



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P (MD)No.13298 of 2016

and

Crl.M.P. (MD)Nos.6213 and 6214 of 2016

WEB COPY

S.V.Ramasamy

... Petitioner

Vs

1.The State rep. by
The Inspector of Police,
Anna Nagar Police Station (Crime),
Madurai City.

2.R.Jawahar

... Respondents

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to call for the records in C.C.No.66/2016 on the file of the learned Judicial Magistrate No.VI, Madurai, quash the same.

For Petitioner : Mr.M.Saravanan

For R1 : Mr.A.Robinson
Government Advocate (Crl.side)

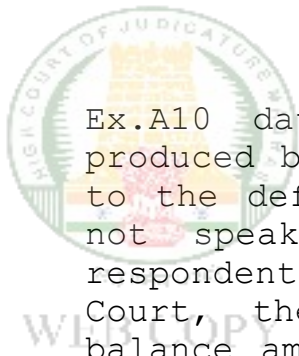
For R2 : Mr.P.Jeganathan

ORDER

This criminal original petition has been filed for quashing the proceedings in C.C.No.66 of 2016 on the file of the Judicial Magistrate No.VI, Madurai.

2.The second respondent herein is the defacto complainant. The second respondent and the petitioner had a commercial relationship spread over several years. The petitioner was a supplier of the building materials to the second respondent herein. The second respondent was a builder. According to the second respondent, he terminated the relationship with the petitioner. According to him, the petitioner, feeling aggrieved by the same, chose to raise fraudulent demand for payment of a sum of Rs.7,21,660/- There was an exchange of notices between the parties. The petitioner filed O.S.No.111 of 2011 before the Fifth Additional District Sessions Court, Madurai. The suit was dismissed on 30.03.2015 and according to the petitioner, First Appeal has been filed questioning the dismissal of the suit.

3.The specific case of the defacto complainant is that



Ex.A10 dated 18.10.2008 which is the statement of accounts produced before the Civil Court, was a fraudulent one. According to the defacto complainant, the actual statement of accounts did not speak of any balance amount as payable by the second respondent herein. But in the document filed before the Civil Court, there was an incorporation of certain figures as the balance amount to be paid by R2 herein. Thus, by engineering the civil proceedings on the strength of the fraudulent document, the petitioner had committed certain punishable offences. With these allegations, the second respondent moved the Inspector of Police, Anna Nagar Police station (Crime) and Crime No.112 of 2014 was registered. The same was investigated and final report was filed against the petitioner as having committed the offences under Sections 406, 420, 468 and 471 of IPC. The learned Judicial Magistrate No.VI, Madurai, took cognizance of the offences and issued summons to the petitioner. To quash the same, this criminal original petition has been filed.

4.The learned counsel appearing for the petitioner reiterated all the contentions set out in the memorandum of grounds and called upon this Court to quash the impugned proceedings.

5.Per contra, the learned counsel appearing for the complainant submitted that the contentions urged by the petitioner's counsel are rather factual in nature and that, therefore, this Court would not be justified in invoking the inherent powers.

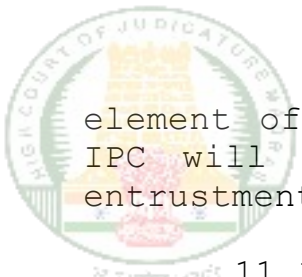
6.The learned Government Advocate (Crl.side) supported the stand taken by the defacto complainant.

7.I carefully considered the rival contentions. The Court below has taken cognizance of the offences under Sections 406, 420, 468 and 471 of IPC.

8.As rightly contented by the learned counsel appearing for the petitioner, the petitioner and the second respondent had a business relationship.

9.The case of the petitioner is that the second respondent has to pay a sum of Rs.7,21,660/-. According to the defacto complainant, for the goods received by him, the liability has already been cleared and settled in full. There is no question of making any further demand. This is the stand of the defacto complainant.

10.Thus, it is obvious that there is no element of entrustment with the petitioner herein. Unless, there is an



element of entrustment, the question of invoking Section 406 of IPC will not arise. In this case, there is no element of entrustment.

11.I am of the view that prosecuting the petitioner for the offence under Section 406 of IPC is patently an abuse of legal process. Likewise, the offence under Section 420 of IPC will be made out only if it is shown that the accused has held out some assurance with a dishonest intention at the very inception and the accused made a wrongful gain or the complainant suffered a wrongful loss, as a result. In this case, the petitioner is not said to have held out any such false assurance. Therefore, the elementary ingredients of the offence of cheating are also absent. I, therefore, hold that there is no justification in prosecuting the petitioner for the offence under Section 420 of IPC.

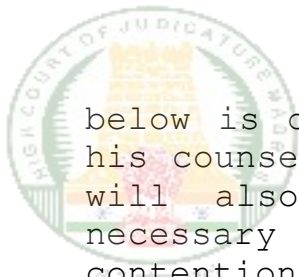
12.But then, the offences under Sections 468 and 471 of IPC would stand on a different footing altogether.

13.As rightly pointed out by the learned counsel appearing for the defacto complainant, one can forge even one's own signature. In this case, the petitioner has projected a document that was marked as Ex.A10 in the civil proceedings. According to the defacto complainant, the original document did not bear the interpolations subsequently made by the petitioner.

14.The petitioner's stand is that there is no interpolation or incorporation of false particulars and that, they represented the true state of affairs. The petitioner's counsel also would contend that even though the trial Court has dismissed the suit, the petitioner has moved this Court by filing a first appeal. Thus, the genuineness and authenticity of the document in question cannot be adjudicated in a petition filed under Section 482 of Cr.P.C.

15.The issue is eminently factual in nature and therefore, it would not be proper on my part to quash the proceedings insofar as the offences under Section 468 and 471 of IPC. It is for the petitioner to establish his innocence before the Court below in a regular trial. I, therefore, leave open the petitioner's contentions and defences on that score. In this view of the matter, charges under Sections 406 and 420 of IPC stand quashed. C.C.No.66 of 2016 on the file of the Judicial Magistrate No.VI, Madurai will proceed in respect of the charges under Sections 468 and 471 of IPC.

16.Considering the overall facts and circumstances of the case, the personal appearance of the petitioner before the Court



below is dispensed with. Of-course, he has to be represented by his counsel on those occasions, when he is absent. The petitioner will also appear on those occasions, when his presence is necessary and imperative. I reiterate and clarify that all the contentions and defences of the petitioner are left open. This criminal original petition is partly allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (W)

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/ /2020

Sub Assistant Registrar (CS)

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To

1.The Judicial Magistrate NO.VI, Madurai.

2.The Inspector of Police,
Anna Nagar Police Station (Crime),
Madurai City.

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

+1 CC to Mr.M.SARAVANAN, Advocate (SR-5001[F] dated 06/02/2020)

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