

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2018

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.21941 of 2018
and Crl.M.P.Nos.12039 & 12040 of 2018

Apoorva Dadha

... Petitioner/Accused

Versus

1.The Inspector of Police,
Ooty Town West Police Station,
Ooty,
Nilgiris Dist. ... Respondents/Complainants

2.Vasudha Chakravarthi ... Respondent/Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.68 of 2018 in Crime No.11 of 2016 on the file of the Judicial Magistrate, Udhagamandalam and quash the same.

For Petitioner : A.M.O.Gurunarayana Rao

For Respondents: Mr.M.Mohamed Riyaz for R1
Additional Public Prosecutor
Mr.S.V.Pravin Rathinam for R2

O R D E R

This petition has been filed to quash the proceedings in C.C.No.68 of 2018, pending on the file of the Judicial Magistrate, Udhagamandalam.

2.The allegations made in the final report is that the 2nd respondent had undertaken some work in the Bangalow belonging to the petitioner and the petitioner had to pay a sum of Rs.6,00,000/- to the 2nd respondent towards the work done by the 2nd respondent. There is also an agreement between the parties in this regard. Since this amount was not paid by the petitioner, the 2nd respondent has chosen to give a complaint to the 1st respondent police and the 1st respondent Police had registered an F.I.R in Crime No.11 of 2016 for an offence under Sections 420 and 465 of IPC. On completion of the investigation, a final report has been filed before the Court

below for the very same offence.

3.The learned counsel for the petitioner would submit that even if the allegation made in the final report and the statement given by the witnesses are taken as it is, no offence under Sections 420 and 465 of IPC has been made out. The learned counsel for the petitioner would further submit that a dispute which is purely civil in nature has been given a Criminal colour. Therefore, the learned counsel would submit that the proceedings will have to be quashed by this Court in exercise of its Jurisdiction under Section 482 Cr.P.C.

4.Per contra, the learned counsel for the 2nd respondent would submit that in this case, the petitioner had an intention to cheat the 2nd respondent and that is why, even after the completion of work, the petitioner choice not to pay a single pie to the 2nd respondent. The learned counsel would further submit that even though the charges have entered into an agreement, the 2nd respondent is entitled to proceed independently against the petitioner if the offence is cheating to made out.

5.This Court has carefully considered the submissions made on either side.

6.The entire reading of the final report as well as the statement of the witnesses, makes it clear that the entire dispute is purely civil in nature. The respondent Police have proceeded to file a final report for the offence under Section 465 of IPC. It is not even in the case of 2nd respondent that the petitioner has committed any forgery. The allegations made in the final report doesnot satisfy the requirements of Section 463 of IPC and therefore there is no question of filing a final report for offence under Section 465 of IPC.

7.In so far as, the offence under Section 420 of IPC is concerned, it has been repeatedly held by the Hon'ble Supreme Court that unless and otherwise, there is an offence to cheat at the inspection, there is no question of attracting the offence of cheating under Section 420 of IPC. The Hon'ble Supreme Court has also held that failure to keep up the promise subsequently will not tantamount to a culpable intention at the inception. A useful reference can be made to the Judgment of the Hon'ble Supreme Court in the case of S.V.L.Murthy Versus State represented by CBI, Hyderabad reported in 2009 6 SCC page 77 and International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) And Others Versus Nimra Cerglass Technics Private Limited and another reported in 2016 1 SCC page 348.

8.This Court is of the considered view that neither the offence of forgery nor the offence of cheating has been made out

in the final report. The continuation of the proceedings will only result in abuse of process of Court. The petitioner need not go through the ordeal of facing a trial before the Court below.

9. In the result, the proceedings in C.C.No.68 of 2018, on the file of the Judicial Magistrate Udagamandalam, Nilgiris is hereby quashed. It is made clear that the quashing of the proceedings will not stand in the way of 2nd respondent to proceed further against the petitioner for recovery of money, in accordance with law. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate Court,
Udhagamandalam.

2. The Inspector of Police,
Ooty Town West Police Station,
Ooty,
Nilgiris Dist.

3. The Public Prosecutor,
High Court, Madras. सत्यमेव जयते

+1cc to M/s.Hari & Guru Associates, Advocate sr.no.86357

+2cc to Mr.S.V.Pravin Rathinam, Advocate sr.no.86005

CrI.O.P.No.21941 of 2017

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nr 07/01/2019