IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.2541 of 2019
and Crl.MP.Nos. 1629 & 2331 of 2019

1. Meharaj
   W/o.Rahim
2. A.Hakkim
   S/o.Abdul Azeez ... Petitioners

Vs.

1. The State represented by
   The Inspector of Police,
   District Crime Branch,
   Erode, Erode District.
   Crime No.28 of 2018.

2. P.Praveen
   S/o.S.Palanisamy ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in Crime No.28 of 2018 on the file of the first respondent and quash the same.

For Petitioner : Mr.G.Ravikumar

For Respondents
For R1 : Mr.Mohammed Riyaz
Additional Public Prosecutor.

For R2 : Mr.Sathish Parasaran
Senior Counsel
For Mr.S.John J. Raja Singh

O R D E R

This petition is directed as against the FIR in Crime No.28 of 2018 on the file of the first respondent registered for the offences under Sections 120B, 420 and 506(i) of IPC, on the complaint of the second respondent herein.

2. The learned counsel appearing for the petitioners submitted that entire allegations are the business transactions

between the petitioners and the second respondent commenced from the year 2015. The entire allegations averd in the complaint did not disclose any offence as registered by the first respondent. He further submitted that there was a yarn business between the petitioners and the second respondent from the year 2015, in which there is an amount due payable by the petitioners and as such it is a civil in nature and no offence is made out as against the petitioners. He further submitted that the petitioners were purchasing yarn from the second respondent from the year 2015-16 to 2018-19, in the petitioners' company in the name and style of Liberty Clothing Company in totaling 506 transactions to the tune of Rs.51,55,54,672/-. Like wise the petitioners' another company viz., M/s. LCC Mill Private Limited were procured yarn from the defacto complainant from the year 2017 to 2019 for the total business 486 transactions to the tune of Rs.23,11,53,714/-. He further submitted that from the above business transactions between the petitioners and the defacto complainant to the tune of more than Rs.74 cores received from the petitioners clearly establishes routine business transactions. If any dispute arose between them in the routine business transactions, it cannot be termed as commission of criminal offence.

2.1. He further submitted that in the alleged FIR, the commission of offences from 08.01.2018 to 05.07.2018 as per the complaint. Whereas it is seen from the records on 05.07.2018 a sum of Rs.54 lakhs was received by the defacto complainant/second respondent in eight payments towards supply of yarn to the petitioners' company. The contemporaneous statement of account clearly shows that entire business are bonafide civil transactions between them. Further he submitted that the Purchase Contract executed on 01.07.2017 between the petitioner's company and the second respondent would clearly show that the entire transactions are commercial business transactions and no offence is made out as alleged by the second respondent.

2.2. He further submitted that the petitioners filed a civil suit in O.S.No.383 of 2017 before the District Court, Tiruppur, for injunction restraining the second respondent from supplying yarn to other companies and after the appearance of the second respondent, there was a compromise between them. Once again on the basis of the Purchase Contract dated 01.07.2017, the petitioners filed another suit in O.S.No.265 of 2018 before the Principal District Court, Tiruppur, for injunction restraining the second respondent from carrying business with some other third parties and an interim injunction was also granted, which is still in force. Therefore, the entire transactions are civil in nature. In fact, as against the interim injunction order, the second respondent filed an appeal in CMA.No.2264 of 2018 before this Court and the same is pending on the file of this Court. Therefore, the allegation of inducement to deliver yarn by the petitioners with dishonest intention is not there, as such the offence under Section 420 of IPC is not at all attracted as against the petitioners. Further he submitted that the petitioners lodged a complaint on 05.12.2018, and the same has been registered in Crime No.1488 of 2018, for the offences under Sections 294(b) and 506(i) of IPC on the file of the Inspector of Police, Tiruppur North Police Station. The present complaint is nothing but to overcome the above said civil suit as against the petitioners, foisted by the second respondent and got registered.

2.3. He further submitted that a Joint letter signed by the defacto company and the petitioner's company executed on 24.08.2018, specifically stated that any false rumours that might be circulating in the market of a strained relationship between the petitioners and the second respondent are untrue. Thereby, they request all customers not to believe such rumours. It shows that it is clear business transactions between them and no question of inducement by the petitioners to supply the goods on false presumption. He further submitted that the entire business transactions in connection with the supply of yarn were made through their bankers of the defacto complainant. So far, the second respondent received a sum of Rs. 74 croes from the year 2015-16, towards the purchase of yarn and continuing the business till 26.07.2018. Therefore, there is no offence of cheating and the FIR is nothing but arm twisting method to extract the money from the petitioners. He also relied upon the following judgments :-

i) (2000) 4 SCC 168 - Hridaya Ranjan Prasad Verma Vs. State of Bihar and another

ii) (2001) 3 SCC 513 - Alpic Finance Ltd., Vs. P.Sadasivan and another

iii) (2018) 15 SCC 273 - M.Suresh and ors Vs. Sate of Andhra Pradesh and anr

iv) 2018 SCC Online Mad 2874 - S.S.Janagarajan Vs. The State of Tamil Nadu and anr

v) 2019 SCC Online SC 196 - Sathishchandra Ratanlal Shah Vs. State of Gujarat and anr.

vi) 2019 SCC Online SC 208 - Pro. R.K.Vijayasarathy and anr Vs. Sudha Seetharaman and anr. Therefore, he prayed for quashment of the present complaint.

3. Per contra, the learned Senior Counsel appearing for the second respondent filed counter and submitted that the second respondent is involved in business of producing and selling hosiery yarn for the past 20 years. The petitioners are running business through a yarn trading company in the name and style of M/s. LCC Mill Private Limited at Tiruppur. During the month of January, 2018, their agent named Chinasamy had approached the second respondent with malafide intention to supply the hosiery yarn and promised to make payment within a period of 15 days. Even then without making any payment they had given promise that after making payment, the next supply of hosiery yarn can be done. Due to their false promise and the inducement of the petitioners, the second respondent/defacto complainant supplied yarn to the value of Rs.1.5 crore, during the second week of January, 2018.

3.1. He further submitted that again the petitioners had conspired together to cheat the defacto complainant and stated that they will repay that amount, on condition that fresh supply of yarn worth about another Rs.1.5 crore should be done by the second respondent and further promised that total payment of Rs.3 crores will be done within a period of 15 days. Believing the said promise, the second respondent supplied yarn worth to the tune of Rs.1.25 crores and as such there was total outstanding amount to the tune of Rs.2.75 crores. Thereafter, on making several representation, the petitioner did not make any payment and cheat the second respondent and to achieve wrongful gain.

3.2. The learned Senior Counsel further submitted that the petitioners also filed a suit in O.S.Nos.383 of 2017 and 265 of 2018, before the District Court, Tiruppur to subdue the criminal offence committed by them. In fact, as against the injunction order, the second respondent filed C.M.A.No.2264 of 2018 before this Court and the same is pending. Therefore, it is clear that they approached the defacto complainant with an intention to cheat him and as such the offence under Section 420 of IPC are clearly made out. He also relied upon the following judgements :-

i) 1992 Supp(1) SCC 335 - State of Haryana and ors Vs. Bhajanlal and ors

ii) (1996) 1 SCC 542 - State of Maharastra Vs. Ishwar Piraji Kalpartri and ors.

iii) (2001) 7 SCC 659 - S.M.Datta Vs. State of Gujarat and anr.

iv) Criminal Appeal No.255 of 2019 dated 12.02.2019 passed by the Hon'ble Supreme Court of India in the case Sau.Kamal

Shivaji Pokarnekar Vs. The State of Maharashtra & ors. Hence, he prayed for dismissal of the quash petition.

4. The learned Additional Public Prosecutor appearing for the first respondent submitted that the petitioners are arraigned as A1 and A2 in the FIR registered in Crime No.28 of 2018 for the offences punishable under Sections 120B, 420, 506 (i) of IPC. He further submitted that there are specific allegations as against the petitioners to attract the offences under Sections 120B, 420, 506(i) of IPC. Further, it cannot be quashed in its threshold and the investigation has to be done to unearth the crime. Therefore, he vehemently opposed to quash the proceedings and prayed for dismissal of this quash petition.

5. Heard Mr.G.Ravikumar, learned counsel appearing for the petitioners Mr.M.Mohamed Riyaz, learned counsel appearing for the first respondent and Mr.Sathish Parasaran, learned Senior Counsel appearing for the second respondent.

6. The petitioners are arraigned as A1 and A2 in Crime No.28 of 2018 registered for the offence under Sections 120B, 420, 506(i) of IPC. The crux of the complaint is that the petitioners approached the second respondent through their agent one Chinasamy and requested to supply the yarn on credit basis and also assured that the payment will be made within the period of 15 days from the supply of yarn. Accordingly, the second respondent supplied the yarn worth about Rs.1.5 crore to the petitioner's company. Further the petitioners failed to make payment and requested further period 30 days time to make the payment. Further alleged that again the petitioners requested the second respondent to supply of yarn to the tune of Rs.1.5 crore and also assured to make payment for the total due of Rs.3 crore within a period of 15 days. Believing that, the second respondent supplied yarn to the petitioner's company to the tune of Rs.1.25 crores. In total the petitioners' company have to pay a sum of Rs.2,79,91,558/- towards the supply of yarn, which was delivered to the petitioners on credit basis. When it was requested by the second respondent, the petitioners refused to pay the amount and also intimated him with dire consequences. Hence, the complaint.

7. On perusal of documents, the petitioners and the second respondent are doing business from the year 2015 and there was purchase contract between them dated 01.07.2017. As per the agreement, the second respondent agreed to produce 100% hosiery yarn & cloth and to sell to the petitioners' company. It is relevant to extract the purchase contract dated 01.07.2017, as follows :-

"Purchase Contract

Dated : 01.07.2017

The terms of the purchase contract made with Manufacurer M/s.Selvakumar Spinners Pvt. Ltd., SR.No.10/3 & 936 Selvanagar, Thandamapalayam (PO) - 638109, Tirupur Dt, Tin : 33553081770, are as follows:-

1) Selvakumar Spinners agreed to produce 100% hosiery yarn & cloth and to sell to Liberty Clothing Company only.

2) Packing and labeling should be "LCC" brand.

3) Counts range and prices is 20s Khy - Rs.180/Kg Exmill with 150 imp, 25s Khy - Rs.187/Kg Exmill with 250 imp, 30s Khy - Rs.196/-Kg Exmill with 400 imp, 34s Khy - Rs.203/- Kg Exmill with 600 imp & 40s Khy- Rs.210/Kg Exmill with 900 imp.

4) Count CV% should be maintained below 1.5% and CSP of yarn should be above 2000 mic value should be 3.8 to 4.2 and Mic variation should be maintained as .05.

5) Quality is always Selvakumar spinners responsibility. And weekly once Selvakumar Spinners should be sent their all counts internal test report to LCC

6) Net weight should be 250 grms extra for every bag

7) Payment terms 30 to 35 days from the date of dispatch for LCC.

8) Price changes should be followed as per Shanmugavel Mills monthly declaration.

9) Every month closing stock should be taken that month rate only.

10) Upto 60000 Kgs stock to be allowed in the mill when needed.

11) Freight and forwarding LCC a/c, and agent (Mr.Chinnasami) commission should be Selvakumar a/c.

12) Mill provide one technical person for attending quality complaints in the market and Mill agreed to allow LCC representative to visit in the mill always.

For Liberty Clothing Company Sd/-
For Selvakumar Spinnners Pvt Ltd., Sd/-"

8. While being so, there was a dispute between them in respect of complying the said purchase contract and the petitioners filed a suit in O.S.No.383 of 2017, before the

District Court, Tirupur. Thereafter they entering into compromise and the said suit was closed. Once again the petitioners filed another suit in O.S.No.265 of 2018 on the file of the Principal District Court, Tirupur for the violation of purchase contract dated 01.07.2017 and for seeking injunction, in which the learned Principal District Judge, Tirupur granted interim injunction restrained the second respondent from carrying the business to some other third parties. In fact, as against the said order the second respondent has also filed an appeal in C.M.A.No.2264 of 2018 before this Court and the same is pending without any interim order. It shows that the petitioners had business transactions from the year 2015 onwards in two names viz., Liberty Cloth Company and M/s.LCC Mill Private Limited. It is also seen from the invoice and E-mail correspondence between the petitioners and the second respondent, a sum of Rs. 74 crores has been received by the second respondent and it shows that they have been in business transactions from the year 2015 till 2018.

9. It is also seen that the second respondent caused notice to the petitioners on 04.03.2019 claiming a sum of Rs.3,52,93,018/- towards the purchase of hosiery yarn. After receipt of the same, the petitioners replied by reply notice dated 14.03.2019 and it is clear that there had been business transaction between the petitioners and the second respondent herein. On perusal of documents from the year 2015-16 and 2017-18, the petitioners company viz., Liberty Clothing Company purchased yarn by the 506 transactions to the tune of Rs.51,55,54,672/-. Likewise, the petitioners company M/s.LCC Mills Private Limited purchased yarn from the year 2017-18 and 2018-19 by the 486 business transactions to the tune of Rs.23,11,53,741/- In total, the second respondent/defacto complainant received a sum of Rs.74 crores towards the supply of yarn to the petitioners. It clear shows that there is no inducement on the part of the petitioners to supply yarn by the second respondent. There is no iota of evidence to show that the petitioners made false representation from the inception of the transactions to the second respondent/defacto complainant in respect of supply the goods. Therefore, there is no ingredients in the complaint to make out the case for the offence under Section 420 of IPC and it is purely business transactions and civil in nature.

10. This Court after hearing the counsel on either sides reserved the case "For orders". While pending for pronouncing orders, the learned counsel appearing for the petitioners requested to reopen the case and filed an additional affidavit of the second petitioner/A2, in respect of the subsequent events. It is seen from the said additional affidavit of the second petitioner/ A2, on 12.03.2019, the second petitioner/A2

received a demand notice dated 04.03.2019 from the second respondent under the Insolvency Bankruptcy Code, 2016, demanding a sum of Rs.3,52,93,018/-. In the said demand notice dated 04.03.2019, this Court finds that the second respondent demanded a sum of Rs.3,52,93,018/- towards supply of hosiery yarn. It is also reflected that the last payment received on 02.08.2018 by the second respondent and claiming the said amount through the invoice. Therefore, it is clear business transactions between the petitioners and the second respondent from the year 2015 onwards and it is also confirmed from the E-mail series and ledger accounts of the petitioners and the second respondent herein.

11. In this regards, the learned counsel appearing for the petitioners relied upon the judgment of the Hon'ble Supreme Court of India reported in 2019 SCC Online SC 196 in the case of Sathishchandra Ratanlal Shah Vs. State of Gujarat and anr., as follows :-

> "14. Now coming to the charge under Section 415 punishable under Section 420 of IPC. In the context of contracts, the distinction between mere breach of contract and cheating would depend upon the fraudulent inducement and mens rea. (See Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168).In the case before us, admittedly the appellant was trapped in economic crisis and therefore, he had approached the respondent no. 2 to ameliorate the situation of crisis. Further,in order to recover the aforesaid amount, the respondent no. 2 had instituted a summary civil suit seeking recovery of the loan amount which is still pending adjudication. The mere inability of the appellant to return the loan amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, as it is this mens rea which is the crux of the offence. Even if all the facts in the complaint and material are taken on their face value, no such dishonest representation or inducement could be found or inferred.
>
> 15.Moreover, this Court in a number of cases has usually cautioned against criminalizing civil disputes, such as breach of contractual obligations [refer

to Gian Singh v. State of Punjab, (2012) 10 SCC 303]. The legislature intended to criminalize only those breaches which are accompanied by fraudulent, dishonest or deceptive inducements, which resulted in involuntary and inefficient transfers, under Section 415 of IPC.

16.However, the High Court appears to have been carried away by the moral element involved in the breach of promise and made certain observations. Being a policy consideration, such suggestions need to be restricted. The aforementioned observations of the High Court were not only unnecessary for the adjudication of this matter, but the same could have been understood as casting some kind of aspersions on the accused. This clearly reflected a loaded dice situation against the appellant herein.

17.In our considered opinion, the High Court should have maintained judicial restraint and desisted from making such general observations at this stage of the criminal proceeding,as they may have had a bearing on the adjudication of the trial. Therefore, the observations made in paragraphs 42 and43 of the impugned judgment stand expunged.

18.In view of the above, we are unable to uphold the impugned order passed by the High Court in Criminal Miscellaneous Application No. 4033 of 2012 and the same is hereby set aside. The application filed by the appellant under Section 482 of Cr.P.C. is allowed and the proceedings initiated based on the FIR instituted at the instance of respondent no. 2 are hereby quashed."

In the above case, the Hon'ble Supreme Court of India held that in the context of contracts, the distinction between mere breach of contract and cheating would depend upon the fraudulent inducement and mens rea.

12. In the case on hand, there had been business transactions between the petitioners and the second respondent from the year 2015 and the second respondent also received a sum of Rs.74 crores towards the supply of yarn on the basis of the purchase contract dated 11.07.2017 between the petitioners and the second respondent. That apart, the petitioners initiated two

civil suits on the ground of violation of terms and conditions of the purchase contract as against the second respondent, in which one suit is pending. Therefore, merely inability of the petitioner to return the balance cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the business transactions, as it is this mens rea which is the crux of the offence. In overall reading of the complaint, there is no such dishonest representation or inducement could be found or inferred. The present complaint is nothing but an attempt of the second respondent to cloak a civil dispute with a criminal nature despite the absence of the ingredients necessary to constitute a criminal offence. The impugned FIR as against the petitioners constitutes an abuse of process of Court and is liable to be quashed.

13. The judgment relied upon the by the learned Senior Counsel appearing for the second respondent are dealt in different facts and circumstances as such they are not helpful to the case of the prosecution. Another judgment citied by the learned Additional Public Prosecutor in Crl.A.No.255 of 2019 dated 12.02.2019 in the case of Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors., in which the Hon'ble Supreme Court of India held as follows:-

> "9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."

The Hon'ble Supreme Court of India held that the criminal proceedings cannot be quashed on the ground that the allegations made therein appear to be a civil nature. If the ingredients of the offence are prima facie made out in the complaint, the complaint cannot be quahsed.

14. In the case on hand, as discussed above, the entire transactions are business transactions between the petitioners and the second respondent and they had been continued in business from the year 2015 till August month of 2018 and there is no ingredient to make out the offence under Sections 420 of IPC. Insofar as the offence under Section 120B of IPC is concerned, when the offence under Section 420 of IPC itself is not made out, no ingredients are there to attract the offence under Section 120B of IPC. In respect of the offence under Section 506(i) of IPC is concerned, it is nothing but clear abuse of procees of law. Therefore, on the face of the complaint itself, it is clear abuse of process of Court and the allegations did not constitute any of the offences as alleged by the prosecution. In view of the above discussions, this Court is of the considered opinion that the impugned FIR cannot be sustained as against the petitioners and it is liable to be quashed.

15. Accordingly, the Criminal Original Petition stands allowed and the FIR in Crime No.28 of 2018 on the file of the first respondent is hereby quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police,
District Crime Branch,
Erode, Erode District.

2. The Public Prosecutor,
High Court of Madras,
Chennai.

+2cc to Mr.Ravikumar, Advocate Sr.41734
+1cc to Mr.S.John J.Raja Singh, Advocate Sr.42432

CRL.O.P.No.2541 of 2019
and Crl.MP.Nos. 1629 & 2331 of 2019

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