

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2019

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

Cr1.O.P.No.21658 of 2009

1.M/s.Veekay Enterprises & Builders (P) Ltd.,
Rep by its Managing Director Mr.P.K.Nanda
Having office at No.43, Park Town, Ganga Nagar,
Bhubaneswar, Orissa

2.P.K.Nanda

..petitioners

Vs.

M/s.Gloebal Chem,
A proprietorship concern rep by its proprietor,
Mr.C.L.Muthaiah having his place of business at
W-11, 5th Main Road, Anna Nagar East,
Chennai-600 040

..Respondent

PRAYER:

The Criminal Original Petition is filed under Section 482 of Cr.P.C to call for the records in C.C.No.15695 of 2008 on the file of the learned XIV M.M, Egmore, Chennai-8 and quash the same.

For Petitioners: Mr.M.Udhaya Kumar
For Respondent : No Appearance

ORDER:

This criminal original petition is filed to quash the proceedings in C.C.No.15695 of 2008 on the file of the learned XIV M.M, Egmore, Chennai-8.

2. The case of the petitioner is that the respondent herein filed a complaint against the petitioner for an alleged offence under Section 138 of Negotiable Instruments Act. The respondent placed order with the first petitioner for supply of iron ore to the tune of 20,000 metric tons at the agreed rate of Rs.1,750/- per metric ton and paid a sum of Rs.20,00,000/- as advance amount by way of cheque drawn on Dena Bank, Aminjikarai Branch dated 13.08.2005 in favour of the petitioner. As per the complainant, the first petitioner has not supplied iron ore on several demands. Further the petitioners agreed to repay the

amount by way of two instalments vide two post dated cheques, and issued a cheque to the complainant for a sum of Rs.10,00,000/- bearing No.901743 dated 17.09.2005 drawn on Syndicate Bank, Bharmatolla, Hospital Street Branch, Kolkatta and the same was presented for realization through his banker Dena Bank, Aminjekarai Branch on 07.02.2006 and the same was returned as "insufficient fund" by the petitioners banker Syndicate Bank, Bharmatolla, Hospital Street Branch, Kolkatta on 11.02.2006 and the same was intimated vide debit notice dated 15.02.2006. Thereafter the complainant respondent issued statutory notice dated 11.03.2006 and the same was received on 21.03.2006. Challenging the said complaint, the present petition has been filed.

3.The learned counsel appearing for the petitioners submitted that though the respondent entered into contract for supply of iron ore in 2005, as per the terms and agreement, the respondent has paid a sum of Rs.20,00,000/- by way of cheque as advance for procurement of further materials to fulfill the quantity required in August 2005. However, the respondent did not require any material and failed to purchase the material as per the contract. On the other hand, the respondent has collected post dated cheques as security for the purpose of contract for supply of iron ore for further shipments. Thereafter the respondent complainant demanded repayment of portion of amount. As per the request, the petitioners have paid a sum of Rs.4,00,000/- by way of D.D.No.595790 dated 05.11.2005 and thereafter the respondent complainant requested the petitioners to supply iron ore at Haldia part and the petitioners supplied the material for a sum of Rs.6,29,612/-. The above supply and repayment of money was made before December 2005 and the petitioners have to pay only Rs.9,50,000/-, which will be adjusted in the future supply of iron ore. Instead, the respondent has filed the complaint under NI Act. Accordingly, he prayed to quash the proceedings in C.C.No.15695 of 2008 on the file of the learned XIV M.M, Egmore, Chennai-8.

4.The learned counsel appearing for the petitioners further submitted that the cheque was presented on 07.02.2006, notice was issued on 11.02.2006 and the same was received by the petitioners on 21.03.2006. Though the respondent has filed the complaint on 12.05.2006, there was a delay in filing the complaint, and on that score alone, the complaint can be quashed.

5. Though the criminal original petition was filed in the year 2009, no one appeared on behalf of the respondent. Hence, in the absence of respondent, this Court perused the entire materials on record, which reveals that admittedly, the

petitioner issued two post dated cheques on 13.08.2005 and the same were presented before the bank, which was returned. Thereafter, legal notice was issued by the respondent, pursuant to which the present complaint has been lodged. However, the entire arguments of the petitioner are the disputed question of facts, which can be considered only before the trial court and cannot be under Section 482 of Cr.P.C. before this Court.

6. It is relevant to extract the dictum of the Hon'ble Supreme in State of Haryana and others Vs. Ch.Bhajan Lal and others [AIR 1992 SC 604], wherein it is held that on the following grounds, Section 482 of Cr.P.C., can be exercised:

'102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontraverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do

not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceedings against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceedings is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.'

7. Further, admittedly the petitioner issued cheques and the same were returned. On that score alone, this petition cannot be entertained, and the same is liable to be dismissed.

8. Accordingly, this criminal original petition is dismissed.

सत्यमेव जयते Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The XIV Metropolitan Magistrate,Egmore, Chennai-8

2.The Public Prosecutor,High Court of Madras
+lcc to Mr.Udayakumar , Advocate SR.No. 102062

CrI.O.P.No.21658 of 2009

A.SK(29/01/2020)