IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.11.2018

PRONOUNCED ON : 24.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.O.P.No.5051 of 2010
and
M.P.No.1 of 2010

Amutha Meenakshi ... Petitioner

Vs

1.The State Rep. By
Inspector of Police,
B-2, R.S.Puram Police Station (L & O),
Coimbatore City.

2.Madanlal P.Bafna ... Respondents

PRAYER: Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the complaint in C.C.No.366 of 2009 on the file of the Judicial Magistrate No.1, Coimbatore and to quash the same.

For Petitioner : Mr.MA.P.Thangavel

For Respondents : Mr.T.Shanmuga Rajeswaran,
Government Advocate (Crl. Side)
for R.1

Mr.S.Gunalan for R.2

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ORDER

This petition is filed to quash the proceedings pending against the petitioner in C.C.No.366 of 2009 on the file of the learned Judicial Magistrate No.1, Coimbatore.

2. The first respondent had filed a final report as against the petitioner in C.C.No.366 of 2009 for the offence punishable under Section 420 IPC. Perusal of the final report shows that the petitioner / accused had executed two agreements on 09.03.2009, for sale of her properties and received a sum of Rs.60,00,000/-. But, later, the petitioner / accused convinced the respondent / defacto complainant that she could not execute the sale deeds and agreed to return the money and in that basis, cancelled the sale deeds by issuing two Cheques for a

sum of Rs.27,00,000/-, each. The Cheques, when presented for collection, were returned on 'stop payment' instructions given by the petitioner / accused. Even as per the Bank statement, the petitioner / accused was not having sufficient balance amount. Hence, the petitioner / accused cheated the respondent / defacto complainant to the tune of Rs.54,00,000/- and thus, the petitioner / accused committed the offence punishable under Section 420 IPC.

3. The case was originally filed before the learned Judicial Magistrate No.1, Coimbatore under Section 200 Cr.P.C., as a private complaint in C.M.P.No.3183 of 2009 and the learned Magistrate referred the case for investigation under Section 156(3) Cr.P.C., and accordingly, a case was registered in Crime No.794 of 2009, for the offence punishable under Section 420 IPC.

4. The case of the petitioner is that on 06.01.2009, she borrowed a loan from the defacto complainant for her real estate business, for which, the complainant obtained three filled Cheques and four blank Cheques as security. Again, on 06.02.2009, when the petitioner approached the complainant for further loan, the complainant insisted for sale agreement of her property and a further loan was obtained by executing two sale agreements. According to the petitioner, she had repaid the loan amounts and therefore, the said two sale agreements executed for the security towards the loan transaction were cancelled by way of a registered cancellation deed dated 16.03.2009. But, on 10.04.2009, the defacto complainant filed a suit for permanent injunction as against the petitioner before the District Munsif Court, Coimbatore, in O.S.No.757 of 2009 for a permanent injunction restraining the petitioner from alienating or encumbering the suit property. Another suit was also filed by the complainant as against the petitioner before the District Munsif Court, Coimbatore, in O.S.No.2244 of 2009 with regard to another property of the petitioner. In the meantime, the petitioner had also lodged a complaint as against the defacto complainant before the police and the same was registered in Crime No.2384 of 2009 for the offence punishable under Sections 120(b), 420, 467, 471 and 506(2) IPC. Yet another suit was filed by one Goutham Chand Bohra, who is the son-in-law of the defacto complainant, against the petitioner and thirty others, for specific performance of the sale agreements, in O.S.No.762 of 2009, on the file of the I Additional District Court, Coimbatore. After venturing into the civil litigations, the defacto complainant could not get some favourable orders and had instituted this criminal complaint by way of a private complaint in the month of August, 2009. Therefore, the learned Counsel for the petitioner prayed for allowing the present application.

5. The learned Government Advocate appearing for the first respondent Police would submit that the petitioner had induced the complainant to purchase her property and received a sum of Rs.60,00,000/- on various occasions, but, later

requested the complainant to cancel the sale agreements with an undertaking to repay the money. Believing the petitioner's words, the complainant cancelled the agreements before the Registrar Office. While cancellation, the petitioner had issued two Cheques bearing number 440788 for a sum of Rs.27,00,000/- and another Cheque bearing number 440789 for a sum of Rs.27,00,000/-. When these Cheques were presented for collection, they were returned on 'stop payment' instructions. Thereafter, the present complaint is filed.

6. According to the first respondent, they have examined four witnesses and arrived at an conclusion that the petitioner had received money from the complainant, entered into a sale agreement and requested the complainant to cancel the same and after cancelling the above agreements, issued two Cheques and gave 'stop payment' instructions and thereby, cheated the complainant.

7. The case of the defacto complainant is that he is the proprietor of M/s.Asoka Developers and the accused / petitioner is the proprietor of one Meenakshi Gardens. The accused induced the complainant to purchase certain lands at Perianaickanpalayam Village to an extent of 1.80 acres and accordingly, two registered sale agreements were executed between them on 09.02.2019 and towards the sale price, the complainant had paid a sum of Rs.2,00,000/-, each. On 10.02.2009, the complainant had paid another sum of Rs.28,00,000/-, each, for both agreements and as such, he paid a sum of Rs.60,00,000/-, as advance, towards the sale agreements. But, within a month, the petitioner had approached the complainant and informed that she was not in a position to sell the property by executing the sale deed and agreed to return the amount received by her as advance. The complainant, believed her words, cancelled the agreements and both agreements have been cancelled by way of a registered cancellation deed on 16.03.2009. On the same day, the petitioner had also issued two Cheques, dated 15.03.2009, each for a sum of Rs.27,00,000/- as repayment. Both the Cheques, when presented, were returned for reason payment stopped by the Drawer. Thus, according to the complainant, the petitioner had deceived him by giving the Cheques towards the cancellation of agreements and later instructed for stop the payment of those Cheques. Hence, he gave a complaint on 29.07.2009 before the Judicial Magistrate No.1, Coimbatore, which was referred under Section 156(3) Cr.P.C., and the case was registered on 11.08.2009.

8. Heard the learned Counsel appearing on either side and perused the documents placed on record.

9. Before venturing into the arguments made by the learned Counsel on either side, this Court feels it relevant to extract the ingredients of an offence of cheating, which reads thus:

i) there should be fraudulent or dishonest inducement of a person by deceiving him;

ii) (a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and

iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

10. An offence of cheating would be constituted when the accused has fraudulent or dishonest intention at the time of making promise or representation. A pure and simple breach of contract does not constitute an offence of cheating.

11. In similar lines, the Hon'ble Supreme Court, in Dalip Kaur and Others v. Jagnar Singh and Another, reported in (2009) 14 SCC 696, has held as follows:

> "10. The High Court, therefore, should have posed a question as to whether any act of inducement on the part of the appellant has been raised by the second respondent and whether the appellant had an intention to cheat him from the very inception. If the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating. Similar is the legal position in respect of an offence of criminal breach of trust having regard to its definition contained in Section 405 of the Penal Code.
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> 11. ...
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> 12. Yet again, in Hira Lal v. State of U.P., this Court held: (SCC p.92, para 12)
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> > "12. The parameters of interference with a criminal proceeding by the High Court in exercise of its jurisdiction under Section 482 of the Code are well known. One of the grounds on which such interference is permissible is that the allegations contained in the complaint petition even if given face value and taken to be correct in their entirety, commission of an offence is not disclosed. The High Court may also interfere where the action on the part of the complainant is mala fide.""

12. In Haridaya Ranjan Prasad Verma and Others v. State of Bihar and Another, reported in (2000) 4 SCC 168, the Hon'ble Supreme Court has held as follows:

> "15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time to inducement which may be judged by his subsequent conduct but for this subsequent conduct is

not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating, it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

13. In yet another decision, in Alpic Finance Ltd., v. P.Sadasivan and Another, reported in AIR 2001 SC 1226 : 2001 (3) SCC 513 : LNIND 2001 SC 431, the Hon'ble Supreme Court has held as follows:

"10. The facts in the present case have to be appreciated in the light of the various decisions of this Court. When somebody suffers injury to his person, property or reputation, he may have remedies both under civil and criminal law. The injury alleged may form basis of civil claim and may also constitute the ingredients of some crime punishable under criminal law. When there is dispute between the parties arising out of a transaction involving passing of valuable properties between them, the aggrieved person may have right to sue for damages or compensation and at the same time, law permits the victim to proceed against the wrongdoer for having committed an offence of criminal breach of trust or cheating. Here the main offence alleged by the appellant is that respondents committed the offence under Section 420 IPC and the case of the appellant is that respondents have cheated him and thereby dishonestly induced him to deliver property. To deceive is to induce a man to believe that a thing is true which is false and which the person practicing the deceit knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence. There is no allegation that the respondents made any willful misrepresentation. Even according to the appellant, parties entered into a valid lease agreement and the grievance of the appellant is that the respondents failed to discharge their contractual obligations. In the complaint, there is no allegation that there was fraud or dishonest inducement on the part of the respondents and thereby the respondents parted with the property. It is trite law and common sense that an honest man entering into a contract is deemed to represent that he has the present intention of carrying it out but if, having accepted the pecuniary advantage involved in the transaction, he fails to pay his debt, he does not necessarily evade the debt by deception."

14. In Indian Oil Corporation v. NEPC India Ltd., and Others, reported in (2007) 1 MLJ (Crl) 473 (SC), it has been held as follows:

> "13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders / creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages / families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged. In G.Sagar Suri v. State of UP (2000) 2 SCC 636, this Court observed: "It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a shortcut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."
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> 14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 Cr.P.C., more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant."

15. Here in the case on hand, two sale agreements were entered into between the petitioner and the complainant on 09.02.2009 and these agreements have been cancelled jointly by the petitioner and the complainant. While cancelling the sale agreements, the accused is said to have issued two Cheques of

Corporation Bank, bearing numbers 440788 & 440789, dated 15.03.2009, for Rs.27,00,000/-, each. Though the Cheques presented for collection were returned on 21.03.2009 for the reason payment stopped by the Drawer, the defacto complainant had filed a suit against the petitioner and four others on 10.04.2009 before the District Munsif Court, Coimbatore, in O.S.No.757 of 2009 for a permanent injunction restraining the defendants therein and their relatives from in any way alienating or encumbering the suit properties mentioned thereunder.

16. In the said suit, the defacto complainant had stated that an agreement was entered into between the petitioner and him, for a total sale consideration of Rs.52,00,000/- and on the date of agreement, he had paid an advance of Rs.5,00,000/-, by way of a Cheque. As per the terms and conditions of the sale agreement, the sale has to be completed within a period of two months from the date of agreement and therefore, he had paid a further advance amount of Rs.45,00,000/- on 09.01.2009. The defacto complainant, after paying a sum of Rs.50,00,000/-, requested the petitioner to execute the sale deed on receiving the balance sale amount. But the petitioner has delayed the sale. Hence, he issued a legal notice on 28.03.2009 and filed the above suit.

17. Yet another suit was filed by the defacto complainant as against the petitioner and one Mahadevan, in O.S.No.2244 of 2009 before the District Munsif Court, Coimbatore, for the relief of permanent injunction restraining the defendants therein from alienating or encumbering the suit mentioned properties. In the said plaint, the defacto complainant had stated that on 16.03.2009, an agreement was entered into between the petitioner and the complainant to sell the properties mentioned thereunder for a sum of Rs.64,00,000/- and on the date of agreement, he had paid a sum of Rs.4,00,000/- and as per the terms and conditions of the agreement, the defacto complainant has to pay the balance sale consideration amount within a period of ten months from the date of agreement, ie., on or before 16.01.2010. Alleging that the petitioner had attempted to sell some of the lands, this suit came to be filed. One more suit was filed by one Gowtham Chand Bohra, son-in-law of the complainant, for specific performance of the agreements.

18. The present complaint, in the form of private complaint, is filed on 29.07.2009 and the case is registered under Section 420 IPC on 11.08.2009. As against the dishonoured Cheque, the defacto complainant has not taken any steps under Section 138 of the Negotiable Instruments Act or for recovery of money through a civil Court. The averments in the complaint and the suit are entirely different. The conduct of the parties would also expose the fact that the transaction is a money transaction and the complainant, who had opted his remedy before the civil Court, with an apprehension of not getting a favourable order, has given a criminal twist and lodged the

complaint. The respondent police had also filed the final report in a mechanical manner, without even verifying the civil litigations pending between the parties.

19. Under the above circumstances and also keeping in mind the decisions of the Hon'ble Supreme Court, as extracted supra, this Court is inclined to allow the present quash petition. In fine, the proceedings pending against the petitioner in C.C.No.366 of 2009 on the file of the Judicial Magistrate No.1, Coimbatore, stands quashed and this Criminal Original Petition is accordingly, allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

gk

To

The Judicial Magistrate No.1,
Coimbatore.

2.The Inspector of Police,
B-2, R.S.Puram Police Station (L & O),
Coimbatore City.

+1cc to Mr.MA.P.Thangavel , Advocate SR.No. 6181
+1cc to Mr.S.Gunalan , Advocate SR.No. 5589

Crl.O.P.No.5051 of 2010
and
M.P.No.1 of 2010

A.SK(13/02/2019)