



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.11.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD) No.3685 of 2017

WEB COPY

U.Nataraja Nathan

... Petitioner/Accused

-vs-

P.Selvakumar

... Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records relating to the proceedings in C.C.No.502/2016 on the file of the learned Judicial Magistrate, No.I, Tirunelveli and quash the same.

For Petitioner : Mr.K.Samidurai

For Respondent : Mr.Niranjan S.Kumar

O R D E R

This criminal original petition has been filed seeking to quash the proceedings in C.C.No.502/2016 pending on the file of the Judicial Magistrate, No.I, Tirunelveli.

2.The respondent has filed a private complaint before the Court below against the petitioner alleging that the petitioner entered into an agreement with the respondent to create a web site called as "www.itrans.asia" in order to enable the respondent, who was running a travels business to effectively expand his business. The agreement contemplated payment of a sum of Rs.22,25,000/- towards the creation of the web site and this amount was also paid. However, the petitioner failed to fulfil his part of the contract and thereby he has cheated the respondent.

3. The learned counsel appearing on behalf of the petitioner submitted that the petitioner has already completed his part of the obligation by creating the web site for the travels business that is run by the respondent. The learned counsel submitted that the respondent has already started using the web site and is also issuing tickets to the customers through the said web site. The learned counsel submitted that the father of the respondent had sent a legal notice to the petitioner on 21.11.2013 to the effect that he is dissatisfied with the work that was done by the petitioner and he had cited many errors and has alleged that there was deficiency in service on the part of the petitioner in creating the web site. For this notice, the petitioner had also given a reply on 03.12.2013. In the said reply, the petitioner has clearly stated the fact that he has completed his part of the contract and the respondent is also



using the web site for the purpose of booking tickets for the customers.

4. The learned counsel for the petitioner submitted that after the exchange of notices, the criminal complaint came to be lodged by the respondent and the Court below has taken cognizance of the complaint for offence under Sections 406, 417, 420 and 426 of the Indian Penal Code. The learned counsel submitted that none of these offences are attracted and a case, which is primarily civil in nature has been given a criminal colour.

5. Per contra, the learned counsel appearing on behalf of the respondent submitted that the petitioner had received a sum of Rs.22,25,000/- on the ground of creating a web site and has cheated the respondent and thereby the respondent has incurred huge loss in his business. The learned counsel submitted that there are sufficient allegations made in the complaint and the same makes out an offence and there is absolutely no ground to interfere with the private complaint.

6. This Court has carefully considered the submissions made on either side and the materials available on record.

7. A reading of the agreement that has been entered into between the parties on 13.10.2011 shows that the petitioner had to create a web site for the transport business that was done by the respondent. The total consideration was fixed at Rs.22,25,000/-. The agreement itself stipulates the terms and conditions and the agreement also fixed the payment schedule for the payments to be made at each stage on the completion of the project.

8. It is clear from the notices that have been exchanged between the parties that the respondent had already started using the web site created by the petitioner and had booked the tickets for his customers. The real grievance of the respondent is that there are several errors that have crept in and there is deficiency in service on the part of the petitioner in completing his part of the contract. It is only after the exchange of notices, a private complaint has emerged from the side of the respondent.

9. A reading of the allegations made in the complaint at the best only makes out a breach of agreement between the parties. To attract the offence of cheating, there must be an intention of cheating from the inception and even according to the respondent, he noticed the errors in the web site that has been created by the petitioner at a later point of time and he had only alleged deficiency of service in the legal notice. These allegations will not constitute an offence of cheating or criminal breach of trust. The breach of agreement, which occurs at a later point of time cannot amount to attributing a culpable intention on the part of the respondent from the inception. The law on this issue is well settled.



10. It is clear from the allegations made in the complaint and the records produced before this Court that a dispute, which is purely civil in nature has been given a criminal colour. There are absolutely no grounds to proceed further with the criminal complaint. If at all the respondent has any grievance on the service rendered by the petitioner, he has to work out his remedy only before the competent Court and he cannot be permitted to prosecute the petitioner before the criminal Court.

11. The private complaint initiated by the respondent against the petitioner is an abuse of process of Court and it requires interference of this Court in exercise of its jurisdiction under section 482 of the Code of Criminal Procedure.

12. In the result, the proceedings in C.C.No.502/2016 on the file of the Judicial Magistrate, No.I, Tirunelveli, is hereby quashed and the criminal original petition is allowed. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS)

RR

To

The Judicial Magistrate, NO.I
Tirunelveli.

+1 CC to Mr.K. SAMI DURAI, Advocate (SR-99696[F] dated 20/11/2019)

Crl.O.P.(MD)No.3685 of 2017
and Crl.M.P.Nos.2727 & 2728 of 2017
19.11.2019

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MK (11.12.2019) 3P 3C