



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.10.2020

Pronounced on : 12.10.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.No.402 of 2015
and M.P.No.1 of 2015

1. Kay Logistics Private Limited
Rep by its Managing Director
Mr.Karunendra Jasti
Plot No.30, Road No.10
Dhanalakshmi Housing Society
Mahindra Hills
Secunderabad.
2. Navayuga Engineering Company Ltd.,
Rep by its Managing Director Mr.C.Sridhar
C/o. Krishnapatnam Port Company Limited
Krishnapatnam, Muthukur Mandal
Nellore
Andhra Pradesh - 524 344. ..Petitioners/Accused

Vs.

Suri Green Ventilation Systems Private Limited
Represented by its Authorized Representative
Mr.S.P.A. Raja Mohamed
227, Kutcheri Road
Mylapore
Chennai - 600 004. ..Respondent/Complainant

Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records pertaining to C.C.No.6014 of 2014 on the file of the XVII Metropolitan Magistrate, Saidapet, Chennai and to quash the said complaint as against the petitioners.

For Petitioners : Mr. N.Ramesh

For Respondent : Mr.Aasim Shehaad
for M/s.BFS Legal



ORDER

This petition has been filed for quashment of C.C.No.6014 of 2014, pending on the file of the XVII Metropolitan Magistrate, Saidapet, Chennai, as well as the complaint given against the petitioners

2. For the sake of convenience, the parties would be referred to as the complainant and the accused.

3. Facts disinterred from the impugned complaint is as under :

- (a) The complainant is into the business of erecting roofs for industrial establishments in large scale with imported materials;
- (b) The accused are into the business of logistics in Andhra Pradesh and they were constructing sheds at Krishnapatnam Port in Andhra Pradesh;
- (c) The second accused is the parent company of the first accused.
- (d) On 21.06.2013, the accused placed an order with the complainant for construction of three sheds in Krishnapatnam Port, and that the purchase order clearly provided the specification details and fixed the total consideration for the project as Rs.3,08,24,400/-. As per the payments terms of the purchase order, the complainant was required to furnish a Bank Guarantee for an amount of Rs.40 lakhs, being 13% of the entire consideration and upon receiving the same, the accused would pay Rs.40 lakhs to the complainant as advance amount.
- (e) The complainant imported the materials based on High Sea Sales Agreement entered with the accused.
- (f) The raw materials that were required for construction of sheds, reached the Krishnapatnam Port, using which the complainant erected two sheds. The accused paid Rs.1 crore on 17.10.2013 and thereafter, there was a misunderstanding between the complainant and the accused, resulting in exchange of legal notices.

4. The grievance of the complainant is set out in paragraph No.11 of the complaint, which reads as under :



"The Complainant states that on completion of the erection work of both the sheds, it had removed the machineries from the project site and the Invoice dated 30th January, 2014 for a sum of Rs.4,71,096/- (Rupees Four Lakh Seventy One Thousand and Ninety Six only) was raised towards the same. Even though all the works were carried out to the satisfaction of both the Accused, they have failed to make full and final payment towards all the Invoices. It is pertinent to note that the possession of the completed project was handed over to the both Accused on 12th Jan 2014. After 20 days of repeated reminder and calls, the personnel of the 1st Accused had met the Complainant on 09.02.2014 and had offered to return the remaining raw materials with valid statutory documents and also settle all the bills within a period of 10 days. However, even after a month of such promises, there has been no effort on the part of the 1st Accused to settle the bills and also hand over the remaining raw materials."

5. On these allegations, the complainant filed a complaint under Section 200 Cr.P.C., for the offences under Sections 120-B, 406 and 420 IPC., in the Court of XVIII Metropolitan Magistrate, Saidapet, against the accused, for quashing which, the accused have preferred this petition.

6. Heard Mr.N.Ramesh, learned counsel for the accused and Mr.Aasim Shehaad, learned counsel for the complainant.

7. It is the case of the accused that the raw materials and labour were not provided in time by the complainant to complete the project and therefore, they were forced to engage outside contractors to complete the job.

8. A thorough reading of the complaint and the accompanying documents filed along with the complaint show that both the parties had entered into an agreement, by which, the complainant was required to construct three sheds in Krishnapatnam Port in Andhra Pradesh, for a total consideration of Rs.3,08,24,400/-. The Advocate Notices exchanged between the parties, which have been filed as documents along with the complaint show that the dispute is essentially civil in nature, inasmuch as it is the case of the complainant that the accused had not paid Rs.6,72,356/- towards four invoices; and Rs.9,13,670/- towards detention charges and a further sum of Rs.24,11,499/- towards unused raw materials lying in the project



site. Thus, it is clear that out of Rs.3,08,24,400/-, the complainant is due only a sum of Rs.39,97,525/- (6,72,356 + 9,13,670 + 24,11,499).

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9. Mr.Aasim Shehaad, learned counsel for the complainant placed strong reliance on the following judgments of the Hon'ble Supreme Court and contented that the complainant should be given an opportunity to prove the offence :

- i. S.W.Palanitkar And Others Vs. State of Bihar And Another [(2002) 1 SCC 242];
- ii.State of M.P. Vs. Awadh Kishore Gupta And Others [(2004) 1 SCC 691]
- iii.Suryalakshmi Cotton Mills Limited Vs. Rajvir Industries Limited And Others [(2008) 13 SCC 678]
- iv.Kamal Shivaji Pokarnekar Vs. State of Maharashtra And Others [(2019) 14 SCC 350]

10. It is true that in the aforesaid judgments, the Supreme Court has stated that several commercial transactions may apparently look civil in nature, but, below the surface, there may be criminality. But, in this case, going by the averments in the complaint and the documents filed along with the complaint, this Court is unable to infer any criminality in the transactions. It is seen that the contract entered between the complainant and the accused, was for erection of sheds in Krishnapatnam Port and while that being so, it is not known as to how the Court in Chennai would have the jurisdiction to entertain the present complaint. As discussed above, as per the contract, the complainant had installed two sheds and payments were also made by the accused from time to time, and the dispute is only with regard to the four invoices and other sundry payments allegedly incurred by the complainant. This being the case of the complainant, the remedy is only in the civil forum and not a criminal prosecution. Merely alleging in paragraph No.12 of the complaint that the accused had an intention to cheat the complainant from the very beginning and in order to gain confidence in them, they made various false promises, would not by itself attract the penal provisions mentioned in the complaint. Hence, there are no prima facie materials to infer that the accused had an intention to cheat the complainant from inception.

11. In the result, this Criminal Original Petition is allowed and the proceedings in C.C. No.6014 of 2014 on the



file of the XVIII Metropolitan Magistrate, Saidapet, Chennai, is hereby quashed. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

1. The XVIII Metropolitan Magistrate
Saidapet, Chennai.
2. The Chief Metropolitan Magistrate,
Egmore.

order in
Cr1.O.P.No.402 of 2015

GJ(CO)
RV(10/11/2020)