IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.07.2018

Pronounced on : 23.08.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.3728 of 2009
and
M.P.No.1 of 2009

T.E.Ramesh,
S.o.Rajagopal. ... Petitioner/accused

Vs.

1.State represented by
the Inspector of Police,
District Crime Branch,
Kancheepuram.

2.K.B.Ramanan,
S/o.Babu. ... Respondents/Complainants

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records on the file of the Judicial Magistrate Court No.1, Kancheepuram in C.C.No.322 of 2007 and quash the same.

For Petitioner : Mr.V.Sairam

For R1 : Ms.V.Saratha Devi,
Government Advocate [Crl. Side]

For R2 : No appearance [Notice served]

O R D E R

This Criminal Original Petition is filed to call for the records on the file of the Judicial Magistrate Court No.1, Kancheepuram in C.C.No.322 of 2007 and quash the same.

2.The petitioner had filed the above quash petition to quash the charge sheet in C.C.No.322 of 2007 for the offences under Sections 420 and 506 (ii) of the Indian Penal Code pending trial on the file of the Judicial Magistrate Court No.1, Kancheepuram, which has been prosecuted by the first respondent on the complaint given by the second respondent.

3.The case of the petitioner is that the complaint was given in the year 2005 and the charge sheet was filed by the first respondent/Inspector of Police, District Crime Branch, Kancheepuram in the year 2008, which would itself shows that it is an abuse of process of law. Further, a civil transaction has been given a criminal colour in order to make the charges against the petitioner and bring him for the compromise.

4.It is further submitted by the learned counsel for the petitioner that right from the year 1991, there have been regular transaction between the petitioner and the second respondent, only due to the non payment of EMI by the customers, the petitioner could not make the payments and there is no offence of cheating, when, there is no deception at the time of inception. Thus, from the facts of the case, it could be seen that the business transaction for non-payment has been given a criminal colour and the first respondent without proper investigation had filed a charge sheet against the petitioner. Hence, the charge sheet is liable to be quashed.

5.The case of the prosecution is that the petitioner is running K.R.Electronics at Sekupettai, Kancheepuram. The second respondent/defacto complainant is running Sri Agathiyar Finance at Kancheepuram. The petitioner had approached the defacto complainant to finance its customers in buying the articles from his shop, on hire purchase agreement. The entire payment for the product would be made by the second respondent and the petitioner would collect the money from his customers on monthly basis and the said monthly collection with interest would be paid to the second respondent.

6.Thus, the above said transactions have been going on from the year 1991 and in the course of time, the petitioner failed to make payments collected and hence, deceived the second respondent and committed the offence of cheating. Further, the statements were recorded from the customers. When the customers enquired, they have categorically stated that they have purchased the articles and they have been regularly making payments to the petitioner and they have produced the payment receipts and acknowledgement issued by the petitioner for the money received from them.

7.From which, it could be seen that the petitioner, though, have been collecting money in a deceptive manner, deceived the second respondent and had not made the payment, which were due to the second respondent. On the other hand, the petitioner had usurped and converted the same to his own use and thereby, caused un-lawful loss to the second respondent and correspondingly, the petitioner made un-lawful gain.

8.Further, the first respondent states that the investigation has been carried out diligently and witnesses LW1 to LW17 have been examined and the statement of witnesses have categorically spoken about the complicity of the petitioner in committing the above offence. All the mandatory provisions have been followed and thereafter, charge sheet has been filed and prayed to dismiss the above quash petition filed by the petitioner.

9.Further, the learned Government Advocate contended that due to the pendency of the above case, the Trial Court could not pursue the trial. This is the case of the year 2007, nearly a decade has been passed without any progress.

10.The petitioner relied upon the following citations:

(i) P.K.Balachandran, Director, Pioneer Feeds and Poultry Products Private Limited, Coimbatore Vs. State represented by its Inspector of Police, Central Crime Branch, Coimbatore reported in 2014 (3) MWN (Cr.) 430; and

(ii) Anil Mahajan Vs. Bhor Industries Limited and Another reported in (2006) 1 Supreme Court Cases (Cri) 746.

11.On considering the rival submission, it is clear that the contention of the learned counsel for the petitioner is not sustainable and it is found that there are enough materials against the petitioner. The petitioner had cheated the complainant an amount of around Rs.13,00,000/- (Rupees Thirteen lakhs only) has to be decided only during trial. The contention of the learned counsel for the petitioner does not merit consideration.

12.Hence, the Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.1,
Kancheepuram.

2.The Inspector of Police,
   District Crime Branch,
   Kancheepuram.

3.The Public Prosecutor,
   High Court, Madras.

4. The Section Officer,
   Criminal Section,
   High Court, Madras-104

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PP(CO)
GN(17/09/2018)