IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.06.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Crl.O.P.No.1128 of 2016 and
Crl.M.P.No.503 of 2016

1. Duraisamy
2. Tamil Selvi ... Petitioners

Vs.

The Inspector of Police
District Crime Branch,
Cuddalore ... Respondent

Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records relating to the charge sheet in C.C.No.157 of 2014 on the file of the learned Judicial Magistrate No.1, Virudachalam and quash the same.

For Petitioners : Mr.A.Selvendran

For Respondent : Mr.S.Karthikeyan
Additional Public Prosecutor

O R D E R

The present Criminal Original Petition is filed under Section 482 Cr.P.C.,to call for the records relating to the charge sheet in C.C.No.157 of 2014 on the file of the learned Judicial Magistrate No.1, Virudachalam and quash the same.

2. The allegations levelled against the petitioners, as per the charge sheet is that one Ganesan / defacto complainant, son of Palanirathinam is running a company under the name and style of "Grant Export" in Virudhachalam and in the said company, the said Ganesan was carrying on business with regard to import and export of Iron. The petitioners herein were running the company under the name and style of "Krishna Smelters" in Salem, in which they were carrying on the work with regard to melting of the old iron and they would sell the same to another company. The petitioners herein had visited the defacto complainant's company in- person on 23.04.2013 and demanded 100 tonnes of old iron and that the said agreement were reduced into writing, wherein 1 tonne of iron was fixed at Rs.23,000/-, the tax and

lorry charges were at exclusive. The said agreement was signed by the 1st petitioner and the defacto complainant. Subsequently, the defacto complainant imported the Iron from the Company at Singapore and exported to the petitioners' company by three loads by way of Invoices to the tune of Rs.26,02,653/-. In view of damages and debris available in the Iron, the petitioners had requested the defacto complainant to subtract Rs.1,80,000/-. The petitioners had paid only Rs.6,00,000/- and failed to pay the balance consideration of Rs.18,22,653/- wantonly and therefore, a complaint was lodged and on account of the same, the petitioners were charged for the offences punishable under Sections 406 and 420 of IPC. In support of the same, the witnesses who had received the iron in the petitioner's company, Village Administrative Officer, a person, employed in RSM Clearing Service, [who would clear the customs for the products received through Chennai Port Trust], Assistant Commissioner, Commercial Tax Officer, Sangagiri were examined under Section 161(3) Cr.P.C., Subsequently, a case was registered and charge sheet was filed in C.C.No.157 of 2014 on the file of learned Judicial Magistrate No.1, Virudhachalam. Seeking to call for the records and quash the same, the petitioners are before this Court.

3. The learned counsel for the petitioners would submit that a pure commercial / contractual transaction has been given a criminal colour only for the purpose to harass the petitioners, which is not legally sustainable. The said transaction, as averred in the charge sheet, is purely borne out by contract dated 23.04.2013 and there is no criminality to attract the offences under Sections 406 and 420 of IPC. Further, the charges levelled under Sections 406 and 420 IPC does not attract to the present facts of the case.

4. The learned counsel for the petitioners would also submit that as far as cheating is concerned, dishonest intention is the must, followed by inducement and delivery of property. In the present case, the charges against the petitioners, as stated above, is purely a commercial transaction governed by contract between the parties regarding purchase of goods. Further, without any prima facie triable charge, the charge sheet has been filed, hence, the learned counsel for the petitioners pleaded to quash the same.

5. Per contra, the learned Additional Public Prosecutor appearing on behalf of the respondent submitted that on account of the interim stay granted by this Court on 21.01.2016, the trial cannot be proceeded with. Further, Section 161(3) statements were recorded from the persons, who dealt with the matter and who were involved in the case, in order to substantiate the case on the side of the prosecution and hence

seeks to dismiss the present petition filed by the petitioners.

6. Heard the learned counsel on either side and perused the documents placed on record.

7. From the perusal of the record, it could be seen that the defacto complainant, namely, Ganesan is running a company called 'Grant Export' in which he is exporting the old iron and the petitioners, who are the husband and wife, are the owners of the company, namely, 'Krishna Smelters', in which they would melt the old iron and sell it another company. While that being so, the petitioners had ordered 100 tonnes of Iron and for the same, the petitioners and the defacto complainant entered into a contract and the same was signed by both the parties with consicious state of mind. In total, for the delivery of iron made by the defacto complainant, the petitioners were due for a sum of Rs.24,22,653/- . Further, on account of Port charges as well as lorry charges, the petitioners had given a cheque for Rs.1,87,146/- and the petitioners had also handed over 5 cheques each for a sum of Rs.1,00,000/-. Thereafter, the said cheque, which was given for a sum of Rs.1,87,146/- as well as two cheques, each for a sum of Rs.1,00,000/- alone got collected and the balance cheques [3 cheques each for a sum of Rs.1,00,000/-] were bounced due to 'insufficient funds'. Subsequently, the petitioners had settled a sum of Rs.4,00,000/- through RTGS. Moreover, a sum of Rs.18,22,653/- was due, therefore, the defacto complainant had lodged a complaint seeking for a direction and thereafter, the 1st petitioner had appeared in-person before police station and stated that he would settle the amount. Since the petitioners had not settled the same, the petitioners had again on 29.01.2014 lodged a complaint and on account of the same, charge sheet was filed.

8. Admittedly, there is a contract existing between the petitioners and the defacto complainant. When the petitioners had requested for 100 tonnes of old iron from the defacto complainant, the parties had entered into a contract and the said contract was duly signed by both the parties. While that being the case, the defacto complainant cannot now take a turn and seek for a direction under the Criminal Procedure Code, that too when the present case is purely civil in nature, which involves a commercial transaction between the petitioners and the defacto complainant and no criminal offence has been made out.

9. It is pertinent to point out that the dispute between the parties, at the most, can be said to be the civil dispute and it is tried to be converted into the criminal dispute. Therefore, this Court is of the opinion that continuing the criminal proceedings against the petitioners will be an abuse of process of law and, therefore, the criminal proceedings are

liable to be quashed. Merely because the petitioners have not have paid the amount due and payable under the agreement or even assuming not paid the amount in lieu of one month Notice, this by itself cannot be said to be a cheating and/or having committed offence under Sections 406 and 420 of the IPC, as per Hon'ble Supreme Court [Criminal Appeal No. 1593 of 2018 arising out of SLP (CRL.) No. 1960 of 2018] Vinod Natesan Vs. State of Kerala & Ors.

10. For better appreciation of the present case on hand, it is necessary to extract Sections 405, 406 and 420 of IPC:-

> "Section 405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".
>
> Section 406 of IPC . Punishment for criminal breach of trust.—Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.
>
> Section 420 of IPC : Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

11. In the present case on hand, looking at the allegations in the charge sheet, on the face of it, this Court finds no allegations are made attracting the ingredients of Section 406 IPC. Likewise, there are no allegations as to cheating or the dishonest intention of the petitioners in retaining the money in order to have wrongful gain to themselves or causing wrongful loss to the complainant. Excepting the bald allegations that the petitioners did not make payment to the defacto complainant and that the petitioners utilized the amounts either by themselves or for some other work, there is no iota of allegation as to the dishonest intention in misappropriating the money / property. To make out a case of criminal breach of trust, it is not sufficient to show that money has been retained by the petitioners. It must also be shown that the petitioners dishonestly disposed of the same in some way or dishonestly

retained the same. The mere fact that the petitioners did not pay the money to the complainant does not amount to criminal breach of trust. Even if all the allegations in the charge sheet taken at the face value are true, this Court is of the view that basic essential ingredients of dishonest misappropriation and cheating are missing. Criminal proceedings are not a short cut for other remedies. Since no case of criminal breach of trust or dishonest intention of inducement is made out and the essential ingredients of Sections 406/420 IPC are missing, the prosecution of the petitioners under Sections 406/420 IPC, is liable to be quashed, as opined by the Hon'ble Supreme Court reported in 2015 ALLSCR293 on 30 October, 2014 [Binod Kumar & Ors Vs. State Of Bihar & Anr].

12. In view of the above, the present Criminal Original Petition is allowed and the proceedings in C.C.No.157 of 2014 pending on the file of the learned Judicial Magistrate No.1, Virudhachalam is quashed. The bail bond, if any, executed by them shall stand cancelled and the fine amount, if any paid by them shall be refunded to them. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Inspector of Police
District Crime Branch,
Cuddalore.

2. The Judicial Magistrate No.I,
Virudhachalam.

3. The Public Prosecutor,
High Court, Madras.

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Crl.M.P.No.503 of 2016

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