



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.09.2019

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CrI OP(MD)No.15436 of 2014

and

CrI MP(MD)No.1 of 2014 & 5382 of 2018

WEB COPY

1.Karthikeyan

2.Epsi Karthikeyan

... Petitioners / Accused 1-2

Vs.

1.State, rep.by

The Inspector of Police,
District Crime Branch,
Palayamkottai,
Tirunelveli District.

...1st Respondent /
Complainant

2.The Director,

M/s.Akshaya Agro Informatic
Pvt.Limited,
No.60/3, L.D.G.Road,
Chinnamalai, Chennai-15.

...2nd Respondent /
Defacto Complainant

Prayer : Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in Crime No.44 of 2009 pending investigation on the file of the respondent police and quash the same.

For Petitioners : Mr.V.Prakash, Senior Counsel
for Mr.R.Manickam

For Respondents : Mr.A.Robinson,
Government Advocate (crl.side) for R1
Mr.R.Murali for R2

ORDER

The petitioners have filed this criminal original petition for quashing the FIR in Crime No.44 of 2009 on the file of the Inspector of Police, District Crime Branch, Palayamkottai, Tirunelveli District. The said case was registered at the instance of the second respondent herein for the offences under



Sections 406, 420 and 506(ii) IPC.

2.The case of the defacto complainant is that they had supplied 22000 quintals of paddy rice based on the invoice raised by the first petitioner herein namely, Karthikeyan. The defacto complainant had sourced the materials from various parts of the country and transported the same through railway wagons. The paddy bags were transported to the rice mill owned by the first petitioner herein in a number of trucks.

3.The case of the first petitioner is that the paddy supplied by the second respondent was not as per the sample and that he had rejected the same. There was an exchange of correspondence between the parties. FIR itself came to be lodged only on 15.07.2009 though the cause of action according to the defacto complainant arose some eight months prior thereto. The second respondent had also filed C.S No.805 of 2009 on the Original Side of the Madras High Court seeking recovery of the amount from the first petitioner herein. The first petitioner had admittedly paid a sum of Rs.37.00 lakhs as advance amount.

4.The learned Senior Counsel appearing for the petitioners submitted that the entire transaction is civil in nature and that therefore, the very lodging of the criminal case is an abuse of legal process. The learned Senior Counsel drew my attention to the decision of the Hon'ble Supreme Court reported in **(2018) 13 SCC 374 (Medmeme, LLC vs. Ihorse BPO Solutions Pvt.Ltd.,)**. The Hon'ble Supreme Court held as follows :

"10.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.

11.After going through the allegations contained in the complaint and the material on record, we are of firm conclusion that the matter entirely pertains to civil jurisdiction and not even a prima facie case is made out for offences Under Sections 420, 406, 409 read with Section 120B of Indian Penal Code even if the allegations contained in the complaint are to be taken on their face value. The complaint gives a clear impression that it was primarily a case where the Respondent had alleged breach of contract on the part of the Appellants in not making the entire payments for the services rendered to the Appellants. On the other hand, it is not in dispute



that substantial amounts have been paid by the Appellants to the Respondent-company for the services rendered.

12. Reason for non-payment of the balance amount as given by the Appellants is that the services rendered by the Respondent-company were not in terms of the agreement entered into between the parties and were deficient in nature. For this reason, even the Appellants have filed claims against the Respondent-company alleging that Appellant suffered losses because of the defective services provided by the Respondent.

13. 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."

5. The learned Senior Counsel for the petitioners also pointed out that in the civil suit when the complainant wanted attachment of an property, an undertaking was given that the same will not be alienated without the permission of the court. He therefore wanted this Court to quash the impugned FIR as an abuse of legal process.

6. Before proceeding further with the matter, I must point out that the impugned FIR is to quashed insofar as the second petitioner is concerned. The second petitioner is the wife of the first petitioner. The transaction was one essentially between the first petitioner and the defacto complainant. Even in the civil suit, it is only the first petitioner who has been impleaded as the sole defendant in his capacity as the Proprietor of K.K.Rice Mill. I am of the view that the second petitioner has been roped in as accused only to bring pressure on the first petitioner to settle the claim. The allegation against the second petitioner is that she abused the defacto complainant over phone and that she criminally intimidated him. Except this, there is no other material against her. Merely because of the words uttered by the



second petitioner, she cannot be prosecuted in this case. The core allegation is only against the first petitioner. Therefore, the impugned FIR has to be quashed insofar as the second petitioner is concerned.

7. It is not in dispute that the first petitioner has raised an invoice with the second respondent for supply of the goods in question. It is also not in dispute that the goods were actually transported by the second respondent herein. The controversy is as to whether there was a delivery or not. The learned Senior Counsel for the petitioner would claim that even after the goods were landed at the site, the first petitioner did not accept the delivery and that he had instructed the agent of the defacto complainant to take them back.

8. The learned counsel for the defacto complainant would draw my attention to the legal notice dated 19.01.2009 issued by the first petitioner herein. From a reading of the said legal notice averments, one can come to the prima facie conclusion that the goods actually and physically landed at the first petitioner's mill premises. There is nothing on record to indicate that they were taken back by the so called agent of the defacto complainant. In any event, these are matters for investigation and this Court cannot appreciate the materials and go into the merits of the case.

9. The Hon'ble Supreme Court in a recent decision in ***Criminal Appeal No. 1082 of 2019 (Arising out of SLP (Crl.) No.10762 of 2018)*** held as follows :

"15. In exercising jurisdiction under Section 482 it is not permissible for the Court to act as if it were a trial Court. The Court is only to be prima facie satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate materials and documents on record, but it cannot appreciate the evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

16. The High Court should not, in exercise of jurisdiction under Section 482, embark upon an enquiry into whether the evidence is reliable or not, or whether on a reasonable appreciation of the evidence the allegations are not sustainable, for this is the function of the trial Judge. This proposition finds support from the judgment of this Court in *Zandu Pharmaceutical Works Ltd. and Ors. v. Mohd. Sharful Haque and Another* ((2005) 1 SCC 122)."

10. In view of the aforesaid decision of the Hon'ble Supreme

<https://hccourts.mca.gov.in/hccourts> will not assume the role of the trial court to



appreciate the material evidence. I am of the view that the first petitioner has not made out a case for quashing the impugned FIR as far as he is concerned. The impugned Fir is quashed as far as the second petitioner is concerned. It is made clear that this Court has not gone into the merits of the matter. Accordingly, this criminal original petition stands partly allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

Skm

To

1. The Inspector of Police,
District Crime Branch,
Palayamkottai,
Tirunelveli District.

2.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai

+1 CC to M/s.E.VEDA BAGATH SINGH, Advocate (SR-86587[F] dated 13/09/2019)

+1 CC to M/s.R.MANICKAM, Advocate (SR-86805[F] dated 16/09/2019)

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