IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2021

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.23019 of 2016
and
Crl.M.P.No.10806 of 2016

Mr.T.S.Kalyanaraman,
Chairman and Managing Director,
M/s.Kalyan Jewellers ... Petitioner/A1

Vs.

Naveen @ Raman,
S/o.Ponnukasu ...Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in C.C.No.95 of 2016 on the file of the learned Judicial Magistrate -I, Erode and to quash the same.

For Petitioner : Mr.B.Kumar, Senior Counsel
For Mr.R.Karthikeyan

For Respondent : Mr.M.Mariappan

ORDER

(This case has been heard through video conference)

This Criminal Original Petition has been filed by the Petitioner/A1, seeking to call for the records relating to the private complaint in C.C.No.95 of 2016 pending on the file of the learned Judicial Magistrate No-I, Erode and to quash the same.

2.Brief facts of the case:

The petitioner is the 1st accused in C.C.No.95 of 2016 filed by the respondent / complainant for the offence under Sections 420 read with Section 34 and 506 (ii) IPC against the petitioner. The brief allegations in the private complaint is that the respondent / complainant on seeing the advertisement in flex board and television clipping featuring the 4th accused Prabhu [cine actor] had gone to Kalyan Jewellers in Erode run by the petitioner herein on 25.07.2015 and purchased gold ear stud, weighing about 3.200 gms, by paying a sum of Rs.8,938.85/- and had also paid a sum of Rs.61.15/- towards the insurance premium. The further case of the respondent / complainant is that when he had shown the said stud after two days to his mother in the presence of his sister, his mother was shocked on seeing a metal wire in the stud and immediately they came to a conclusion that they have been cheated and his mother and sister had advised the respondent / complainant to make necessary complaint to the said Kalyan Jewellers. Thereafter, the respondent/complainant contacted the shop run by the accused through telephone and when he informed them about the same, the persons in the shop informed the complainant that he could return the ear stud and take back the money and the complainant had informed them that he would consult his mother and do so. On 28.07.2015 at about 2.00 p.m., when the complainant, his mother and brother were in their house, a person named Karthi had come to the house and introduced himself saying that he was sent by the Manager of Kalyan Jewellers and had asked the complainant to come to Mullamprambu Bus Stop. The complainant along with his brother had gone to the said bus stop and the said Karthi had told him that the news about the adulteration in the ear stud need not be disclosed to anyone outside since it would spoil the reputation of the company and had asked the complainant to return the ear stud and the bill and that they would pay more. The complainant had refused to do so and had informed him that he would take action as per law and immediately the said Karthi had threatened the complainant with dire consequences.

3.On 28.07.2015, the complainant had sent a complaint to the District Collector requesting for action to be taken in the said issue. Thereafter, the complainant went to a jewel appraiser in Erode on 06.08.2015 and had requested him to assess the quality of the ear stud. The said assessor had informed him that a metal wire had been fixed with the said gold stud and the ear stud was not of required quality and thereby, the complainant had come to a conclusion that the accused had cheated him. Thereafter, since no action had been taken on the complaint, the complainant had sent a legal notice on 07.08.2015 to the accused and on 08.08.2015, the complainant had received a call and the caller identifying himself to be one Manikandan, had stated that he was the Regional Manger of M/s.Kalyan Jewellers and had informed that he had wanted to see him and that the complainant had informed that he was standing in front of Bharathi Theatre, Veerappan Chatram, and within 5 minutes a white colour Bolero car had come near him and two persons had got down from the car and asked the complainant to get into the car stating that the Manager of M/s.Kalyan Jewellery was waiting inside the car and that the said two persons had also asked him for the jewel and the bill. When the complainant had refused, the said Manikandan had threatened the complainant stating that if he does not bring the jewel before that evening, his life would be ended and they went away. Thereafter, the complainant had received a reply notice from the Advocate of the accused on 09.08.2015.

4.The further allegation in the complaint is that on 12.08.2015, the complainant received an anonymous phone call threatening him with dire consequences and thereby, on 13.08.2015, the complainant went to the Erode Karungalpalayam Police Station and preferred a complaint. The Police Officials without registering the FIR had asked the complainant to sit in a room and while he was waiting, they had called the accused to the Police Station. The further allegation is that when the complainant was inside the Police Station, the accused 1 to 3 had come to the Police Station had threatened the complainant in the presence of Police Officials stating that the complainant should return the jewels and take back the money failing which, he would be implicated in false cases and that the complainant in the guise of attending nature's call had escaped from the Police Station. On the next day, a constable from the particular Police Station had called the complainant and asked him for the jewel and bill and on hearing about the news, some local television channels broadcasted about the said incident. Further, the accused had sent a false reply notice on 13.09.2015. On 04.10.2015, the complainant had found that some unidentified persons were following him and thereby, the complainant took asylum in his relatives house and having left with no other alternate remedy the complainant had preferred a private complaint on 06.05.2016. The learned Magistrate had after examining the complainant and his witnesses took cognizance of the case in C.C.No.95 of 2016 and issued summons against accused 1 to 3 against which the present quash petition has been filed by the petitioner / 1st accused.

5.Mr.B.Kumar, the learned Senior Counsel representing Mr.R.Karthikeyan for the petitioner would submit that at the outset the private complaint is a typical example of a frivolous litigant abusing the Court process to achieve his mischievous end of extortion by black mailing. Admittedly even as per the respondent / private complainant, the petitioner is addressed and implicated as the Chairman and Managing Director of M/s.Kalyan Jewellers, having Corporate Office at Pungunam, Trichur, Kerala. M/s.Kalyan Jewellers is a company incorporated under the Companies Act, engaged in the business of sale of gold jewels and ornaments for the past 22 years through its several branches in India and abroad. The petitioner is an ordinary resident of Trichur, Kerala and the Company is running the various branches through Managers and other employees at various locations. The complaint in entirety does not disclose ingredients of the offence against the petitioner. The complaint is vague and without there being any specific allegation, the trial Court without proper application of mind has taken cognizance against the petitioner for offences u/s.420 r/w 34 IPC and u/s.506(ii) IPC.

Learned Senior Counsel would further submit that the entire complaint does not disclose the ingredients of cheating and criminal intimidation and the trial Court which has issued summons had not recorded its satisfaction about prima facie case against the petitioner and the role played by him in the capacity of Managing Director of the company and thereby the summoning order is illegal and vitiated. When absolutely no allegations are made out against the petitioner, without there being any statutory provision, vicarious liability cannot be fastened upon the petitioner, since because he happens to be the Managing Director of the company which sold the goods to the complainant.

The trial Court has not followed the procedure contemplated u/s.204 Cr.P.C. The learned Magistrate has not recorded satisfaction about the prima facie case against the petitioner, when especially the complainant has not made any allegations against the petitioner on oath. Apart from the technical aspects, the complaint is also suffers from suppression of vital facts and misleading the Court with a view to threaten the petitioner and extort money by blackmailing by abusing the process of Court. Further, in the private complaint, the respondent had vaguely averred that the petitioner and his henchmen threatened him at the Karungalpalayam Police Station on 13.08.2015. In respect of the very same allegation, the respondent / complainant had earlier preferred a police complaint to the Karungalpalayam Police Station on 05.10.2015, against the Manager of the branch and certain unknown persons, which has been registered in Crime No.600 of 2015. Strangely in that complaint dated 05.10.2015 nothing has been stated against the petitioner as if he was present in the police station and threatened the complainant inside the police station on 13.08.2015. Subsequently, the complainant had sent a legal notice dated 21.08.2015 to the petitioner at his Tiruchur, Kerala Address and thereafter the complainant had sent a complaint to the District Collector, Erode on 22.02.2016 making allegations against the staff of the petitioner and certain policemen and in both the legal notice and the complaint to the District Collector Erode, no allegation has been made against the petitioner and no averment had been made about the alleged incident at the police station on 13.08.2015 and the presence of the petitioner in the police station. The investigation in Crime No.600 of 2015 on the file of the Karungalpalayam Police Station is still pending.

In the present private complaint, the registration of the police case in Crime No.600 of 2015 and the pending of the investigation has been deliberately suppressed. The complainant who is a menial worker in Erode Municipality had been used as a person and an attempt has been made by the complainant to extort money from the petitioner by abusing the process of Court to achieve his mischievous end by filing a private complaint after a year. The learned Senior Counsel would further contend that the criminal complaint is manifestly attended with malafide intention and is instituted with the ulterior motive for extorting money with a threat to tarnish the reputation and that immediately after the complaint the respondent / complainant had given interviews in local TV Channels and newspapers tarnishing the reputation of the petitioner's business.

6.In support of the above submissions, the learned Senior counsel relied upon the Judgments of the Hon'ble Apex Court in

- Sunil Bharti Mittal V. Central Bureau of Investigation reported in (2015) 4 SCC 609
- Sharad Kumar Sanghi V. Sangita Rane reported in (2015) 12 SCC 781
- Krishna Lal Chawla and Others V. State of U.P. and Another reported in (2021) SCC Online SC 191.
- Shiv Kumar Jatta V. Staff of NCT of Delhi reported in (2019) 17 SCC 193
- In Zandu Pharmaceutical Works Limited. V. Mohd. Sharaful Haque reported in (2005) 1 SCC 122

7.Per Contra, Mr.Mariappan, the learned counsel appearing for the respondent / complainant would vehemently oppose stating that the respondent / complainant is a conservancy worker and he had purchased ear stud from the shop owned by the 1st petitioner on 25.07.2015 after paying an amount of Rs.8,938/-. Thereafter, on 27.07.2015, he had shown the ear stud to his mother and she had found a piece of small iron wire inside the stud and it was also witnesses by the sister of the respondent complainant. The petitioner had believed the advertisement given by the petitioner's company, had purchased the gold stud from the shop. Whereas, the petitioner and his staff have cheated the respondent by giving a defective stud. When the complainant had brought it to the notice of the staff of the petitioner, they had in the guise of changing the stud and return the money had called him and later they have threatened him with their henchmen. The respondent complainant had gone to the police station on 13.08.2015 and given a complaint. The policemen had made him wait in the police station and had asked the accused to come to the police station. The petitioner had come to the police station along with two other persons and in the presence of the policemen had threatened the respondent. Subsequently, on the instructions of the petitioner and his staff, the henchmen have followed the respondent and also threatened him in his cell phone and had threatened to murder him and compelled him to withdraw the consumer case given by him. Though a case was registered in Crime No.600 of 2015 for the offence u/s.506 (ii) IPC against the unknown accused, no action was taken, thereby, the respondent was constrained to file a private complaint. The trial Court after following the due procedure, finding that there was prima facie case against the petitioner had issued summons to the petitioner. The trial Court apart from the respondent had examined four other witnesses and marked 22 documents.

8.In reply, the learned Senior counsel for the petitioner would submit that though a private complaint has been filed much later on 06.05.2016, almost after a year, there had been deliberate suppression about the case registered in Crime No.600 of 2015 based on the complaint of the respondent dated 05.10.2015 in respect of the very same allegation of criminal intimidation. Even in the complaint sent to the District Collector, Erode and in the earlier complaint dated 05.10.2015, no allegations or averments are made against the petitioner who is the Managing Director of M/s.Kalyan Jewellers, which is a registered company. The allegations are for the offence under I.P.C. and without there being a specific statutory provisions applicable to the facts of the case, the petitioner cannot be prosecuted by fastening vicarious or constructive liability. Further, even taking the complaint into entirety, no offence of cheating is made out against the accused. The accused have not induced the respondent or they have not cheated him with knowledge.

9.Learned Senior counsel would reiterate that the petitioner is the Managing Director, normally residing at Trichur and Head Office is at Trichur and that about 200 branches are there throughout India and abroad and that the petitioner had never visited Erode during the relevant period and nor visited Erode Police Station. It is a case of simple sale of goods and that the transactions between the petitioner and the respondent complainant is covered by the principles of Caveat emptor. In support of his contentions, he relied on the judgement of the Hon'ble Apex Court in Commissioner of Customs (Preventive) V. Aafloat Textiles (I)(P) Ltd. (2009) 11 SCC 18 : (2009) 4 SCC (Civ) 404.

10.Heard the counsels.

11. Admittedly, as per the complaint, the petitioner is shown to be the Managing Director of M/s.Kalyan Jewellers and

that his address is shown at the Corporate Office at Trichur, Kerala. Coming to the facts of the case as per the complainant is that he had on seeing the T.V. advertisements given by the accused featuring Actor Thiru Prabhu (4th accused) he had gone to M/s.Kalyan Jewellers, Erode run by the accused and purchased a gold stud weighing 3.200 grams by paying a sum of Rs.8,938.85 and a sum of Rs.61.15 was paid towards insurance premium. After two days he had shown the ear stud to his mother and sister and that they have seen a metal wire in the stud and that the respondent complainant had come to a conclusion that he had been cheated. Thereafter, the respondent / complainant had contacted the shop of the accused through telephone and when he had informed about the same, the persons in the shop told him that he could return the stud and take back the money and the complainant had informed them that he would consult his mother and do so.

12.Further, on 28.07.2015 when the complainant, his mother and brother were in the house, a person named Karthi had come to the house and threatened them. The further allegation is that he was stalked by the henchmen of the petitioner and he was threatened. On 28.07.2015, the respondent had sent a complaint to the District Collector, Erode, requesting for action to be taken in the said issue. Thereafter, he had gone to the jewel appraiser in the Erode on 06.08.2015 and assessed the quality of the ear stud and that the said assessor had informed that an iron rod has been inserted in the gold stud and the ear stud was not of the required quality. Since no action was taken on the complaint given by him, he had sent a legal notice to the petitioner on 07.08.2015 and 08.08.2015. The further allegation is that one Manikandan, identifying himself to be the Regional Manager of M/s.Kalyan Jewellers had wanted to see him and that he had informed him that he was standing in front of the Bharathi Theatre, Veerappan Chatram and that after few minutes two persons had come in a Bolero car and threatened him stating that he should return the jewel and withdraw the complaint or else he would be done to death. The further allegation is that on 12.08.2015, the respondent had received a threatening call from a mobile phone and thereby he had on 13.08.2015 gone to the police station and given a complaint and when he was inside the police station, the accused had come to the police station and threatened him in the presence of the police to hand over the ear stud and the bill and that the respondent / complainant had in the guise of attending nature's call had escaped from the police station. On the next day, a constable from the police station had called the complainant and asked him for the jewel and the bill and hearing about the news, some local television channels broadcasted about the said incident and thereafter the accused had sent a false reply notice on 13.09.2015 and even thereafter some unidentified persons had stalked the complainant and he had taken asylum in his relatives house. The respondent complainant had filed the private complaint on 06.05.2016. The respondent had cited five witnesses including himself and enclosed 22 documents. The trial Court after examining the complainant and witnesses on oath and perusing the complaint had taken cognizance and issued summons to the petitioner holding that prima facie case was made out against accused 1 to 3 for offence u/s.420 r/w 34 IPC and u/s.506(ii) IPC. However, perusal of the complaint and the statement of the witness does not disclose any averment against the petitioner for offences of cheating and criminal intimidation. The complainant had not made any specific allegations against the petitioner as if the petitioner induced him and made him to buy the ear stud and cheated him. Further no allegations of the criminal intimidation are specifically made against the petitioner.

13.It is obligatory on the part of the learned Magistrate to apply his mind to the contents of the complaint and the relevant satisfactory material before taking cognizance and issuance of summons. When there is no specific allegation against the petitioner, the order of taking cognizance and issuance of summons without the allegation being supported by evidence oral or documentary, is illegal and thereby the proceeding is vitiated.

14.Further, it is the case of the respondent / complainant that the petitioner and his henchmen threatened him at Karungalpalayam Police Station on 13.08.2015 and further continued to threaten him by his henchmen. In respect of allegations of threatening, the complainant had earlier preferred a police complaint to Karungalpalayam Police Station on 05.10.2015, which has been registered in Crime No.600 of 2015 and it is still pending. In the complaint, nothing had been alleged against the petitioner, as if he along with his staff threatened the respondent inside the police station on 13.08.2015. Further, the respondent / complainant had also sent a legal notice to the petitioner on 21.08.2015 to his Corporate Office at Trichur, Kerala and subsequently the respondent / complainant had also sent a complaint to the District Collector, Erode on 22.02.2016. Strangely, in the complaint to the police dated 05.10.2015, legal notice dated 21.10.2015 and the complaint to the District Collector dated 22.02.2016 no allegations have been made against the petitioner as if the petitioner had threatened him. Further, there had been deliberate suppression in the private complaint about the earlier complaint dated 05.10.2015 given to the police and the registration of the case in Crime No.600 of 2015.

15.The petitioner has been implicated in this case with vague allegations stating that he is the Managing Director of

M/s.Kalyan Jewellers. Other than implicating the petitioner as the Managing Director of M/s.Kalyan Jewellers, no other specific allegations have been made against the petitioner. The Hon'ble Apex Court In Sunil Bharti Mittal V. Central Bureau of Investigation reported in (2015) 4 SCC 609 and in Shiv Kumar Jatta V. Staff of NCT of Delhi reported in (2019) 17 SCC 193, has held that cardinal principle of criminal jurisprudence is that no vicarious liability can be fastened upon the Managing Director, unless the statute specifically provides for. Further, in Shiv Kumar Jatta V. Staff of NCT of Delhi reported in (2019) 17 SCC 193, the Hon'ble Apex Court had reiterated that Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company, when the accused is a company.

16.Further in Krishna Lal Chawla and Others V. State of U.P. and Another reported in (2021) SCC Online SC 191, the Hon'ble Apex Court has held that filing of the private complaint with regard to the same allegations by the same complainant when an earlier complaint is pending with the same allegation would amount to abuse of process of Court. In this case, the respondent complainant had wilfully suppressed about the pendency of the earlier complaint, which has been registered in Crime No.600 of 2015.

17.Further, going through the averment in the private complaint, no ingredients of offence of cheating is made out against the petitioner. The allegation of the respondent is that there was latent defect in the gold stud which was found after two days. As stated by the learned counsel for the petitioner a simple case of bare contract of sale of goods has been attempted to be projected as a case of cheating. Nothing had been averred in the complaint that the other accused gave express warranty with regard to the quality of the ear stud gold. It is for the buyer to be vigilant when purchasing a good when no express warranty is given by the seller.

18.In Commissioner of Customs (Preventive) V. Aafloat Textiles (I)(P) Ltd. (2009) 11 SCC 18,(2009) 4 SCC (Civ) 404 at page 26 the Hon'ble Apex Court has held:

> “13. It was for the buyer to establish that he had no knowledge about the genuineness or otherwise of the SIL in question. The maxim caveat emptor is clearly applicable to a case of this nature.
>
> 14. As per Advanced Law Lexicon by P. Ramanatha Aiyar, 3rd Edn., 2005 at p. 721: Caveat emptor means “let the purchaser beware”. It is one of the settled maxims, applying to a purchaser who is bound by actual as well as constructive knowledge of any defect in the thing

purchased, which is obvious, or which might have been known by proper diligence. "Caveat emptor does not mean either in law or in Latin that the buyer must take chances. It means that the buyer must take care."

15. "Caveat emptor is the ordinary rule in contract. A vendor is under no duty to communicate the existence even of latent defects in his wares unless by act or implication he represents such defects not to exist." (See William R. Anson, Principles of the Law of Contract 245, Arthur L. Corbin, ed., 3d Am. Edn. 1919.) Applying the maxim, it was held that it is the bounden duty of the purchaser to make all such necessary enquiries and to ascertain all the facts relating to the property to be purchased prior to committing in any manner.

16.Caveat emptor qui ignorare non debuit quod jus alienum emit. A maxim meaning "let a purchaser beware; who ought not to be ignorant that he is purchasing the rights of another". (Hob. 99; Broom; Co., Litl: 102 a: 3 Taunt. 439.) As the maxim applies, with certain specific restrictions, not only to the quality of, but also to the title to, land which is sold, the purchaser is generally bound to view the land and to enquire after and inspect the title deeds; at his peril if he does not.

17. Upon a sale of goods the general rule with regard to their nature or quality is caveat emptor, so that in the absence of fraud, the buyer has no remedy against the seller for any defect in the goods not covered by some condition or warranty, expressed or implied. It is beyond all doubt that, by the general rules of law there is no warranty of quality arising from the bare contract of sale of goods, and that where there has been no fraud, a buyer who has not obtained an express warranty, takes all risk of defect in the goods, unless there are circumstances beyond the mere fact of sale from which a warranty may be implied. No one ought in ignorance to buy that which is the right of another. The buyer according to the maxim has to be cautious, as the risk is his and not that of the seller.

19.Perusal of the entire complaint and entire materials on record discloses that it is a typical case of the respondent / complainant abusing the process of Court to achieve his mischievous end. The allegation against the petitioner / Managing Director seems to be unbelievable. It is settled law that this Court has got inherent powers to prevent the abuse of process of Court to see to that the person shall not suffer a litigant utilising institution of justice for unjust means. Similarly, a litigant pursuing frivolous and vexatious proceedings cannot claim unlimited right. This Court is of the opinion that it is a vexatious petition filed by the respondent / complainant to pressurize the petitioner, who is the Managing Director of the Company living elsewhere by false implication.

20.In Zandu Pharmaceutical Works Limited. V. Mohd. Sharaful Haque reported in (2005) 1 SCC 122 the Hon'ble Apex Court has held

> "8.... It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

21.In this case, as stated above, perusal and assessment of the entire materials do not disclose any offence as against the petitioner herein, thereby, the continuation to proceeding against the petitioner is nothing but an abuse of process of law.

22.In view of the above, the Criminal Original Petition stands allowed and the proceedings in C.C.No.95 of 2016, pending on the file of the learned Judicial Magistrate - I, Erode as against the petitioner / A1 alone stands quashed. Consequently, the connected miscellaneous petition also stands closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kas / ssi

To

The Judicial Magistrate - I,
Erode.

Crl.O.P.No.23019 of 2016
and
Crl.M.P.No.10806 of 2016

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