



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.11.2019

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

Crl.O.P(MD).No.15933 of 2016

and

Crl.M.P.(MD)Nos.7663 and 7664 of 2016

1.Ayyalusamy
2.Sanjeevi Rajan
3.Rajaguru

... Petitioners/Accused 1 to 3

Vs

1.The Inspector of Police,
South Police Station,
Rajapalayam, Virudhunagar District.
(Crime No.376 of 2007)

... 1st Respondent/Complainant

2.R.V.Vijay Anand

... 2nd Respondent/Defacto
Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records in pursuant to the C.C.No.229 of 2009, on the file of the learned Judicial Magistrate, Rajapalayam and quash the same.

For Petitioners : Mr.K.P.Narayanakumar

For R 1 : Mr.A.Robinson
Government Advocate (Crl. side)

For R2 : No Appearance

ORDER

The petitioners herein are shown as accused in C.C.No.229 of 2009, on the file of the learned Judicial Magistrate, Rajapalayam. The second respondent is the de-facto complainant. Alleging that the petitioners herein have caused him wrongful loss to the tune of Rs.11,62,600/-, the second respondent filed a complaint before the first respondent herein, leading to registration of FIR in Crime No.376 of 2007. It was investigated and final report was filed against the petitioners. Cognizance of the offences under Sections 409, 420 and 120(b) of IPC was taken and the case was taken on file in C.C.No.229 of 2009. To quash the same, this Criminal Original Petition has been filed.



2.The de-facto complainant has been served and his name is also printed in the cause list. But he has not chosen to enter appearance.

3.Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Crl. side) appearing for the first respondent.

4.The allegation of the de-facto complainant is that the petitioners herein had purchased cotton thread on credit basis to the tune of Rs.11,62,600/- and failed to settle the bills.

5.This is purely a commercial transaction and neither the offence of breach of trust nor the offence of cheating can be said to be made out. Thus, the only remedy open to the de-facto complainant is to file a suit for recovery. There is no element of entrustment nor the dishonest intention from the inception. The very filing of the criminal case is an abuse of legal process. The impugned prosecution stands quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

sjj

To

1.The Judicial Magistrate, Rajapalayam.

2.The Inspector of Police,
South Police Station,
Rajapalayam, Virudhunagar District.

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

+1 CC to M/s.K.P.NARAYANA KUMAR, Advocate (SR-102298[F] dated 28/11/2019)

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JMN(18.12.2019) 2P : 5C