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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 03.08.2017

Pronounced on : 24.08.2017

CORAM :

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.R.C.(MD) No.421 of 2015

and

M.P(MD)No.1 of 2015

L.K.Suthish
Proprietor,
Captain Cine Creations,
72, Cauvery Street,
Saligramam,
Chennai.

... Petitioner/Petitioner/1st Accused
Vs.

B.Mariammal,
Proprietor,
Selva Nandhini Pictures,
through her power agent,
S.Balaraman,
Vaidhiyanathapuram,
Rajapalayam.

... Respondent/Respondent/Complainant

Petition filed under Sections 397 read with 401 Cr.P.C, to set aside the order dated 17.11.2014 in Cr.M.P.No.9031 of 2013 in C.C.No.207 of 2006 on the file of the Judicial Magistrate II, Srivilliputhur and consequently discharge the petitioner from the offence under Sections 406, 420 read with 34 IPC in the above C.C.

For Petitioner : Mr.A.Sivaji

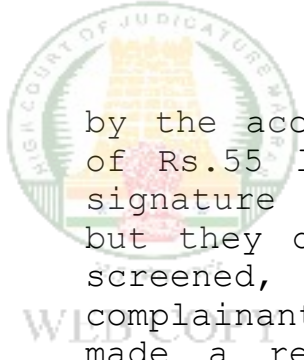
For Respondent : Mr.G.Karuppasamy Pandian

ORDER

Challenging the order dismissing the petition filed under Section 245 (2) to discharge the petitioner from the charges, the present Criminal Revision Case has been filed.

2.The case of the complainant in a nutshell is as follows:-

The respondent-complainant engaged in cinema distributorship at Tirunelveli in the name and style of "Selva Nanthini Pictures". In the year 2001, the petitioner/A1 produced a Tamil movie called "Narashimha" in which the second accused has acted. The respondent/complainant requested the petitioner for the distributorship for the above movie for Tirunelveli area and there has been an agreement between them. The accused demanded a sum of Rs.55 lakhs and it was also agreed that, if any loss occurred to the respondent, the accused will compensate the loss, and also promised to give distributorship of a subsequent movie being taken



by the accused. Believing their words, the respondent gave a sum of Rs.55 lakhs to the accused, at that time, they obtained her signature in a blank papers for the purpose of creating agreement but they did not give the copy of the same. When the movie was screened, it has collected only sum of Rs.29 lakhs and the complainant suffered huge loss of Rs.26 lakhs. The complainant made a request to the accused to compensate her as per the agreement but they refused to do so, the legal notice sent by the complainant was also not properly replied. Alleging that the accused have cheated the complainant, she has filed a private complaint before the Court below and the Court below taken cognizance, also issued summons to the accused.

3.Earlier, the second accused in this case has filed a petition to quash the proceedings in C.C.No.207 of 2006, and this Court by an order dated 06.09.2007, in Crl.O.P.(MD)No.5590 of 2006 quashed the proceedings against the second accused alone. Thereafter, the first accused filed an application to discharge him from the charges before the trial Court, which was dismissed by order dated 17.11.2006. Challenging the same, the present Criminal Revision Case has been filed.

4.Heard Mr.A.Sivaji, learned counsel for the petitioner and Mr.G.Karupphasamy Pandian, learned counsel for the second respondent.

5.Learned counsel for the petitioner submitted that absolutely there is no written agreement between the parties as alleged by the complainant, apart from that the petitioner never promised the respondent that he will compensate her suitably in the event of the complainant suffered any loss. In fact, it is not a distributorship as alleged by the respondent but the movie was given only on royalty. Even assuming that there was an agreement, it would only rise a civil dispute, absolutely there is no material available on record to show that there is entrustment and breach of trust and cheating. Therefore, the charge for the offence under Sections 406 and 420 IPC is not made out either in the complaint or in the evidence placed by the complainant, absolutely no prima facie case is made out against the petitioner to proceed with the complaint. But the Court below dismissed the petition on the ground that all these contentions can be proved only during the trial.

6.Per contra, learned counsel for the respondent contended that only on the promise made by the accused that they will compensate her in the event of any loss in the business, the complainant undertook the distributorship. When the movie runs loss as per the agreement, the accused should repay the remaining sum to the complainant. But the accused did not fulfil their promise and they have cheated the complainant. The materials



available on record would prove that the very inception of the transaction the petitioner had an intention to cheat the complainant and a prima facie case is made out against the accused, the Court below considering the entire materials, has rightly dismissed the petition.

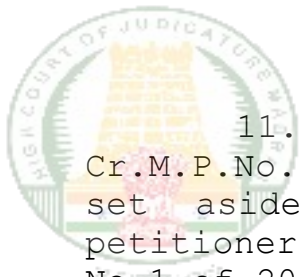
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7.I have considered the rival submissions made on either side and perused the materials available on record carefully.

8.The main contention of the complainant is that for distributorship of the movie there was an agreement between the parties and as per the said agreement, the accused promised her that they will pay 20% of the total collection and if any loss occurred to the complainant, the accused would compensate her suitably or they will give distributorship in the subsequent movie produced by the accused in order to compensate the loss. Even though the complainant has stated in the complaint that at the time of handing over money, the accused have obtained signatures in some blank papers in the guise of creating agreement but absolutely there is no material available on record to show that there is an agreement between the parties as stated in the complaint, in the absence of any material regarding such agreement, the Court cannot presume that there is an agreement between the parties.

9.Even assuming that there is an agreement between the parties and if any breach of the same, it would only give rise to a civil dispute and the remedy available to her only before the Civil Court. There must be some tangible material to show that there was an intention on the part of the accused at the time of making promise or representation and mere failure to keep up the promise cannot be presumed as a cheating punishable under Section 420 IPC. When the transaction purely commercial in nature and in the absence of any averment regarding deception and the accused have an intention to cheat her from the inception, the offence under Section 420 IPC cannot be made out. It is an admitted case of business transaction between the parties regarding the film distributorship and if any loss in the above business, it would only give rise to civil dispute and the complainant cannot give a criminal flavour to it and file a complaint.

10.From the materials available on record, I am of the considered view that there is no prima facie case is made out against the petitioner for the offence punishable under Sections 406, 420 read with 34 IPC. The Court below without considering the case in its proper perspective dismissed the discharge petitions mainly on the assumption that the petitioner has *mens rea* to cheat the complainant. In the above circumstances, the petitioner is discharged from the charges framed against him.



11. In the result, the order passed by the Court below in Cr.M.P.No.9031 of 2013 in C.C.No.207 of 2006, dated 17.11.2014 is set aside. The Criminal Revision Case is allowed and the petitioner is discharged from the charges. Consequently, M.P(MD) No.1 of 2015 is closed.

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Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate II, Srivilliputhur

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.A.SIVAJI, Advocate SR.No.74495

sms

MAS/MR-KKR/SAR2:14.09.2017:4P-4C

order made in
Crl.R.C.(MD) No.421 of 2015
and
M.P(MD)No.1 of 2015
24.08.2017