments, have paid substantial amount towards the consideration.

12. Having regard to the facts and circumstances, it is difficult to discern an element of deception in the whole transaction, whereas it is palpably evident that the appellant had an oblique motive of causing harassment to the respondents by seizing the entire articles through magisterial *proceedings. We are of the view that the learned judge was perfectly justified in quashing the proceedings and we are disinclined to interfere in such matters."*

12. In the judgment reported in ***(2005) 10 SCC 228 (Anil Mahajan vs. Bhor Industries Ltd.)***, the Hon'ble Apex Court has held as follows:

"The facts in the present case have to be appreciated in the light of the various decisions of this Court. When somebody suffers injury to his person, property or reputation, he may have remedies both under civil and criminal law. The injury alleged may form basis of civil claim and may also constitute the ingredients of some crime punishable under criminal law. When there is dispute between the parties arising out of a transaction involving passing of valuable properties between them, the aggrieved person may have right to sue for damages or compensation and at the same time, law permits the victim to proceed against the wrongdoer for having committed an offence of criminal breach of trust or cheating. Here the main offence alleged by the appellant is that respondents committed the offence under Section 420 *I.P.C. and the case of the appellant is that respondents have cheated him and thereby dishonestly induced him to deliver property. To deceive is to induce a man to believe that a thing is true which is false and which the person practicing the deceit*

knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence. There is no allegation that the respondents made any willful misrepresentation. Even according to the appellant, parties entered into a valid lease agreement and the grievance of the appellant is that the respondents failed to discharge their contractual obligations. In the complaint, there is no allegation that there was fraud or dishonest inducement on the part of the respondents and thereby the respondents parted with the property. It is trite law and common sense that an honest man entering into a contract is deemed to represent that he has the present intention of carrying it out but if, having accepted the pecuniary advantage involved in the transaction, he fails to pay his debt, he does not necessarily evade the debt by deception. Moreover, the appellant has no case that the respondents obtained the article by any fraudulent inducement or by willful misrepresentation. We are told that respondents, though committed default in paying some installments, have paid substantial amount towards the consideration."

13. In the judgment reported in ***(2006) 6 SCC 736 (Indian Oil Corporation vs. NEPC India Limited)***, the Hon'ble Apex Court has held as follows:.

"32.The essential ingredients of the offence of 'cheating' are : (i) deception of a person either by

making a false or misleading representation or by other action or omission (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce 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."

14. In the judgment reported in ***(2009) 3 SCC 78 (V.Y.Jose vs. State of Gujarat)***, the Hon'ble Apex Court has held as follows:

"21.There exists a distinction between pure contractual dispute of civil nature and an offence of cheating. Although breach of contract per se would not come in the way of initiation of a criminal proceeding, there cannot be any doubt whatsoever that in absence of the averments made in the complaint petition where from the ingredients of an offence can be found out, the court should not hesitate to exercise its jurisdiction under Section 482 of the Code of Criminal Procedure.

22. We may reiterate that one of the ingredients of cheating as defined in Section 415 of the Indian Penal Code is existence of an intention of making initial promise or existence thereof from the very beginning of formation of contract.

23. Section 482 of the Code of Criminal Procedure, saves the inherent power of the court. It serves a salutary purpose viz. a person should not undergo harassment of litigation for a number of years although no case has been made out against him.

24. It is one thing to say that a case has been made out for trial and as such the criminal proceedings should not be quashed but it is another thing to say that a person should undergo a criminal trial despite the fact that no case has been made out at all."

15. From the above rulings of the Hon'ble Apex Court, it is clear that to constitute the offence of cheating, the following essential ingredients should be satisfied:

"(i) *Deception of any persons;*

(ii) *Fraudulently or dishonestly inducing any person to deliver any property; or*

(iii) *To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit."*

Keeping the above principles laid down by the Hon'ble Apex Court, if the complaint, statement of witnesses and the records are read in totality, the only conclusion that could be arrived at is that there is absolutely no allegation that the petitioner acted either fraudulently or dishonestly so as to induce the second respondent to enter into the construction agreement and further, nowhere it is stated in the complaint that from the very inception, the petitioner deceived the second respondent and thereby this Court finds that the proceedings are vexatious and unreasonable, wherein a case of breach of contract has been given a criminal colour and an attempt has been made to circumvent the process of the Civil Court. If such proceedings are allowed to continue, the same would result in abuse of process of the Court and it is the paramount duty of this Court to prevent such abuse of the process of Court.

16. In view of the discussions above, this Court finds that the continuation of proceedings is an abuse of process of law.

17. In the result, the criminal original petition is allowed and the proceedings in C.C.No.756 of 2013, on the file of the learned Judicial Magistrate, Tambaram, against the petitioner, are quashed. Consequently, connected miscellaneous petition is closed.

10.10.2017

gr.

Index : Yes
Internet: Yes

To
1.The Judicial Magistrate, Tambaram.
2.The Public Prosecutor, High Court, Chennai.
3. The Sub-Inspector of Police, C3, Police Station, Manimangalam.

A.D.JAGADISH CHANDIRA, J
gr.

ORDER IN Crl.O.P.No.28771 of 2013

10.10.2017