



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.01.2019

CORAM:

WEB COPY THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.O.P. (MD)No.5437 of 2018

and

CrI.M.P. (MD)Nos.8404, 2626 & 2627 of 2018

- 1.Chellappa & Co.,
Timbers Tiles Merchant Company,
No.1724/3, AC Saw Mill Compound,
West Santhai, Theni.
- 2.Nagarathinam
- 3.Thesimani
- 4.Rajeswari
- 5.Shanmugasundaram
- 6.Baskaradhass
(Petitioners 2 to 6 are partners of Chellappa &
Co Timbers, Tiles Merchant Company) : Petitioners/Accused No.1 to4
6&7

Vs.

J.Mariya Amalraj : Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records and quash the proceedings in C.C.No.29 of 2018 on the file of the learned Judicial Magistrate, Theni.

For Petitioners : Mr.C.Muthusaravanan
For Respondent : Mr.G.Prabhu Rajadurai

ORDER

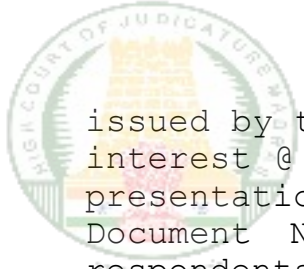
This Criminal Original Petition has been filed to quash the Private complaint in C.C.No.29 of 2018 on the file of the learned Judicial Magistrate, Theni, pending against the petitioners/accused for the offences under Sections 406, 420, 294(b) and 506(ii) IPC.

2. The brief facts in the private complaint: The 1st accused/1st petitioner is the partnership Firm and the petitioners 2 to 6 are respectively the partners of the 1st petitioner Firm. The complainant is a wholesale dealer engaged in the business of Timber in the name of Amal Timbers. The 1st petitioner Firm is dealing with timber business in the name of "Chellappa and Co", and



the petitioners 2 to 6 are partners jointly and individually responsible for the administration of the 1st petitioner firm. The 1st petitioner Firm had been purchasing timber for the past 6 years on credit and remitting the amounts through bank transactions. The business had been run on oral agreement that the amounts would be pay within 60 to 90 days and that the respondent had been believing them supplying timber on credit. From in the year 2013, the petitioner had been purchasing and remitting the amounts through cheques, while so on 26.11.2014 the respondent had supplied 8 logs of imported Vengai Timber measuring 763.02 sq.ft. The value was fixed at Rs.1305.96/- with tax at 14.5% and the total value was Rs.11,41,000/-. Towards the liability the petitioners had issued six post dated account payee cheques drawn on State Bank of India, Theni, SME Branch on 22.11.2014. While so, out of the outstanding amounts of Rs.11,41,000/-, the petitioners had cleared one cheque for Rs.1,00,000/- and did not pay the balance amount. When the respondent had in person and through phone contacted the petitioner for payment they had been whiling away time. The respondent had contacted petitioners 5 and 6 for payment and that they had threatened the respondent over phone saying that if he asks for money they will do away with him. While so, on 12.10.2017 at 12.30 p.m., the respondent along with his assistant had gone to the shop of the respondents seeking payment and at the time petitioners 5 and 6 have threatened him and abused him with filthy language. On 12.10.2017, the respondent had given a complaint to Theni District Crime Branch and the respondent were called for enquiry on 21.10.2017 and 25.10.2017 and since no further action was taken, the respondent sent a complaint by registered post to the Superintendent of Police, Theni District and since no action had been taken by them, the present private complaint had been filed.

3.The learned counsel appearing for the petitioners would submit that the Private complaint pending in C.C.No.29 of 2018 on the file of the learned Judicial Magistrate, Theni, is nothing but an abuse of process of law. He would further submit that a case of commercial transaction had been projected as a case of cheating and criminal breach of trust and thereby an attempt has been made by the respondent /complainant to circumvent the due process of law and resorted to a short cut way of recovering the amounts in a business transaction by projecting this case as a case of criminal nature. He would further submit that the entire reading of the complaint would show that the necessary ingredients for cheating and criminal breach of trust has not been made out against the accused. By making a false averment that the petitioners 5 and 6 are threatened and abused the respondent/complainant with filthy language, the women folk in the family who are nominal partners have also been dragged into the criminal complaint. Admittedly, even as per the complaint, the petitioner firm and the respondent were having business transactions for several years and that there was a running transactions between them. He would further submit that along with the complaint, the respondent had filed 16 Documents, the Document No.1 is a Credit Bill bearing invoice No.197, dated 26.11.2014,



issued by the respondent for Rs.11,41,000/-. It had been stated that interest @ 24% per annum will be charged if the bill is not paid on presentation. Goods once sold will not be taken back. Further Document Nos.8, 9 and 10 are respectively the Reports of the respondents Auditor showing the Ledger Accounts of the respondent with the petitioner firm for the periods (2013 -2014), (2014-2015) and (2015-2016). This would show that the business transaction was a running transaction from 01.04.2013 and several purchases have been made and payments have also been made to the respondent/complainant. Further as per the Statement an amount of Rs.7,25,000/- was shown as outstanding.

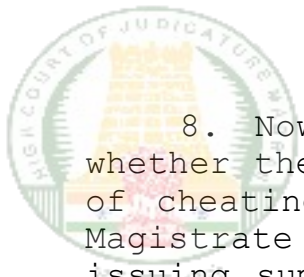
4. The learned counsel for the petitioner would further submit that 2 and 3rd petitioners have seized to be the partners of the firm from 22.11.2007 and he had filed the necessary forms under Section 59 of the Indian Partnership Act. He would also submit that no averment has been made in the complaint as if the cheques were presented for collection and that they have been returned for insufficiency of funds or for any other reason.

5. The learned counsel for the petitioner would further submit that when absolutely no case has been made out against the petitioners for offences of cheating are criminal breach of trust, the learned Magistrate erred in taking cognizance of the complaint and issuing summons to the accused. The entire proceedings is nothing but an abuse of process of law and would pray for quashing the proceedings. The learned counsel for the petitioner would also submit that in support of his contentions would rely on the following judgements:-

1.(2001) 3 SCC (Cr1)513 Alphic Finance Ltd., Vs. P.Sadasivan and another, 2. (2005) 10 SCC 228 Anil Mahajan Vs. BHOR Industries Ltd and another, 3. (2009) 3 SCC 78 V.Y.Jose and another Vs. State of Gujaraj and another, 4.(2015) 8 SCC 293 Vesa Holding Pvt.Ltd and another Vs. State of Kerala and another and 5. 2018 (1) MLJ (Cr1) 215 Ramesh P Sheth and Others Vs. State.

6. The learned counsel for the respondent/complainant would submit that since because there is an element of civil liability it will not preclude the respondent from initiating proceedings under the criminal law. The petitioners had purchased Timber by issuing post dated cheques and after taking delivery of goods have honoured only one cheque and later failed to honour the remaining cheques and when the respondent had demanded payment the petitioners 5 and 6 have abused the respondent with filthy language and threatened him of dire consequences and would further submit that the complaint makes out a case for cheating and criminal breach of trust and also for offences under Section 294(b) and 506(i) of IPC.

7. Head both sides and I have perused the copy of the complaint and the documents annexed to the complaint.



8. Now coming to the facts on hand what is to be seen is whether the averments in the complaint make out a case for offences of cheating and criminal breach of trust and whether the learned Magistrate is right in taking cognizance of the complaint and issuing summons to the petitioners. A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed of, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

9. Admittedly, even as per the complaint the petitioners and the respondents were having a running transactions from the year 2013 and that goods were supplied on credit with 60 to 90 days credit limit and further as per the invoice the delayed payment carries interest at 24 % p.a on the outstanding. The complainant himself had annexed the documents, namely the Ledger entries showing various transactions between him and the petitioner's firm for the periods (2013 -2014), (2014-2015) and (2015-2016), wherein it had been shown that the petitioners and the complainant have been having several business transactions from the year 2013 to 2016.

10. The reading and analysis of the complaint along with the documents annexed to shows that it is nothing but a commercial transaction between the petitioners and the respondent/complainant with regard to purchase of timber and non payment of dues and the averments of criminal intimidation and abusing with filthy language are invented for the purpose of bringing the complaint within the ambit of criminal law.

11. Though, several decisions have been relied on by the counsel for the petitioners, this court does not want to burden this Judgement referring to all the above judgements. It would be apposite to refer to the following judgement alone which are relevant for deciding the case on hand.

1. (2005) 10 SCC 228 Anil Mahajan Vs. BHOR Industries Ltd and another.

"Penal Code, 1860 - Ss. 415, 418 and 420 - Cheating - Contract for supply of goods - Fraudulent and dishonest intention must be shown to be existing from the very beginning of the transaction - From mere failure to keep the promise at a subsequent stage, offence of cheating cannot be made out - Distinction between offence of cheating and mere breach of contract should be kept in mind - Mere use of words



cheating in the complaint would not be sufficient - Substance of the complaint has to be seen - Having regard to the substance of the complaint in the instant case, held, it pertains to a civil case of breach of contract and not a criminal case of offence of cheating - Hence Magistrate erred in issuing process - Criminal Procedure Code, 1973, S.482 - Contract Act, 1872, Ss.73, 74 and 75 - Breach of contract - Difference between breach of contract and cheating."

2. (2015) 8 SCC 293 Vesa Holding Pvt.Ltd and another Vs. State of Kerala and another.

"13. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC. In our view the complaint does not disclose any criminal offence at all. The criminal proceedings should not be encouraged when it is found to be malafide or otherwise an abuse of the process of the court. The superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of the court and the High Court committed an error in refusing to exercise the power under Section 482 of the Criminal Procedure Code to quash the proceedings."

12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by the Honourable Apex Court in several decisions over the years. To mention a few -Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre [1988 (1) SCC 692], State of Haryana vs. Bhajanlal [1992 Supp (1) SCC 335], Rupan Deol Bajaj vs. Kanwar Pal Singh Gill [1995 (6) SCC 194], Central Bureau of Investigation v. Duncans Agro Industries Ltd., [1996 (5) SCC 591], State of Bihar vs. Rajendra Agrawalla [1996 (8) SCC 164], Rajesh Bajaj v. State NCT of Delhi, [1999 (3) SCC 259], Medchl Chemicals & Pharma (P) Ltd. v. Biotek Chemicals Ltd. [2000 (3) SCC 269], Hridaya Ranjan Prasad Verma v. State of Bihar [2000 (4) SCC 168], M. Krishnan vs Vijay Kumar [2001 (8) SCC 645], and Zandu Pharmaceutical Works Ltd. v. Mohd.

Sharaful Haque [2005 (1) SCC 122]. The principles, relevant for quashing a complaint are:

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused. For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

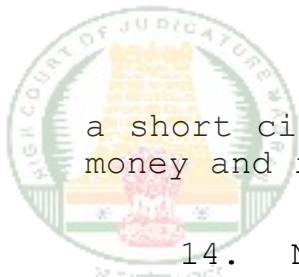
(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

13. In the light of the aforesaid judgements it can only be held that whenever there are sufficient materials to indicate that a complaint manifestly discloses a civil dispute the inherent powers of this Court under Section 482 Cr.P.C., can rightly be invoked. Likewise, when the complaint prima-facie discloses that the transaction is for recovery of money due on a commercial transaction, criminal complaints cannot be initiated for using it as



a short circuit method to avoid filing a civil suit for recovery of money and it can be termed nothing but an abuse of process of law.

14. Now applying the above principles and taking into consideration the facts in the complaint and the documents annexed to the complaint, this Court is of the opinion that the entire allegations against the petitioners are purely civil in nature, which is wrongly projected as criminal case by the respondent and hence this court is of the opinion that the proceedings against the petitioner/accused is nothing but an abuse of process of law. In view of the above, the Criminal Original Petition is allowed, the proceedings in C.C.No.29 of 2018 on the file of the learned Judicial Magistrate, Theni, is quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (cs-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1.THE JUDICIAL MAGISTRATE, THENI.

2.THE ADDITIONAL PUBLIC PROSECUTOR,
THE MADURAI BENCH OF MADRAS HIGH COURT
MADURAI

+1cc to Mr.C.Muthusaravanan, Advocate, SR.No.42307

+1cc to Mr.G.Prabhu Rajadurai, Advocate, SR.No.42639

Cr1.O.P.(MD)No.5437 of 2018
23.01.2019

SP/16.04.2019/ 7P/5C