

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.No.10417 of 2019

and

CrI.M.P.Nos.5395 & 5396 of 2019

R.Ragupathy

... Petitioner
Vs.

M/s.Jayachandra Bearings (India) Pvt. Limited
Rep. by its Manager
A.Sundararajan
No.1002-1004, Avinashi Road
Coimbatore 641 018

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No.42 of 2019 on the file of the Judicial Magistrate Fast Track Court No.II of Coimbatore and quash the same in respect of the petitioner concerned.

For Petitioner : Mr.S.Gunalan

ORDER

This Criminal Original Petition has been filed by the petitioner under Section 482 Cr.P.C. to call for the records in C.C.No.42 of 2019 on the file of the Judicial Magistrate Fast Track Court No.II of Coimbatore and quash the same in respect of the petitioner concerned.

2.The learned counsel for the petitioner would submit that the defacto complainant is the distributor of all type of bearings and the petitioner is dealing with the respondent for the past three years by way of purchase of bearings. The petitioner placed purchase order on 15.09.2018 in ref.No.GSPB/86/18-19 on the basis of quotation given by the respondent on 12.09.2018 and issued a predated cheque for Rs.1,50,000/- dated 25.10.2018 and the delivery was fixed as 5 days but the goods were not delivered to the petitioner as per the purchase order. The goods supplied by the defacto complainant were not lubricated properly due to which the petitioner suffered loss to the tune of Rs.12,77,445/- and

requested the defacto complainant to settle the issue. Since the above said issues were pending unresolved, the petitioner issued "stop payment letter" to his banker on 16.10.2018 and the same was orally informed to the respondent. The dispute between the petitioner and the respondent is still pending, under these circumstances, the respondent presented the cheque which was returned as unpaid for the reason payment stopped by the account holder. The complaint under Section 138 of NI Act is bouncing of a cheque on the ground of inadequate balance in the amount concerned. Whereas the cheque is returned on other grounds, which do not constitute an offence under Section 138 of Negotiable Instrument Act. Hence, the complaint filed by the respondent is not maintainable. Hence this petition.

3. Heard the learned counsel for the petitioner.

4. Further it is seen from the First Information Report that there are specific allegations as against the petitioner and the defacto complainant to attract charges as alleged by the prosecution, which has to be investigated. Further the FIR is not an encyclopedia and it need not contain all facts. Further, it cannot be quashed in the threshold. This Court finds that the FIR discloses prima facie commission of cognizable offence and as such this Court cannot interfere with the investigation. The investigating machinery has to step in to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code.

5. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in CrI.A.No.255 of 2019 dated 12.02.2019 in the case of *Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors.*, as follows:-

"4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.

5. Quashing the criminal proceedings

is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.

.....
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."

6. It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in CrI.A.No.579 of 2019 dated 02.04.2019 in the case of Devendra Prasad Singh Vs. State of Bihar & Anr., as follows:-

" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no

jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

7. Therefore, all the points raised before this Court shall be considered only at the time of trial. Hence, this Court is not inclined to quash the proceedings in C.C.No.42 of 2019 pending on the file of the Judicial Magistrate Fast Track Court No.II of Coimbatore. However, the Trial Court is hereby directed to complete the trial within a period of six months from the date of receipt of a copy of this order.

8. However, considering the age of the petitioner, the personal appearance of the petitioner is dispensed with and he shall be represented by a counsel after filing appropriate application. The petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment.

9. Accordingly, the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are also closed.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1. The Judicial Magistrate
F.T.C.No.II
Coimbatore

+1 CC to Mr.S.Gunalan, Advocate sr 37493.

Crl.O.P.No.10417 of 2019
and
Crl.M.P.Nos.5395
& 5396 of 2019

KAN(CO)
SP(26/04/2019)



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