



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.10.2018

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Cr1 OP(MD)No.16091 of 2016

and

Cr1 MP(MD)Nos.7797 and 7798 of 2016

1.K.G.Ravichandran

K.Ramanathan

... Petitioners/Accused 2 & 3

Vs

1.The State through

The Inspector of Police,
Nilakottai Poice Station,
Dindigul District.

[Crime No.71 of 2012]

... 1st Respondent/Complainant

2.S.Sudhakar

...2nd Respondent/
Defacto Complainant

PRAYER:- Petition filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No. 423 of 2012 on the file of the Learned Judicial Magistrate at Nilakottai insofar as the petitioners are concerned and quash the same.

For Petitioners : Mr.N.Anandhapandmanabhan
For Respondent No.1 : Mrs.S.Bharathi,
Government Advocate(Cr1side)

ORDER

This petition has been filed to quash the final report filed by the respondent Police, which has been taken on file by the Judicial Magistrate, Nilakottai in CC No.423 of 2012 for the alleged offence under Sections 406, 420 and 408 of IPC.

2. A reading of the complaint would clearly reveal that the petitioners have purchased European Cucumber Seeds from the second respondent, which is worth about Rs.8,65,905/- in the year 2007 - 2008 and did not pay the said amount inspite of repeated demands and requests made by the second respondent.

3.The learned Counsel for the petitioner would submit that the case is purely civil in nature and the respondent Police have given it criminal colour and have gone to the extent of filing a final report under Sections 406, 408 and 420 of IPC. The learned



Counsel would further submit that even if the allegations are taken as it is, no offence of criminal breach of trust or cheating has been made in this Case.

4. The learned Government Advocate would submit that the petitioners having purchased the seeds are duty bound to pay the amount and the petitioners are not even accepting the liability on their part to pay the amount. The learned Counsel would further submit that the respondent Police have taken into consideration the statement given by the witnesses and have proceeded to file the final report for the alleged offence under Sections 406, 408 and 420 of IPC.

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

6. It is now a well settled position of law that in order to constitute an offence under Section 420 of IPC, there should be deception at the inception and it is not merely sufficient to prove that a false representation has been made. In this case admittedly, the allegations made in the complaint is to the effect that the petitioners did not pay the amount after the same became due and payable by them. This by itself will not constitute an offence under Section 420 of IPC.

7. Insofar as the offence of breach of trust, essentially the ingredient to constitute an offence of breach of trust is "entrustment of the property" and such property which is entrusted, should have been dishonestly misappropriated or converted to his own use or should have been disposed of in violations of any direction of law prescribing the mode in which it has to be discharged.

8. In this case admittedly, European seeds were purchased by the petitioners from the second respondent. Therefore it is a straight forward commercial transaction between the petitioners and the second respondent and admittedly the second respondent has not retained his dominion over the property, which was given to the petitioners. The primary ingredient to constitute an offence of criminal breach of trust is that owner of the property must retain the dominion over the property which means, he should retain the ownership over the property and the property should have been entrusted to any person. In this case admittedly European seeds were sold to the petitioners and therefore the dominion over the property is transferred in favour of the petitioners under the Sale of Goods Act. Therefore, there is no question of ingredient of the criminal breach of trust being attracted in this case. Consequently, the offence under Sections 406 and 408 should not be attracted.

9. This Court finds that a reading of the complaint, even if it is taken as it is, does not constitute an offence of criminal



breach of trust and cheating.

10. In the result the Criminal original petition is allowed. The proceedings in C.C.No. 423 of 2012 on the file of the Learned Judicial Magistrate at Nilakottai shall stand quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

Sub Assistant Registrar (CS-I)

To

1. The Judicial Magistrate,
Nilakottai.

2. The Inspector of Police,
Nilakottai Poice Station,
Dindigul District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC To MR.N.ANANTHAPADMANABAN, Advocate SR. NO. 88627

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DSK

TR/SV/SAR-I (12.11.2018) 3P 5C