

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.14993 of 2014

and

M.P.No. 1 & 2 of 2014 & M.P.No.1 of 2015

M/s. Santhosh Textile Process
A Partnership Firm
Rep. By its Partners
C.Shanmugasundaram
S.F.No.165, Kulathupalayam
Mangalam Road,
Andipalayam Post,
Tirupur - 641 687. Petitioner

Vs.

M/s.Veena Texchem Industries,
Rep. By its Manager P.Gobady
R.S.No.4/1, Kurumbapet,
Puducherry. Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in C.C.No.45 of 2014 on the file of the learned Judicial Magistrate No.II, Pudhucherry and quash the same.

For Petitioner : Mr.Ashok Kumar, Senior Counsel
For A.Sasidharan

For Respondent : Mr.R.Saseetharan

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O R D E R

This petition has been filed to quash the private complaint in C.C.No.45 of 2014 on the file of the learned Judicial Magistrate No.II, Puducherry for the offences under Section 420, 409 and 418 of IPC.

2. The learned Senior Counsel appearing for the petitioner submitted that the petitioner is one of the partner of M/s. Santhosh Textile Process. The petitioner's firm had business transactions with the respondent/defacto complainant in

respect of the supply of textile accessories and the said sale was an inter-state sale, in which the petitioner's firm were in arrears of payment of Rs.76,33,905.25. Therefore, the respondent filed suit for recovery of money in O.S.No.112 of 2008, on the file of the II Additional District Court, Puducherry. The sale made for the period from 01.04.2006 to 31.12.2006. Further he submitted that now the respondent lodged complaint alleging that the petitioner's firm failed to produce the Form-C as contemplated under the Sales Tax Act, as such made the respondent to pay higher rate of taxes. In this regard, the respondent/complainant also caused legal notice on 17.02.2012, thereby call upon the petitioner to issue Form-C for the above mentioned period or to pay a sum of Rs.1,16,22,722/- for the interstate purchase made by them. Even after receipt of the same the petitioner did not comply the same. Hence the complaint.

2.1. The learned counsel appearing for the petitioner further submitted that the present complaint is nothing but clear abuse of process of Court, since for the very same relief the respondent filed suit in O.S.No.112 of 2008 and the same was also decreed in their favour. Further he submitted that the learned Magistrate did not follow the procedure contemplated under Section 202 of Cr.P.C., and without even conducted enquiry straight away taken cognizance and issued summons to the petitioner. The complaint was filed after 7½ years of the business transaction ie., between the period 01.04.2006 to 31.12.2006. Therefore, the complaint is liable to be quashed on the ground of laches and prayed for quashment of the proceedings.

3. Per contra, the learned counsel appearing for the respondent submitted that the suit is filed by the respondent in O.S.No.112 of 2008 is completely for different relief on different cause of action. The suit was filed for recovery of money from the petitioner for the supply of goods. Whereas the complaint lodged for the allegations that the interstate sale made to the petitioner attracts Central Sales Tax as per the Sales Tax Act 1956 and the petitioner availed concession rate of tax with the assurance to issue Form-C for the interstate purchase made by them. Further he submitted that the obligatory on the part of the petitioner as prescribed under the Sales Tax Act 1956 to issue Form-C to the selling dealer i.e., the respondent so as to get the benefit under Section 8 of Central Sales Tax Act. He further submitted that admittedly the petitioner failed to issue Form-C and also did not pay the balance sale consideration for the goods purchased by them to the tune of Rs.76,33,905.25. Therefore, the civil suit is nothing to do with the present complaint and it can be maintainable. Hence, prayed for dismissal of the quash petition.

4. Heard Mr.Ashok Kumar, learned Senior Counsel appearing for the petitioner and Mr.R.Saseetharan, learned counsel appearing for the respondent.

5. The petitioner is arraigned as second accused on the complaint filed by the respondent. The trial Court have taken cognizance for the offences under Sections 420, 409 and 418 of IPC. Admittedly, there is a business transaction between the petitioner and the respondent, in which according to the respondent, there is payment due to the tune of Rs.76,33,905.25. It is also seen that on the business transaction, the petition ought to have issued declaration Form-C to get the benefit under Section 8(2) of the Central Sales Tax by the respondent. If the said Form-C has not been issued, as per the invoice cum deliver challan, the respondent/defacto complainant can debit the amount in the account of the petitioner. On perusal of the invoice cum deliver challan, it has been stated as that "Please send us necessary sales Tax Declaration form "C" immediately otherwise all taxes will be debited in your account. No claims will be recognised unless notified in writing within 5 days from receipt of goods". Therefore, the respondent/complainant can very well debit the amount which was benefited by the purchase of the goods, if the declaration Form-C not issued by the purchaser.

6. It is also seen that from the suit filed by the respondent in O.S.No.112 of 2008, though it was filed for recovery of money, in the plaint the respondent categorically stated that the petitioner did not submit declaration Form-C. Even then the respondent did not file the complaint immediately after the suit. The said suit was filed in the year 2008, for the business transaction happened between 01.04.2006 to 31.12.2006, whereas the impugned complaint filed only on 11.03.2013, that too after the period of 7½ years from the business transaction. There is absolutely no explanation for the delay in filing the complaint. It is also seen that the suit filed by the respondent for recover of money was also decreed in their favour. Therefore the impugned complaint is nothing but clear abuse of process of law and it cannot be sustained as against the petitioner and it can be quashed on the ground of laches alone. Section 420 of the Penal Code reads thus:-

420. Cheating and dishonestly inducing delivery of property — Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either

description for a term which may extend to seven years, and shall also be liable to fine.

The ingredients to constitute an offence under Section 420 of IPC are as follows :-

(i) A person must commit the offence of cheating under Section 415 and

(ii) The person cheated must be dishonestly induced to (a) deliver property to any person or (b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.

Cheating is an essential ingredient for an act to constitute an offence under Section 420.

7. It is relevant to relay the judgment reported in (2018) 13 SCC 374 in the case of Medmeme, LLC and others Vs. Ihorse BPO Solutions Pvt. Ltd., as follows :-

"9. Coming to the case at hand, a perusal of the judgment of the High Court would show that the High Court formulated the following three questions for determination:

(i) Whether the complaint is liable to be quashed on the ground that the allegations made in the complaint do not constitute any offence Under Section 420 Indian Penal Code?

(ii) Whether the criminal law can be set in motion in this case, since the agreement comprises a provision for arbitration?

(iii) Whether the Magistrate has conducted the enquiry Under Section 202 Code of Criminal Procedure, since the Petitioners are residing outside the jurisdiction of the Court?

10. The High Court was of the view that the allegations contained in the complaint filed by the Respondent, particularly in paragraph 7 thereto, satisfy the ingredients of the offences for which the Appellants are implicated. But the High Court further observed that merely because arbitration proceedings were pending between the parties, it would not preclude the Respondent from launching criminal prosecution when prima facie criminal case was also made out against the Appellants. In the three question

formulated, the High Court took the view that the Magistrate had conducted a proper inquiry Under Section 202 of the Code of Criminal Procedure before proceeding against the Appellants.

11. The moot question before us revolves around Question No. 1 which was formulated by the High Court and it is to be seen as to whether dispute between the parties is essentially of a civil nature or any case is made out against the Appellants for launching criminal prosecution under the aforesaid Sections.

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14. On the basis of it, we find that it cannot be said that at the time of entering into the agreement, either the first agreement or even the second agreement, there was any intention on the part of the Appellants to cheat the Respondent. No suspicion of any nature was shown or even alleged. It is also not the allegation of the Respondent in the complaint that the agreement was entered into with fraudulent or dishonest intention on the part of the Appellants in inducing the Respondent to enter into such a contract. At best, the dispute between the parties is of a civil nature, proceedings in respect of which are pending before the learned Arbitrator."

8. Admittedly, there was a business transaction between the petitioner and the respondent. The condition necessary for an act to constitute an offence under Section 405 of the Penal Code is that the accused was entrusted with some property or has dominion over property. There is on the face of the complaint, no entrustment of the petitioner with any property. The condition necessary for an act to constitute an offence under Section 415 of the Penal Code is that there was dishonest inducement by the accused. No act on part of the petitioner has been alleged that discloses an intention to induce the delivery of any property to the petitioner by the second respondent. There is thus nothing on the face of the complaint to indicate that the petitioner dishonestly induced the second respondent to deliver the property to them. Cheating is an essential ingredient to an offence under Section 420 of the Penal Code. The ingredient necessary to constitute the offence of cheating is not made out from the fact of the complaint and consequently, no offence under Section 420 of IPC is made out.

9. In view of the above discussions, the Criminal Original Petition stands allowed and the proceedings in C.C.No.45 of 2014 on the file of the learned Judicial Magistrate No.I, Pudhucherry is hereby quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CCC)

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Sub Assistant Registrar

Rts

To

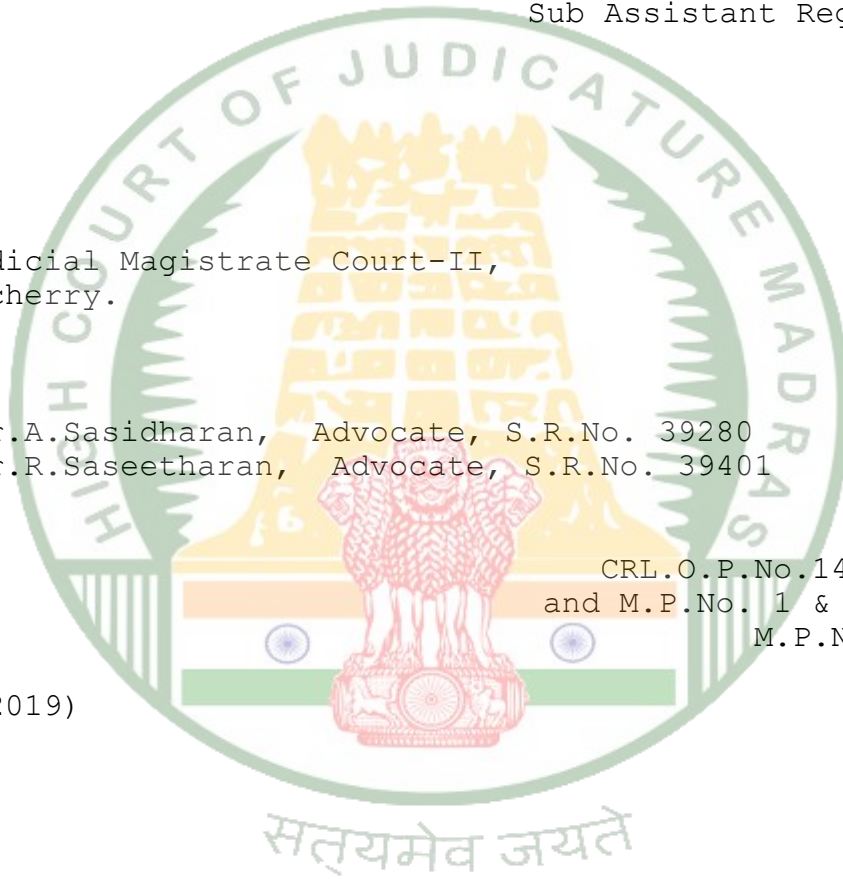
1. The Judicial Magistrate Court-II,
Pudhucherry.

+1cc to Mr.A.Sasidharan, Advocate, S.R.No. 39280

+1cc to Mr.R.Saseetharan, Advocate, S.R.No. 39401

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and M.P.No. 1 & 2 of 2014 &
M.P.No.1 of 2015

GJ II(CO)
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