

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.26443 of 2014

and

Crl.M.P.Nos.1 & 2 of 2014

M/s.JV Roofing India Building Systems,
Palayapuram, Tuticorin - 628 002,
rep. by its Proprietor,
Thiru.G.Jeyaramakrishnan,
having Office at No.1C/184,
Rajarathina Nagar,
Palayapuram,
Meelavittan P.O.,
Tuticorin - 628 002. Petitioner

Vs.

Metal Scope (India) Pvt. Limited.,
rep. by its Manager (Business Development)-cum-
Authorised Signatory,
Thiru.R.Gunalan,
having its sales office at No.2/285,
Thendral Street, Jawahar Nagar,
Thiruchitrambalam,
Vanur Taluk,
Villupuram District - 605 111
and registered office at Saidapet,
Puducherry 605 111,
residing at No.36,
First Floor, VII Avenue,
Ashok Nagar,
Chennai - 600 083. Respondent

PRAYER: Criminal Original Petition is filed under
Section 482 of the Code of Criminal Procedure, to call
for the records of the said complaint bearing C.C.No.178
of 2012 pending on the file of Judicial Magistrate, Vanur
and quash the same filed against the petitioner herein.

For Petitioner : Mr.J.Sudhakaran

For Respondent : Mr.Saikrishnan

ORDER

Criminal Original Petition has been filed to quash the proceedings in C.C.No.178 of 2012 pending on the file of the Judicial Magistrate Court, Vanur.

2.The respondent was engaged in fabrication of Pre-engineered building and Heavy steel structural since October 2006 and the petitioner as a contractor was doing in the business of erection of steel buildings at Tuticorin. On the purchase order dated 18.04.2011, the respondent has supplied iron and steel structural for a sum of Rs.17,78,637/- to the petitioner under Invoice No.061 dated 29.04.2011 for Rs.10,59,577/- and Invoice No.070 dated 30.04.2011 for Rs.7,19,060/-. In discharge of the liability, the petitioner issued an advance cheque bearing No.891156 dated 19.04.2011 drawn on AXIS bank Limited, Tuticorin for a sum of Rs.8,00,000/- and towards the balance amount of Rs.9,78,637/-, he has issued a cheque bearing No.891162 dated 28.04.2011 for a sum of Rs.9,53,543/- drawn on the said AXIS Bank, Tuticorin. When the respondent presented the said cheque dated 28.04.2011 through Federal Bank Limited, T.Nagar Branch, Chennai on 05.07.2011, the same was returned with an endorsement "Payment Stopped by the Drawer" and the respondent intimated the same to the petitioner and demanded the said amount for which he has received the said cheque dated 28.04.2011 and made a payment of Rs.2,00,000/- by way of demand draft drawn on AXIS Bank, Service Branch, Chennai towards the part payment of the said balance amount due to the respondent and further he has issued a cheque bearing No.891167 on 08.07.2011 to the respondent for Rs.7,53,408/- drawn on AXIS Bank, Tuticorin by mentioning the date as 18.07.2010 with a malafide intention. After the issuance of the said defective cheque, the respondent demanded the amount on three occasions, but the petitioner has not paid anything towards the said balance amount due to the respondent. Hence, the respondent sent a statutory notice to the petitioner on 17.10.2011 and on receipt of the same, the petitioner neither reply to the same nor repaid the amount and thereby, the petitioner has committed an offence of cheating under Sections 418 and 420 of IPC.

3.The learned counsel for the petitioner would submit that there is no specific allegation to make out a case as against him and the same was filed by the respondent before the trial Court with ulterior motive. He would further submit that the respondent, in order to prove offence of cheating, is required to show that the

accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 can be said to have been made out and further, there is no ingredients for cheating as envisaged under Section 418 and 420 of IPC. Hence, he prayed for quashing of the proceedings against the petitioner.

4. In support of his contention, the learned counsel for the petitioner relied upon the Judgment of the Hon'ble Supreme Court of India in the case of V.Y. Jose and another Versus State of Gujarat and another reported in (2009) 3 Supreme Court Cases 78.

5. The learned counsel for the respondent would submit that the petitioner has not chosen to pay the amount inspite of the repeated demands as well as issue of several letters made by the respondent. He would further submit that the petitioner with a malafide intention has wantonly issued a cheque on 08.07.2011 to the respondent for Rs.7,53,408/- bearing No.891167 drawn on AXIS Bank, Tuticorin by mentioning the date as 18.07.2010. The other points raised by the learned counsel for the petitioner have to decide only during the trial.

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

7. It is seen that the petitioner has issued a cheque on 08.07.2011 to the respondent for Rs.7,53,408/- bearing No.891167 drawn on AXIS Bank, Tuticorin by mentioning the date as 18.07.2010. The respondent on coming to know about the date of the cheque is wrong, he should have returned the cheque to the petitioner and should have obtained a fresh cheque, but he has filed the present complaint after lapsing of a year with an ulterior motive for wreaking vengeance on the petitioner, which attracts clause (7) of the Judgment in the case of State of Haryana Versus Bhajan Lal reported in 1992 SCC (Cri) 426.

8. Hence, the criminal proceedings is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge and there is no ingredients for cheating as envisaged under Section 418 and 420 of IPC. Accordingly, this Criminal Original Petition is

allowed and the proceedings in C.C.No.178 of 2012 on the file of Judicial Magistrate Court, Vanur is quashed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vv2

To

1.The Judicial Magistrate Court,
Vanur.

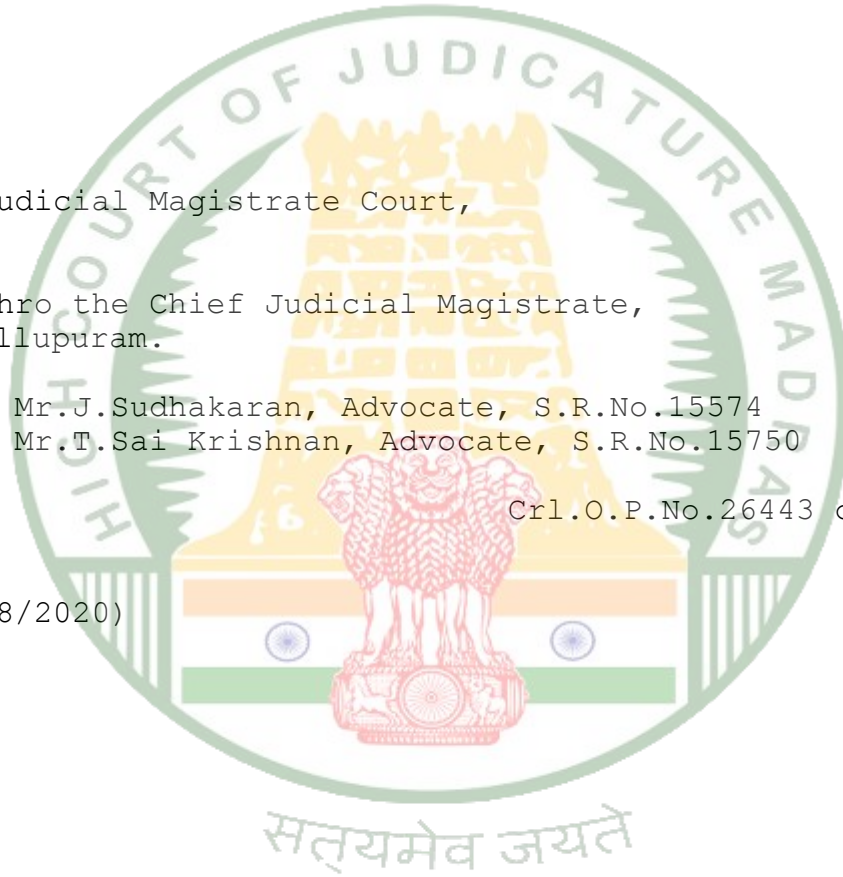
2.-do-Thro the Chief Judicial Magistrate,
Villupuram.

+1cc to Mr.J.Sudhakaran, Advocate, S.R.No.15574

+1cc to Mr.T.Sai Krishnan, Advocate, S.R.No.15750

Cr1.O.P.No.26443 of 2014

RK(CO)
CB(07/08/2020)



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