IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.29325 of 2018
Crl.MP.No. 17206 of 2018

1. Ruma Chakraborty
2. Kali Kishore Bagchi ... Petitioners

Vs.

1. The State of Tamil Nadu rep. by
The Deputy Superintendent of Police,
District Crime Branch,
Namakkal District.

2. The Inspector of Police,
DCB, Namakkal.

3. V.N.Dhanakoti ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records pertaining tot he First Information Report in F.I.R.No.07 of 2018 dated 13.08.2018 for the alleged offence punishable under Section 420 of the Indian Penal Code, on the file of the District Crime Branch, Namakkal District, quash the same.

For Petitioners : Mr.M.L.Ramesh

For Respondents
For R1&R2 : Mr.Mohammed Riyaz
Additional Public Prosecutor.

For R3 : Mr.S.Kalyanaraman

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O R D E R

This petition has been filed to quash the FIR in Crime No.7 of 2018 registered for the offences under Section 420 of IPC as against the petitioners.

2. The learned counsel appearing for the petitioners would submit that the dispute of payment raised in the complaint is purely civil in nature and there is no iota of criminality.

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Initially the complaint was not entertained and thereafter it was forwarded under Section 156(3) of Cr.P.C. by the jurisdictional Magistrate, and thereafter the case has been registered. The petitioners and the defacto complainant having business transactions for the past five years and the petitioner have made payment to the tune of more than Rs.7 crores, as such the ingredients for the offence under Section 420 of IPC are not made out as against the petitioner. There was no inducement to the complainant by the petitioners to delivery any goods. Even according to the complainant, the petitioners placed orders and the defacto complainant supplied the goods, for which the amount paid and for the last transaction, the petitioners failed to pay the amount as agreed by them. Therefore, there is no dishonest or fraudulent inducement to the complaint to deliver any property. Further there is no intention and inducement to the complainant to deceived to do or omit to anything, which he would not do or omit if he were not so deceived. Therefore, none of the ingredients to attract the offences of cheating are made out as against the petitioners. It is purely business relationship and the entire dispute is civil in nature. Instead of approaching civil form in a short cut mode, the defacto complainant approached the learned jurisdictional Magistrate under Section 156(3) of Cr.P.C., and the same was forwarded to the second respondent. Unfortunately, the first respondent without conducting any enquiry, mechanically registered the complaint. Therefore, he sought for quashing the FIR.

3. Per contra, the learned counsel appearing for the second respondent filed a counter and submitted that the grounds raised by the petitioners are not at all considered in this quash petition, since they challenged the FIR very initial stage and it cannot be quashed in threshold. Still born baby and it cannot be threshold on its birth. The defacto complainant lodged complaint before the jurisdictional Magistrate i.e., the learned Judicial Magistrate, Tiruchengode and the same was forwarded under Section 156(3) of Cr.P.C., to the first respondent for registration of FIR. The learned Magistrate found that there is prima facie case against the petitioner and as such the complaint was directed under Section 156(3) of Cr.P.C. Further he submitted that the issue raised in the complainant is not civil in nature, though it is a business transactions, it disclosed intention and inducement by the petitioner to deliver the materials to them. After receipt of materials, the petitioner did not pay the amount to the tune of Rs.41,25,810/-. In fact, in the earlier transaction, there was a due of Rs.6 lakhs and thereafter only intention to cheat the defaccto complainant, the petitioners promised that along with the earlier balance, they would settle the entire amount and request to send the materials. On believing the said promise by the defacto complainant supplied bulk materials to the tune of Rs.

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35,25,810/-. After receipt of the goods, along with the earlier balance, a sum of Rs.41,25,810/- was not paid as promised by the petitioner. Therefore, the offence under Section 420 of Cr.P.C., is clearly made out as against the petitioners. Therefore, he sought for dismissal of this quash petition.

4. The learned Additional Public Prosecutor would submit that there are two accused in this case and the petitioners are arraigned as A1 & A2. The petitioners cheated the defacto complainant to the tune of Rs.41,25,810/- and on the directions of the learned Judicial Magistrate, Tiruchengode, this case has been registered in Crime No.7 of 2018, for the offence under Section 420 of IPC. The investigation is not yet completed and hence, he prayed for dismissal of this petition.

5. Heard Mr.M.L.Ramesh, learned counsel appearing for the petitioner, Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the respondents 1 & 2 and Mr.S.Kalyanaraman, learned counsel appearing for the third respondent.

6. The petitioners are the accused in Crime No.7 of 2018, registered for the offence under Section 420 of IPC. The complaint filed before the learned Judicial Magistrate, Tiruchengode and the same was forwarded under Section 156(3) of Cr.P.C. and got registered. The crux of the complaint is that the petitioners are the partnership firm in the name and style of Roma International and engaged in the business of manufacturing and export of various life style products in cotton, canvas, jute, juco and leather combination bags. The defacto complainant is running a firm in the name and style of Mahalaxmi Textile Mills and they are supplied the fabric for bags. The petitioners regularly purchased the fabric from the defacto complainant from 01.04.2013 onwards. During the business transaction, there was due from the petitioners to the tune of Rs.6 lakhs for the supply of materials by the defacto complainant. Without settling the said amount, further they placed bulk orders to the tune of Rs.35 lakhs, by promising that the entire amount would be paid. After receipt of the goods, the petitioners failed to pay the amount and cheated to the tune of 41,25,810/-.

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7. Admittedly, it is a business transaction between the petitioners and the defacto complainant. On perusal of the documents filed by the petitioners, it is seen that the petitioners purchased fabric from the defacto complainant from 01.04.2013 till 2017. During the business transaction, so many payments are made on the invoice raised by the defacto complainant. In respect of purchase dated 17.06.2017, for the total sum of Rs.51 lakhs placed by the petitioners, the

complainant supplied the materials belatedly for the said purchase order and there were disputes with regard to the quality of the materials received by the petitioners. Therefore, there are some disputes between the petitioners and the defacto complainant.

8. Now, whether the offence under Section 420 of IPC is made out or no as against the petitioner?

9. To attract the offence under Section 420 of IPC the essential ingredients are necessary which are as follows :-

> (i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;
>
> (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and
>
> (iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property. To constitute an offence under section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived (i) to deliver any property to any person, or (ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

Therefore, to establish the offence of cheating the complainant is required to show that the accused on fraudulent or dishonest inducement at the time of making promise or representation. From him making failure to keep promise subsequently, such a culpable intention right at the beginning i.e., at the time when the promise was made cannot be presumed.

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10. In the case on hand, admittedly the petitioners and the defacto complainant were in the business transaction from the year 2014 till 2017. There was so many invoices and payments made by the petitioners. It is seen from the conduct of the petitioners, there was no fraudulent or dishonest inducement at the time of placing orders before the third respondent/defacto complainant. In the absence of dishonest and fraudulent

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inducement, the qauestion of committing offence under Section 420 of IPC does not arise. The entire transaction between the petitioners and the defacto complainant is civil in nature. In view of the above, the FIR cannot be sustained for the offence under Section 420 of IPC and it is liable to be quashed.

11. In fine, this Criminal Original Petition stands allowed and the FIR in Crime No.7 of 2018 is hereby quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Superintendent of Police,
   The State of Tamil Nadu,
   District Crime Branch,
   Namakkal District.

2. The Inspector of Police,
   DCB, Namakkal.

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

+1cc to Mr.ML.Ramesh, Advocate Sr.14822
+1cc to Mr.S.Kalyanaraman, Advocate Sr.15002
+1cc to M/S.N.B.Surekha, Advocate Sr.14804

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