

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 05.09.2018

PRONOUNCED ON : 12.09.2018

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.5176 of 2013

and

M.P.Nos.1 and 2 of 2013

1.Santhosh Reddy

,

2.Perumal Samy

... Petitioners

Vs.

1.State rep. By

The Inspector of Police (Crime),
V.5, Thirumangalam Police Station,
Chennai - 600 101.
(Crime No.1900/2011)

2.Eswara Perumal

... Respondents

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records in C.C.No.6049 of 2012 filed before the X Metropolitan Magistrate, Egmore, Chennai against Cr.No.1900/2011 of V.5 Thirumangalam Police Station, Chennai under Section 420, 406, 294(b) and 506(ii) I.P.C.

For Petitioner : Mr.R.C.Paul Kanagaraj

For Respondents: Mr.T.Shanmuga Rajeswaran
Government Advocate (Crl.Side)
for R1

: Mr.B.R.Shankaralingam for R2

WEB COPY

O R D E R

This Criminal Original Petition has been filed by the accused Nos.1 and 2 to quash the proceedings against them in C.C.No.6049 of 2012 on the file of the X Metropolitan Magistrate, Egmore, Chennai.

2. Based on the complaint lodged by the second respondent, the first respondent has registered a case in Crime No.1900 of 2011 under Sections 420 and 406 I.P.C. After investigation the first respondent has filed a charge sheet against the petitioner herein under Sections 420, 406, 294(b), 506(ii) I.P.C. stating that the second respondent is running an Advertisement Agency under the name and style of 'B-Life Creative Consultants Private Limited'. The said firm is doing the work of producing commercial Advertisement short films and released them to the TV Channels. Further it is stated that during March 2007, the petitioners herein met the second respondent at his office, introduced themselves as relatives of Thiru.KKSSR.Ramachandran a Minister; that they are running several companies; that they wanted a commercial Advertisement film to be produced for their companies; that as per the work order issued by them, the second respondent has produced the advertisement films by spending a sum of Rs.10,75,000/- and thereafter the petitioners herein have paid only a sum of Rs.7,75,000/- and they did not pay the balance amount of Rs.3,00,000/-. It is also stated that the petitioners herein have used the said advertisement films in TVs and collected a sum of Rs.15,91,000/- and in that amount, a sum of Rs.7,52,000/- alone was paid and the balance amount of Rs.8,35,000/- was not paid and totally, the petitioners have to pay Rs.11,35,000/- and when the same was demanded by the second respondent, on 25.11.2011, the first petitioner armed with gun and the second petitioner armed with a knife gave criminal intimidation and hence, the petitioners are liable to be punished under Sections 420, 406, 294(b) and 506(ii) I.P.C.

3. The learned counsel for the petitioners has submitted that the respondents have not produced any material to show that the petitioners are liable to pay the aforesaid amount. He further submitted that if at all any amount is due and that should be recovered by filing a civil suit and instead of doing so, the second respondent has filed a complaint before the first respondent as if the petitioners have committed criminal offences. He further submitted that it is not stated either in the complaint or in the charge sheet that at the inception of the contract, there was an intention for the petitioners to cheat the second respondent. He further submitted that the allegations made in the complaint and in the charge sheet would clearly show that it is only a civil dispute and therefore he prayed to quash the proceedings against the petitioners herein.

4. The learned Government Advocate (Crl.Side) who is appearing for the first respondent has submitted that in the complaint, the second respondent has clearly stated that how the petitioners have cheated him. He further submitted that in the

statement recorded under Section 161 Cr.P.C. also, the second respondent and other witnesses have categorically stated that the petitioners herein gave false promise and extracted work from the second respondent i.e. got advertisement films, but subsequently they refused to pay the amount as agreed by them. He further submitted that when the second respondent demanded to pay the said amount, the petitioners criminally intimidated the second respondent by showing gun and knife and hence, a prima facie case is made out against the petitioners and therefore, he prayed to dismiss the petition.

5. The learned counsel for the second respondent has adopted the arguments advanced by the learned Government Advocate (Crl.Side).

6. In the complaint, the second respondent has stated that as per the work order issued by the petitioners herein, he has produced two advertisement films by spending a sum of Rs.10,75,000/- and gave them to the petitioners and after receiving the same, the petitioners herein have paid only Rs.7,75,000/- and balance amount was not paid. He also stated that the petitioners herein have released the said advertisement films in various TV Channels and collected a sum of Rs.15,91,000/- and from that amount, they have paid only Rs.7,52,000/- and balance amount of Rs.8,35,000/- was also not paid. It is to be pointed out that the second respondent at the time of lodging the complaint has not produced any document to show what was the contract entered between the petitioners and the second respondent with regard to the payments to be made by the petitioners. The first respondent also during investigation has not collected any material to show what was the contract actually entered into between the petitioners and the second respondent and how much amount was paid and how much amount to be paid. The first respondent, without seizing any documents with regard to the aforesaid transactions has simply filed the final report merely relying on the oral statements of the second respondent and other witnesses.

7. It is also to be pointed out that the second respondent has not stated either in the complaint or in his statement recorded under Section 161 Cr.P.C. that even at the time of entering the contract, the petitioners herein have acted with a dishonest intention to cheat him. The allegations made in the complaint would show that it is purely a civil dispute and if any amount is due from the petitioners by virtue of a legally enforceable contract entered into between the petitioners and the second respondent, it is for the second respondent to file a civil suit and establish before the Civil Court with regard to the liability of the petitioners. Instead of doing so, the second respondent has lodged a complaint only

with a view to collect the amount by giving criminal colour to the aforesaid transactions. But, as already pointed out that neither the second respondent nor the first respondent have filed any document to substantiate the aforesaid transaction. So, this Court is of the view that there is no prima facie case to proceed against the petitioners herein. Therefore, the proceedings against the petitioners herein in C.C.No.6049 of 2012 on the file of the X Metropolitan Magistrate, Egmore, Chennai, are liable to be quashed.

8. In the result, this petition is allowed and the proceedings in C.C.No.6049 of 2012 on the file of X Metropolitan Magistrate, Egmore, Chennai, are quashed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

vsa
TO

1. The X Metropolitan Magistrate,
Egmore, Chennai - 600 008.
2. The Inspector of Police,
V-5 Thirumangalam Police station,
Chennai - 600 101.
3. The Public Prosecutor,
High court, Madras.

+1cc to Mr.R.C.Paul Kanagaraj, Advocate, S.R.No. 61593
+1cc to Mr.B.R.Shankaralingam, Advocate, S.R.No. 63422

Cr1.O.P.No.5176 of 2013
and
M.P.Nos.1 and 2 of 2013

EV(CO)
GN(02/11/2018)

WEB COPY