

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.06.2018

Pronounced on : 03.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.11250 of 2011

and

M.P.Nos.1 of 2011 & 3571 of 2018

1.M.R.Suresh,
S/o.M.K.Ramesh Babu

2.M.R.Rajesh,
S/o.M.K.Ramesh Babu

... Petitioners/Accused No.1 & 2

Vs.

V.Seshadri,
S/o.D.Venkatraman

...Respondent/Complainant

PRAYER:

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records concerned with C.C.No.176 of 2010 on the file of the Judicial Magistrate Court No.3, Salem and quash the same.

For Petitioners : Mr.V.Sairam

For Respondent : Mr.R.Thiagarajan

O R D E R

This Criminal Original Petition is filed to call for the records concerned with C.C.No.176 of 2010 on the file of the Judicial Magistrate Court No.3, Salem and quash the same.

2.The petitioners in the Criminal Original Petition are the accused in C.C.No.176 of 2010 pending on the file of the Judicial Magistrate Court No.3, Salem, which has been initiated by the respondent, who is the complainant. The respondent had initiated a private complaint against the accused for the offences under Section 420, 406, 506 (ii) of the Indian Penal Code.

3.The brief facts of the case is that the complainant and

one Mr.M.K.Ramesh Babu, father of the accused No.1 and 2 had started a partnership firm on 20.06.2002, in the name and style of S.R.Jewellery and they were into manufacture, purchase and sale of silver products. The said firm was dissolved on 30.06.2004. The complainant who was doing job work in the filed of silver, had acquittance with the accused who were sons and erstwhile partners. The accused were experienced in the field of manufacturing and selling of silver products. The complainant had handed over 35 kilograms of silver bars to the accused. The accused were put in complete charge and responsible for the custody of the silver bars. The accused were to process the same and to sell articles and they were to handover the accounts to the complainant at the end of every English Calendar month. An agreement to that effect was entered into between the complainant and the accused on 24.03.2003. Upto June, 2004, their business was running smoothly, thereafter, when the complainant asked for the return of the silver bars of 35 kilograms entrusted to the accused, the accused had failed return the same.

4.In the meanwhile, during September, 2006, the father of the accused Mr.K.Ramesh Babu passed away and the accused had neither returned the 35 kilograms of silver metal nor paid any interest for using the same and each time they are giving one answer and other, finally the accused stated that no silver was handed over to them and they have stated using of harsh and unparliamentary words. On 01.09.2008, the complainant along with his friends namely Mr.Raja @ Thirumurugan, Mr.Sundaraj had gone to the accused house and demanded for return back the silver metal. The accused not only denied about the having of silver metal of the complainant. They had threatened the complainant. The complainant left with no other alternative gave a complaint on 04.11.2008 to the Commissioner of Police, Salem. After preliminary enquiry, on 08.11.2008, FIR was registered, the respondent had handed over the relevant documents needed for enquiry. The Central Crime Branch, Salem had filed RCS before the respective Court closing the case as "Civil in nature". Aggrieved by the same, the respondent had filed a private complaint which was taken on file and C.C.No.176 of 2010 has been assigned.

5.On receipt of summons, the accused had filed the above Criminal Original Petition and had obtained an Interim stay in Crl.M.P.No.1 of 2011 and the appearance of the accused had been dispensed with vide Crl.M.P.No.2 of 2011.

6.The learned counsel for the respondent/complainant vehemently argued that it is a business transaction, which was entered between the petitioners and the respondent and covered by a contract dated 24.03.2003 and the business as per the

contract terms were transacted smoothly upto June, 2006 and thereafter, only some disputes between the petitioners and the respondent are aroused. Hence, no case of cheating made out. Further, the respondent is giving a criminal colour for a civil dispute and a mere breach of contract does not amount to cheating. Further, he has stated that the offences under Section 420 and 406 of the Indian Penal Code does not go together. Further, he reiterated that the Central Crime Branch, Salem, after investigation had closed the case as "Civil in nature".

7. In support of this case, he had relied upon the following judgments

(1) (2009) 1 Supreme Court Cases (Cri) 996 in the case of V.Y. Jose and another Vs. State of Gujarat and another; and

(2) 2014 (3) Madras Weekly Notes (Cr.) 430 in the case of P.K. Balachandran, Director, Pioneer Feeds and Poultry Products Private Limited Vs. State, Rep. by its Inspector of Police, Central Crime Branch, Coimbatore.

8. The learned counsel for the respondent argued that as per the agreement dated 24.03.2003, the silver bars of 35 kilograms have been entrusted, domain over the property has been handed to the accused who had converted and made it to their own use in violation of the aggrieved terms of the agreement, in which the trust is to be discharged. Thus, the accused had committed criminal breach of trust, misappropriate the property for their own use and had cheated the complainant. Further, on 01.09.2008, when the complainant had gone along with his friends one Mr. Raja @ Thirumurugan and Mr. Sundaraj, the accused had threatened the complainant and hence, the offences under Section 506 (ii) of the Indian Penal Code has been committed by the accused, since, the accused are powerful. Despite, the complaint was given to the Commissioner of Police, which was forwarded to the Central Crime Branch, Salem, who failed to conduct proper investigation and had closed the above case. Hence, the complainant had no other alternative option and approached the trial Court.

9. The Trial Court on perusing the complaint, documents and the statement of the complainant has made out the prima facie case against the accused. Issued summons and there is no illegality or irregularity committed by the Lower Court, while taking up the case on file.

10. On a perusal of the complaint, it is seen that the complainant had cited two other witnesses other than him and also listed five documents. Bare perusal of the complaint, it

is clear that the offence of cheating, misappropriation and criminal breach of trust has been made out.

11.Further, the respondent/complainant had relying upon the Judgment reported in 2009 (11) SCC 529 in the case of Ravindra Kumar Madhanlal Goenka Vs. M/S Rugmini Ram Raghav Spinners Private Limited. The Hon'ble Apex Court in catena of Judgments have time and again reiterated that quashing of complaint at the threshold is to be restrained. Further, taking into consideration of the guidelines in the case of Bajanlal, this Court feels that this case is not a fit case to be quashed.

12.Hence, the Criminal Original Petition filed by the petitioners/accused is dismissed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS II)

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Sub Assistant Registrar

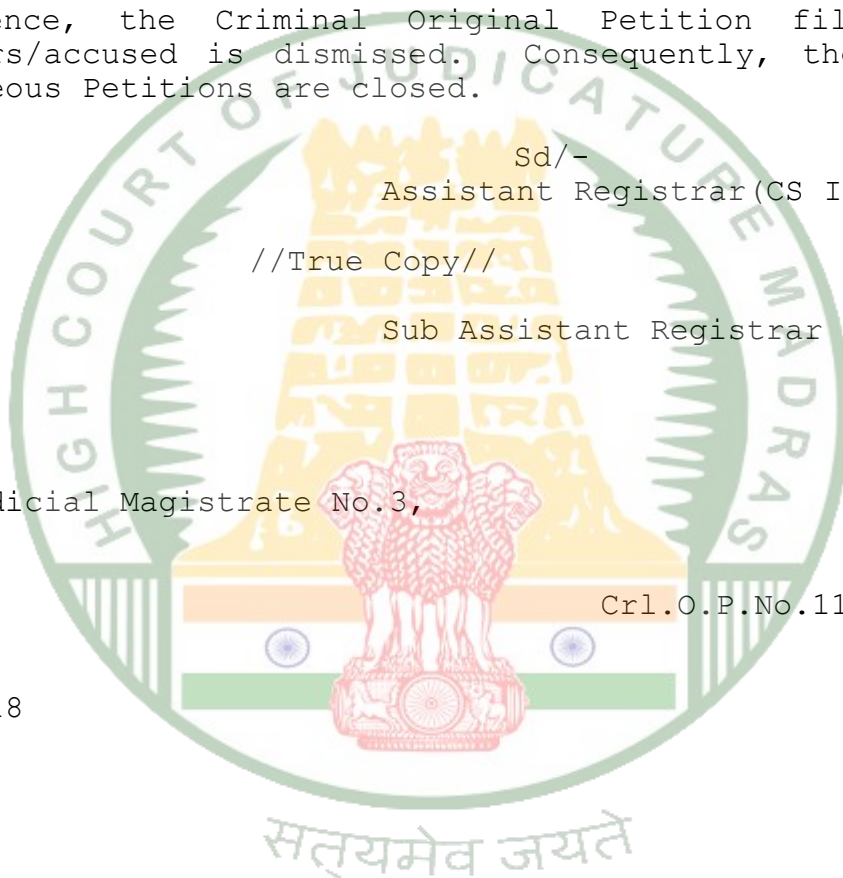
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To

1. The Judicial Magistrate No.3,
Salem.

Cr1.O.P.No.11250 of 2011

VBA (Co)
CS/17/07/18



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