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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 05.09.2018

PRONOUNCED ON : 19.09.2018

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.3117 of 2015

T.Kalyanaraman ... Petitioner

Vs.

1.The Inspector of Police – Crime,
V5, Thirumangalam Police Station,
Chennai – 600 040.
(In Crime No.782 of 2004)

2. Godwin Kumar ... Respondents

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records pertaining to the F.I.R. in Crime No.782 of 2004 pending before the first respondent (viz) Inspector of Police-Crime, V5, Thirumangalam Police Station, Chennai and quash the same.

For Petitioner : Mr. M.Fazulul Haq

For Respondents: Mr.T.Shanmugarajeswaran
Government Advocate (Crl.Side)

O R D E R

This Criminal Original Petition has been filed by the accused to quash the F.I.R. in Crime No.782 of 2004 pending on the file of the first respondent.

2. When this matter was taken up for hearing, the learned Government Advocate (Crl.Side) appearing for the first respondent has submitted that the second respondent died on 20.05.2015 and he also produced a copy of the death certificate and hence, after hearing arguments of M/s.HAQ Law Office, the learned counsel for the petitioner and Mr.T.Shanmugarajeswaran, learned Government Advocate (Crl.Side) appearing for R1, the order is being passed.

3. The respondent herein had filed a private complaint stating that the petitioner herein was doing contract work for ISRO at Sriharikota. The petitioner herein requested the second respondent to work for the petitioner by supplying labour and machinery as agent for the works allotted by the ISRO to the petitioner herein. Accordingly, the second respondent had

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deployed machineries and labourers for the above work at ISRO, Sriharikota and completed the works. The petitioner herein had to pay a sum of Rs.13,60,000/- for the service provided by the second respondent. The petitioner had collected the entire dues from ISRO for the above contract. However, he paid only a sum of Rs.8,48,000/- and there is a balance of Rs.5,12,000/-. In order to discharge a part of the said liability, the petitioner had issued a cheque for a sum of Rs.4,05,000/-. The second respondent had presented the said cheque in the bank for encashment, but the said cheque was returned as 'payment stopped'. That being so, on 15.02.2004, when the second respondent was at No.592, Park Road, Annanagar West Extn., Chennai-101, the petitioner herein along with some rowdy elements came there and threatened that if he proceeded any legal action, they would kill him and also assaulted him. Hence, the second respondent had lodged a complaint before the V-5, Thirumangalam police station, but the said complaint was not taken on file. Even after repeated demands, the petitioner evaded to return back the amount which he had wrongfully gained from the second respondent with an intention to cheat him. Hence, the second respondent had filed a private complaint before the X Metropolitan Magistrate, Egmore, Chennai, with a request to forward the same to the first respondent under Section 156(3) of Cr.P.C. to register a case and investigate the matter. Accordingly, the learned X Metropolitan Magistrate had forwarded the said complaint under Section 156(3) of Cr.P.C., to the first respondent to register a case and investigate the matter. In pursuance of the said order, the first respondent had registered the case on 27.04.2004 in Crime No.782 of 2004 under Sections 406, 420 and 120-B I.P.C.,

4. The petitioner has moved an anticipatory bail application in Crl.O.P.No.22534 of 2004, wherein this Court has granted anticipatory bail on 28.06.2004 on a condition that the petitioner should deposit a sum of Rs.1,50,000/- before the concerned Court. Accordingly, the petitioner has deposited a sum of Rs.1,50,000/- on 02.07.2004 before the X Metropolitan Magistrate, Egmore, Chennai and executed a bail bond. Thereafter, he has filed this petition to quash the said F.I.R.

5. The learned counsel for the petitioner has submitted that the alleged transaction is purely civil in nature. He further submitted that actually there is no amount due to the second respondent and the alleged cheque was issued by the petitioner only as a security for the future work to be done by the second respondent. Since there was some dispute in respect of the work done by the second respondent, the petitioner has issued stop payment instructions to his banker and accordingly, the banker has not honoured the said cheque. He further submitted that since the cheque was dishonoured, the offence under Section 138 of the Negotiable Instruments Act alone may attract and for

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that, the second respondent has not filed a complaint under Section 138 of the Negotiable Instruments Act, and on the contrary, he has filed a private complaint before the Court alleging that the petitioner herein has committed an offence under Sections 406, 420 r/w 120-B I.P.C. He further submitted that the learned Metropolitan Magistrate has forwarded the said complaint mechanically under Section 156(3) of Cr.P.C. to the first respondent and the first respondent also has registered the case without verifying the facts. He further submitted that since there is a dispute with regard to the work done by the second respondent, the petitioner is not liable to pay the amount as alleged by the second respondent. He further submitted that if any amount is due, the second respondent ought to have filed a civil suit. He further submitted that the averments made in the complaint would not disclose the offence under Sections 406, 420 and 120-B I.P.C. and therefore, he prayed to quash the F.I.R.

6.The learned Government Advocate (Crl.Side) has submitted that in the complaint, it is clearly stated that the petitioner has cheated the second respondent. He further submitted that at the time of passing order in the anticipatory application, this Court has directed the petitioner to deposit a sum of Rs.1,50,000/- and without objecting the same, he has deposited the said amount before the trial Court and that would show that he has admitted the case of the second respondent and therefore, he prayed to dismiss this petition.

7. In the complaint, the second respondent has stated that the petitioner herein had represented to him that he was doing contract work for ISRO at Sriharikota and earning money and requested to work for him by supplying labour and machinery as sub-agent for the works allotted by the ISRO to him. He further stated that he has agreed to do the said work for the accused and deployed 3-guniting machines, 3-compressors and also engaged labourers for the above work at ISRO Sriharikota. He further stated that the petitioner herein agreed to pay rental charges as well as labour charges also. He further stated that he agreed for the terms and conditions and completed the works and for that, the petitioner herein has to pay a sum of Rs.13,60,000/-. He further stated that the petitioner herein had collected entire dues from ISRO for the above contract. However, he paid only a sum of Rs.8,48,000/- and there is a balance of Rs.5,12,000/-.

8. Referring to the aforesaid averments, the learned counsel for the petitioner has argued that the contract between the petitioner and the ISRO is a separate and independent contract and the said contract is nothing to do with the contract between the petitioner and the second respondent. He further contended that in the similar set of facts, the Hon'ble Supreme Court in

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U.Dhar and another Vs. State of Jharkhand and others (2003) CRI. L.J. 1224 has held that the offence under Sections 406 and 420 I.P.C. will not attract. In the aforesaid decision, the Hon'ble Supreme Court in paragraph Nos.5 to 8 has observed as follows:

> "5. In our view, what is relevant is that the contract between TCPL and the complainant is an independent contract regarding execution of certain works and even assuming the case of the complainant to be correct, at best it is a matter of recovery of money on account of failure of TCPL to pay the amount said to be due under the contract. The complainant has alleged that TCPL has already received the money from SAIL for the work in question and it has misappropriated the same for its own use instead of paying it to the complainant and it is for this reason that the offences are alleged under Sections 403, 406 and 420 etc.
>
> 6. The courts below have overlooked the fact that the contract between Bokaro Steel (a unit of SAIL) and TCPL is a separate and independent contract. The contract between complainant and TCPL is altogether a different contract. The contractual obligations under both the contracts are separate and independent of each other. The rights and obligations of the parties i.e. the complainant and TCPL are to be governed by the contract between them for which the contract between TCPL and Bokaro Steel (SAIL) has no relevance. Therefore, even if Bokaro Steel has made the payment to TCPL under its contract with the latter, it will not give rise to plea of misappropriation of money because that money is not money or movable property of the complainant.
>
> 7. Further Section 403 uses the words 'dishonestly' and 'misappropriate'. These are necessary ingredients of an offence under Section 403, IPC. Neither of these ingredients are satisfied in the facts and circumstance of the case. In para 14 of the complaint, the complainant has stated as under:
> ".Release of payments to complainant was never depended on the payment released by Bokaro Steel Plant a Unit of SAIL to TISCO growth shop and TCPL".
>
> 8. Thus admittedly, the two contracts are independent of each other and payment under one has no relevance qua the other. It cannot be said that

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there is any dishonest intention on the part of appellants nor it can be said that TCPL or the appellants have misappropriated or converted the movable property of the complainant to their own use. Since the basic ingredients of the relevant Section in the Indian Penal Code are not satisfied, the order taking cognizance of the offence as well as the issue of summons to the appellants is wholly uncalled for. Such an order brings about serious repercussions. So far as the appellants are concerned when no case is made out for the alleged offences even as per the complaint filed by the complainant, there is no reason to permit the appellants to be subjected to trial for the alleged offences. Hence, the appeal is allowed. The impugned orders of the High Court as well as of Chief Judicial Magistrate are hereby ordered to be quashed."

9. The aforesaid decision will squarely apply to this case. In this case, as already pointed out that the contract between the ISRO and the petitioner is totally different. The averments made in the complaint would show that the second respondent himself has admitted that the petitioner has paid a sum of Rs.8,48,000/-. Merely because the petitioner has received a sum of Rs.13,60,000/- from the ISRO, that it does not mean that the second respondent is entitled to receive the entire amount. Admittedly, the second respondent is only a sub-agent. So, he is entitled to receive the amount for the work done by him. But, he cannot claim whatever the amount received by the petitioner from the ISRO.

10. It is also to be pointed out that the complaint shows that the petitioner has issued a cheque for Rs.4,05,000/- and the same was dishonoured and that the second respondent instead of taking action under Section 138 of the Negotiable Instruments Act, he has resorted to file the complaint stating that the petitioner has cheated him.

11. At the time of granting Anticipatory bail, this Court has imposed a condition that the petitioner should deposit a sum of Rs.1,50,000/- and only in compliance of the said condition the petitioner has deposited the said amount. Therefore, it cannot be said that the petitioner has admitted the case of the second respondent.

12. With regard to the Criminal intimidation and also causing injury, there is no evidence except the bald allegations made by the second respondent. He has not stated that he has taken any treatment for the assault said to have been made by

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the petitioner. It is also to be pointed out that the second respondent has not produced any material to show that on the date of alleged occurrence itself, he has lodged a complaint before the police. Therefore, this Court is of the view that the allegations made in the complaint would disclose only civil dispute and therefore, the said F.I.R. is liable to be quashed.

13. In the result, this Criminal Original Petition is allowed and the F.I.R in Cr.No.782 of 2004 pending on the file of the first respondent is quashed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

vsa

To

1.The Inspector of Police - Crime,
V5, Thirumangalam Police Station,
Chennai - 600 040.

2.The Public Prosecutor,
Madras High Court,
Chennai.

+3cc to M/s.Haq Law Officer, Advocate sr.no.65659 & 65716

Crl.O.P.No.3117 of 2015

nr 15/10/2018

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