IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No. 27085 of 2016
and Crl.MP.Nos. 13703 of 2016 & 982 of 2018

S.Vasuki ... Petitioner

Vs.

1. The Sub Inspector of Police,
   Thavalakuppam Police Station,
   Puducherry.
   (Crime No.18 of 2013)

2. D.Kayalvendhan ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in C.C.No.228 of 2014 on the file of the learned Judicial Magistrate-I, Puducherry, quash the proceedings therein.

For Petitioner : Mr.C.S.Dhanasekaran

For Respondents
For R1 : Mr.V.Balamurugane
Additional Public Prosecutor.

For R2 : Mr.Zeakumar
For M/s.Achari and
Antoni Associates

O R D E R

This petition has been filed to quash the proceedings in C.C.No.228 of 2014 on the file of the learned Judicial Magistrate-I, Puducherry.

2. The learned counsel appearing for the petitioner submitted that the petitioner is the sole accused and she has been charged for the offence under Section 420 of IPC. He further submitted that the second respondent lodged complaint that the petitioner cheated her. Mere stating the word cheating would not attract the offence under Section 420 of IPC as against the petitioner. The petitioner entered into a business transfer agreement with the second respondent for business

transaction and as such there is no deception at inception. He further submitted that as per the agreement an amount of Rs.35 lakhs should be settled within a period of two months while the dealership of M/s Eicher Motors Ltd (Royal Enfiled) could not transfer to the defacto complainant. Thereafter she paid substantial advance amount i.e., a sum of Rs.10 lakhs as per the contract and the remaining amount as balance. Therefore, it is purely civil transaction between the petitioner and the second respondent and it cannot be given criminal colour. If at all the allegations are proved, the petitioner is liable to return the amount and it is a contractual liability, as such the respondent ought to have filed civil suit instead of lodging compliant. Without considering the above facts and circumstances, the first respondent mechanically registered a case in Crime No.18 of 2013 for the offence under Section 420 of IPC. Though there is absolutely no material to prove the offence under Section 420 of IPC from the statement recorded under Section 161 of Cr.P.C., the first respondent filed final report charging the petitioner for the offence under Section 420 of IPC. He also relied upon the judgments reported in (2001) 3 SCC 513 in the case of Alpic Finance Ltd. Vs. P.Sadasivan and another and 2015-2-L.W. (Crl.) 237 in the case of Vesa Holding P. Ltd., & Anr Vs. State of Kerala & ors and also (2016) 1 SCC 348 in the case of International Advanced Research Centre and others Vs. Nimra Cerglass Technics Pvt. Ltd and another and prayed for quashment of the entire proceedings.

3. Per contra, the learned second respondent/defacto complainant filed counter and submitted that the petitioner entered into business transfer agreement dated 24.05.2012 with the second respondent with regard to the sale of two wheeler dealership of M/s. Eicher Motors Ltd carried on as M/s. Suvaani Motors dealership for Royal Enfield. As per the agreement, the petitioner agreed to sale the above business for the consideration of Rs.35 lakhs and the second respondent also paid the entire amount. As per the agreement, the petitioner has to transfer the business after the period two months. When the respondent approached the petitioner and also enquired with the Manager of M/s.Eicher Motors Ltd., Chennai, with regard to the transfer of business of dealership for Royal Enfield carried on as M/s.Suvanni Motors, he came to understand that the dealership cannot be transferred at all to any one. Further the Manager of M/s. Eicher Motor Limited informed that the licence issued to the petitioner is also going to be cancelled. After knowing these facts, the petitioner without disclosing anything and only to cheat the respondent entered into the agreement and also received a sum of Rs. 35 lakhs. Thereafter she did not return the entire amount and only after the police complaint she returned a sum of Rs.10 lakhs. Thereafter she did not settle the entire amount. Therefore the offence of cheating is clearly made

out as against the petitioner and prayed for dismissal of the quash petition.

4. The learned Additional Public Prosecutor appearing for the first respondent submitted that the petitioner is the sole accused and she charged for the offence under Section 420 of IPC, on the allegation that the petitioner entered into the transfer of business agreement with the defacto complainant, thereby induced him to pay a sum of Rs.35 lakhs to transfer the dealership of M/s.Eicher Motors Ltd (Royal Enfield). Thereafter the defacto complainant came to understand that the said dealership cannot be transferred to any one and they are about to cancel the licence issued to the petitioner. Suppressing these facts, the petitioner induced the defacto complainant to pay a sum of Rs.35 lakhs and entered into illegal agreement and cheated the defacto complainant. Therefore he prayed for dismissal of the quash petition.

5. Heard Mr.C.S.Dhanasekaran, learned counsel appearing for the petitioner, Mr.V.Balamurugane, learned Additional Public Prosecutor appearing for the first respondent and Mr. Zeakumar, learned counsel appearing for the second respondent.

6. The petitioner is the sole accused in C.C.No.228 of 2014 and the trial Court has taken cognizance for the offence under Section 420 of IPC. The charge is that the petitioner entered into a transfer of business agreement dated 24.05.2012 with the second respondent/defacto complainant. The agreement is for transfer of dealership of M/s. Eicher Motors Ltd., run by the petitioner in the name and style of M/s. Suvaani Motors (for dealership of Royal Enfield) in favour of the second respondent/defacto complainant for the sum of Rs.35 lakhs. Thereafter, failed to transfer the business in favour of the second respondent. After verification, the second respondent came to understand that the dealership cannot be transferred to anyone and also the dealership issued in favour of the petitioner is about to cancel. Suppressing the said facts, the petitioner entered into the business transfer agreement and received a sum of Rs.35 lakhs.

7. On perusal of the agreement, the petitioner agreed to transfer the dealership of business in favour of the defacto complainant. It is seen from the statement of the second respondent that he enquired with the Manager of M/s.Eicher Motors Ltd., Chennai and came to understand that the business of dealership cannot be transferred to anyone. Suppressing the said fact, the petitioner induced the defacto complainant and received a sum of Rs.35 lakhs. When there is no possibility of transfer of business, since it cannot be transferable, the agreement itself illegal one and it cannot be said as civil in nature and contractual.

8. In this regard, the judgment cited by the learned counsel appearing for the petitioner reported in (2001) 3 SCC 513 in the case of Alpic Finance Ltd. Vs. P.Sadasivan and another, reads 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 I.P.C. 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.

11. Moreover, the appellant has no case that the respondents obtained the article by any fraudulent inducement or by willful misrepresentation. We are told that respondents, though committed default in paying some installments, have paid substantial amount towards the consideration."

The another judgement reported in (2016) 1 SCC 348 in the case of International Advanced Research Centre and others Vs. Nimra Cerglass Technics Pvt. Ltd and another reads thus:-

"16. The distinction between mere breach of contract and the cheating would depend upon the intention of the accused at the time of alleged inducement. If it is established that the intention of the accused was dishonest at the very time when he made a promise and entered into a transaction with the complainant to part with his property or money, then the liability is criminal and the accused is guilty of the offence of cheating. On the other hand, if all that is established is that a representation made by the accused has subsequently not been kept, criminal liability cannot be foisted on the accused and the only right which the complainant acquires is the remedy for breach of contract in a civil court. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown at the beginning of the transaction. In S.W. Palanitkar v. State of Bihar, this Court held as under: (SCC p. 250, para 21)

"21. ... In order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating."

9. In the case on hand, the agreement itself illegal one since the business of dealership cannot be transferable one. It is also seen that the license of dealership itself is about to cancel by the M/s. Eicher Motors Ltd. When the petitioner knowing very well that the dealership is not transferable, she entered into the agreement with the second respondent and received a sum of Rs.35 lakhs. Though she returned part of the amount of Rs.10 lakhs, the offence can be sustained. Therefore, the above judgments are not helpful to the case of the petitioner.

10. In view of the above discussion, this Court is not inclined to quash the proceeding. However considering the case is of the year 2014, the trial Court viz., the learned Judicial Magistrate-I, Puducherry, is directed to complete the trial proceedings in C.C.No.228 of 2014, within a period of three months from the date of receipt of a copy of this Order.

11. With the above direction, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rts
To

1. The Judicial Magistrate Court-I,
Puducherry,

2. The Sub Inspector of Police,
Thavalakuppam Police Station, Puducherry.

3. The Public Prosecutor,(Puducherry)
High Court of Madras, Chennai.

+1cc to M/S.Achari Associates Sr.21941
+1cc to Mr.Dhanasekaran, Advocate Sr.21282
+1cc to the Public Prosecutor Sr.21678

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