IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED : 17.08.2021

PRONOUNCED ON : 25.08.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.O.P.NO.9456 OF 2018

R.P.Vishnu Kumar .. Petitioner

Vs.

State rep.by
Inspector of Police,
Central Crime Branch,
Tirupur.
(Cr.No.28/2011) .. Respondent

PRAYER:

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, against the Charge Sheet in C.C.No.463 of 2014, pending on the file of the Judicial Magistrate Court No.I, Thirupur.

For Petitioners: Mr.N.R.Elango, Senior Counsel for Mr.S.Shankar
For Respondent : Mr.C.E.Pratap, GA (Crl.Side)

O R D E R

This Criminal Original Petition has been filed against C.C.No.463 of 2014, pending on the file of the Judicial Magistrate Court No.I, Thirupur.

2. The case of the prosecution is that the petitioner was running a Hosiery Garments Export Company in the name of Sowkar at Thirupur and he placed order for the supply of raw materials to various persons during the period from 2007 to 2009 and after receiving the materials, he failed to pay the money to those suppliers and further the cheques issued towards the payable amount to the suppliers also returned for insufficient funds and thereby he cheated them to the tune of Rs.1,43,22,688/-. Hence the petitioner was charged under Section 420 IPC.

3. The learned Senior Counsel appearing for the petitioner submitted that M/s.Sowkar Textile is a partnership Firm consisting of four partners and all the partners are equally responsible for the business of the partnership Firm, but the respondent Police, for the reasons best known to them, framed the petitioner as a sole accused in his individual capacity. Further there was a running account between the parties during the transaction period from 01.04.2007 to 30.03.2009 and if at all any dispute arose with regard to the running account between the parties, since it relates to a civil transaction, the same has to be decided only by the Civil Court.

4. It is the further submission of the learned Senior Counsel for the petitioner that it is alleged in the complaint that there was issuance of cheques for making payment and the same has been returned for insufficient funds. Such being the case, the complainant has to seek remedy available under Section 138 of the Negotiable Instruments Act. Instead of seeking remedy before the appropriate forum, filing complaint before the respondent Police by giving a criminal colour is not sustainable in the eye of law. Further the business transaction with the complainant was between the period from 01.04.2007 to 30.03.2009, however, the complaint leading to the registration of FIR was belatedly registered after a lapse of more than three years, during the year 2011 and the said delay has not been explained by the prosecution. Therefore, the said complaint is not at all maintainable at this distant point of time and hence, the Charge Sheet filed before the Trial Court, is liable to be quashed.

5. In support of the contention of the learned Senior Counsel appearing for the petitioner, the following decisions were relied upon:

> ''(i) (2005) 10 SCC 228 (Anil Mahajan Vs. Bhor Industries Ltd and another)
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> (ii) (2005) 10 SCC 261 (Hotline Teletubes and Componenets Limited and others Vs. State of Bihar and another);
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> (iii) (2005) 10 SCC 336 (Uma Shankar Gopalika Vs. State of Bihar and another;
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> (iv) (2007) 7 SCC 373 (VIR Prakash Sharma Vs. Anil Kumar Agarwal and another);
>
> (v) (2011) 13 SCC 412 (Thermax Limited and others Vs. K.M.Johny and others);

(vi) (2007) Cri LJ 1259 (M.Sivaram and others Vs. State of Andhra Pradesh and another);

(vii) (2005) 10 SCC 233 (Duraisami Vs. State of Tamil Nadu)''

6. The learned Government Advocate (Crl.side) appearing for the respondent submitted that the accused approached the complainant for the supply of raw materials and after utilising their services, the petitioner had cheated the suppliers/ complainant and also other similarly placed persons without paying the amount due and thereby caused wrongful loss to the Supplier Companies. It is alleged in the complaint that the petitioner with an intention to deceive and cheat the supplier Company, caused financial damages to the Management of the complainants' Company. Therefore, the accused, with mala fide intention, with a view to defraud the complainant had refused to pay the amounts due to the complainants and, thereby, caused monetary damages to the complainants, which squarely attracts the offence under Section 420 IPC and he is liable for penal action for cheating and mischief.

7. This Court has carefully considered the rival submissions and also perused the materials available on record.

8. A perusal of the materials available on record reveals that admittedly the business transactions were existing between the petitioner and the respondent between 2007 and 2009. In fact it is the case of the respondent that the money which the petitioner owes to the complainants is towards the supplies made by them. It is the case of the petitioner that is also substantiated by the relevant documents that the business of the petitioner is a partnership firm, in which there are four partners as stated above. It is the case of the respondent that it was the business transaction between the Firm and the respondent towards supply of certain materials, for which amounts are due from the Firm. That being the admitted case of the respondent, this Court is at a loss to understand as to how the complaint against the petitioner alone can be maintainable.

9. Be that as it may. As pointed out above, the transaction between the petitioner and the respondent is a business transaction, which is purely civil in nature. Further the said transaction had taken place between the petitioner and the respondent between 01.04.2007 and 30.03.2009, which clearly shows that it was a running business account between the parties. Though it is the claim of the complainants that for the supplies made during the period, money has not been paid to the suppliers, however strangely the complaint has been given after a lapse of more than three years. Further, there is no material

on record to show that the complainant had sought for money from the Firm towards the supplies made by the complainant. That being the case, it cannot be said that the petitioner, with mala fide intent, had tried to cheat the complainant by not paying the amounts.

10. It is also the case of the petitioner that certain cheques have been issued for payment of dues to the complainant Companies and if there were any problem in the realisation of the cheques, the course open to the complainant is only to go under Section 138 of the Negotiable Instruments Act. For a purely civil dispute, invoking Section 420 IPC by giving criminal colour to the said transaction, cannot be permitted to be maintained.

11. In Hotline Teletubes case (supra), the Hon'ble Apex Court has held as under :-

> ''2. This appeal by special leave has been filed by the appellants against the order passed by the Patna High Court, refusing to quash their prosecution under Sections 406 and 420 of the Indian Penal Code (for short "IPC"). In the complaint petition, it has been alleged that the complainant supplied goods to the accused persons, but they failed to pay the price therefor. There is no whisper in the complaint that at the very inception of the contract between the parties, there was any intention to cheat. It appears from a bare perusal of the complaint that it is a case of purely civil liability and no criminal offence is disclosed, much less offences either under section 406 or 420 ipc. So far as the High Court is concerned, it has not considered this aspect of the matter, but has refused to quash the prosecution observing that it was a fit case where parties should take steps for settlement. In our view, allowing such prosecution to continue would amount to an abuse of the process of court and to prevent the same, it would be just and expedient to quash the same.''

and In VIR Prakash Sharma (supra), the Hon'ble Apex Court has held as under:-

> ''8. The dispute between the parties herein is essentially a civil dispute. Non-payment or under-payment of the price of the goods by itself does not amount to commission of an offence of cheating or criminal breach of trust.

No offence, having regard to the definition of criminal breach of trust contained in Section 405 of the Indian Penal Code can be said to have been made out in the instant case.



Section 405 of the Indian Penal Code reads, thus:

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".

Neither any allegation has been made to show existence of the ingredients of the aforementioned provision nor any statement in that behalf has been made.

13. The ingredients of Section 420 of the Indian Penal Code are as follows :

i) Deception of any persons;

ii) Fraudulently or dishonestly inducing any person to deliver any property; or

iii) to consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

No act of inducement on the part of the appellant has been alleged by the respondent. No allegation has been made that he had an intention to cheat the respondent from the very inception.

14.What has been alleged in the complaint petition as also the statement of the complainant and his witnesses relate to his subsequent conduct. The date when such statements were allegedly made by the appellant had not been disclosed by the witnesses of the complaints. It is really absurd to opine that any such statement would be made by the appellant before all of them at the same time and that too in his own district. They, thus, appear to be wholly unnatural. ''

12. Though very many decisions have been relied on by the learned Senior Counsel for the petitioner, all those decision squarely relates to the ratio laid down above and the said decisions are clearly applicable to the facts of the present case.

13. As already stated above, the transaction between the petitioner and the defacto complainant is purely a civil transaction relating to the business between the two parties which was a running transaction between 2007 and 2009. Therefore, giving criminal colour to a civil dispute by filing the present complaint and making the petitioner to undergo the rigours of trial cannot be sustained. The defacto complainant, if aggrieved for non-receipt of money in the business, has to proceed in accordance with law and cannot resort to filing criminal case pertaining to civil transaction. For the reasons aforesaid, this Court is of the considered view that no case under Section 420 has been made out and the cognizance taken by the Magistrate on the said complaint is wholly perverse and not sustainable.

14. For the reasons aforesaid, this Criminal Original Petition is allowed and the Charge Sheet in C.C.No.463 of 2014, pending on the file of the Judicial Magistrate Court No.I, Thirupur, is set aside.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To
1. Judicial Magistrate Court No.I, Thirupur.

2. Inspector of Police,
Central Crime Branch, Tirupur.

3. The Public Prosecutor,
High Court, Madras.

Crl.O.P.No.9456 of 2018

RGN(CO)
CS/20/09/2021