



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.10.2020

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD)No.19465 of 2016
and Crl.MP(MD).No.9786 of 2016

Chellapandian

... Petitioner/Sole Accused

Vs.

1.The State represented by
The Inspector of Police
Kallidaikurichi Police Station
Kallidaikurichi
Tirunelveli District
(Crime No.216 of 2014)

....Respondent/Complainant

2.Margreat Sobiya

...Respondent/Defacto Complainant

Prayer:Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in connection with C.C.No.154 of 2016 on the file of the learned Judicial Magistrate, Ambasamudram, Tirunelveli District in connection with Crime No.216 of 2014 on the file of the Inspector of Police, Kallidaikurichi Police Station, Kallidaikurichi, Tirunelveli District and subsequently quash the same as devoid of merits forthwith.

For Petitioner : Mr.S.Palani Velayutham

For R1 : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl.Side)

For R2 : Mr.M.Jegadeesh Pandian

ORDER

This petition has been filed to quash the proceedings in C.C.No.154 of 2016 on the file of the learned Judicial Magistrate, Ambasamudram, Tirunelveli District in connection with Crime No.216 of 2014 on the file of the Inspector of Police, Kallidaikurichi Police Station, Kallidaikurichi, Tirunelveli District.

2.The learned counsel for the petitioner would submit that the petitioner is a sole accused on the complaint lodged by the second respondent herein for the offences punishable under Sections 406, 420, 294 (b) and 506 (2) IPC. No offence is made out as against the petitioner since the entire transactions are civil in nature. No ingredients to attract any of the offence as alleged by the



second respondent herein. According to the second respondent, the petitioner had breached the terms and conditions of the agreement dated 30.07.2013, executed by the petitioner in favour of the second respondent. Therefore, the petitioner has committed the offences under Sections 406, 420, 294 (b) and 506 (2) IPC. Insofar as the offences under Sections 294 (b) and 506 (ii) IPC are concerned, no allegations are made out as against the petitioner and no one has spoken about any overt act to attract those offences. He further submitted that mere removal of machineries belonging to the Vedha Fabrics by the petitioner would not form a base for the said offences as alleged by the prosecution. As per the agreement, the second respondent, agreed to purchase the machineries for his business to the tune of Rs.9 lakhs in which, he has paid a sum of Rs.2,30,000/- and he failed to pay the remaining amount to fulfil the terms and conditions of the agreement dated 30.07.2013. In stead of filing suit, the second respondent lodged a complaint with the false allegations.

3.The learned counsel appearing for the second respondent would submit that from the year 2013, the petitioner had been running a Readymade Stitching Unit under the name and style of 'Vedha Fabrics'. The Readymade Stitching Unit was running in the rental premises belonging to one Ayisha Begam, whose statement was recorded as witness L.W-15. While being so, the second respondent approached the accused to purchase the said unit along with machineries to the tune of Rs.9 lakhs and a sum of Rs.1 lakh was paid as advance on 30.07.2013. Thereafter, a sum of Rs 1,30,000/- was paid to the petitioner in four instalments by way of cheque. Thereafter, the petitioner had shifted all the machineries and other movables from the said premises and hence, the petitioner committed breach of terms and conditions of the agreement and cheated the second respondent to the tune of Rs.2,30,000/-. When it was questioned by the second respondent, the petitioner threatened him with dire consequences. He further submitted that the ground raised by the petitioner are mixed question of fact and it cannot be considered by this Court under Section 482 of Cr.P.C and he sought for dismissal of the quash petition.

4.The learned Government Advocate (Crl.Side) appearing for the first respondent would submit that on the complaint lodged by the second respondent, the first respondent registered a case in Crime No.216 of 2014 for the offences under Sections 406, 420, 294 (b) and 506 (2) IPC. After completion of investigation, the first respondent filed a final report before the learned Judicial Magistrate, Ambasamudram, Tirunelveli District and the same has been taken cognizance in C.C.No.154 of 2016. The petitioner did not perform as per the contract between the petitioner and the

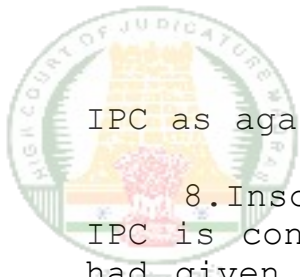


second respondent by the agreement dated 30.07.2013. Thereby, he breached the agreement and he also cheated the second respondent's money to the tune of Rs.2,30,000/-. When it was questioned by the second respondent, the petitioner also threatened him with dire consequences. Therefore, specific allegations and ingredients are very much available to attract the offences under Sections 406 & 506 (ii) IPC as against the petitioner herein. Therefore, he sought for dismissal of the quash petition.

5.Heard the learned counsel appearing for the petitioner, learned Government Advocate (Crl.Side) appearing for the first respondent and the learned counsel appearing for the second respondent.

6.On perusal of records, it is seen that the petitioner entered into an agreement on 30.07.2013 and agreed to sell the machineries and other movables in respect of Ready-made Stitching Unit in the name and style of 'Vedha Fabrics'. The land of said unit belongs to the other person, in which, the petitioner was running the Ready-made Stitching Unit. Due to loss, the petitioner advertised for selling the entire unit. On seeing the same, the second respondent approached the petitioner and agreed to purchase the entire unit along with other movables and had an agreement with the petitioner to the tune of Rs.9,00,000/-. On 30.07.2013, the second respondent paid a sum of Rs.1,00,000/- to the petitioner as advance and thereafter, paid a sum of Rs.1,30,000/- in four instalments by way of cheque. After receiving a sum of Rs.2.30,000/-, the petitioner has failed to sell the Unit and other movables in favour of the second respondent herein. Further, when the second respondent was out of station, the petitioner has shifted the entire machineries and other movables from the premises and thereby, he cheated the second respondent herein.

7.Admittedly, the petitioner and the second respondent entered into an agreement dated 30.07.2013 and the petitioner agreed to sell the Unit along with machineries and other movables in favour of the second respondent and he also received a sum of Rs.2,30,000/-. If at all, the petitioner failed to perform his part of contract, the second respondent can very well approach the civil Court for specific performance under the agreement dated 30.07.2013,. In fact, the petitioner stated that he acknowledged to the terms and conditions of the said agreement, but the second respondent failed to pay the remaining sale consideration and as such, the petitioner **is** constrained to take away the machineries. Even assuming that the petitioner failed to perform his part of contract as agreed by him by the agreement dated 30.07.2013, the second respondent has to approach the Court concerned for appropriate relief under the Act. Therefore, there are no ingredients to attract the offences under Sections 406 and 420 of



IPC as against the petitioner herein.

8.Insofar as the offences under Sections 294 (b) and 506 (ii) IPC is concerned, on the date of agreement, the second respondent had given cheques as security. Thereafter, the petitioner refused to return those cheques and also threatened him with dire consequences. Except such a baled and vague allegations, there is absolutely no specific allegations to attract the offences under Sections 294 (b) and 506(ii) IPC as against the petitioner herein.

9.Therefore, no offence is made out as against the petitioner as alleged by the second respondent herein. In fact, the complaint lodged by the second respondent was enquired and the same was closed by the police authorities. Thereafter, the second respondent lodged a private complaint before the learned Judicial Magistrate, Ambasamudram, Tirunelveli District and the same was forwarded under Section 156 (3) of Cr.P.C for registration of complaint and investigation. Therefore, the entire proceedings initiated as against the petitioner cannot be sustained and it would amount to clear abuse of process of Court. Therefore, the petitioner need not to go for ordeal before the Trial Court.

10. In view of the above, the proceedings in C.C.No.154 of 2016 on the file of the learned Judicial Magistrate, Ambasamudram, Tirunelveli District, is hereby quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AD-II)

// True Copy //

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Sub Assistant Registrar(CS)

dss

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Judicial Magistrate,
Ambasamudram,
Tirunelveli District



2.The Inspector of Police
Kallidaikurichi Police Station
Kallidaikurichi
Tirunelveli District

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

Crl.O.P.(MD)No.19465 of 2016
and
CRL.MP(MD).No.9786 of 2016
09.10.2020

TP(CO)
TR(15.02.2021) 5P 4C