



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.NO.28207 OF 2017

&

CRL.M.P.NO.16026 OF 2017

1. Marimuthu
2. Mohan @ Mohan Raj
3. Sampath

... Petitioners

.Vs.

1. The State Rep. By
The Inspector of Police,
Tiruppur North Police Station,
Tiruppur District.

2. A.Rajendran

... Respondents

PRAYER:- Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in connection with the Crime No.918 of 2016 on the file of the 1st Respondent and quash the same.

For Petitioner : Mr.G.Saravanan

For Respondents : Mr.R.Kishore Kumar - R1
Government Advocate
(Criminal Side)

No appearance - R2

O R D E R

This criminal original petition has been filed to call for the records in connection with the Crime No.918 of 2016 registered under Sections 406, 420, 294(b), 341, 506(i) and 120 (b) IPC on the file of the 1st Respondent and to quash the same.

2. The crux of the allegation in the FIR is that the defacto complainant company is supplying the chemicals to the accused from the year 2006 and there was a due towards the



purchase of the chemicals to the tune of Rs.14,73,694/-. Whenever the defacto complainant requested for the amount, the accused delayed by stating some other reason. Further, when the amount is requested, the accused had made threat, thereby committed offence mentioned in the FIR, as stated above.

3. It is the submission of the learned counsel for the petitioner that the entire FIR is a outcome of civil transaction and no offence has been made out, therefore, submitted that mere non payment of amount during the business transaction, would not constitute offence under Sections 420, 406 etc., whereas, it is a running business between the parties. The mere non payment of amount in the business transaction, in the absence of any material to show that the accused cheated and dishonestly induced the person deceive to deliver any property to a person, offence under Sections 406, 420 of IPC are not attracted. Similarly, alleged threat is only for the purpose of filing FIR, hence the entire FIR has to be quashed.

4. The learned Government advocate (Crl.Side) submits that after receiving all the chemicals, amount has not been paid and the investigation is still pending, thereby vehemently opposed to quash the FIR.

5. Heard the learned counsel for the petitioner as well as learned Government Advocate (Crl.side) for the 1st respondent and perused the documents placed on record.

6. Since the notice sent to the 2nd respondent returned as 'no such addressee' and the notice sent through the learned counsel, who appeared for the defacto complainant before the trial court, was also not been served, this Court on 03.12.2021, directed the learned counsel for the petitioner to take paper publication in any of the vernacular daily widely circulated in Tiruppur district stating the hearing date on 15.12.2021. However, there is no representation for the 2nd respondent either in-person or through learned counsel.

7. Normally, this Court will not interfere with the investigation, at the same time, when the complaint arises out of a civil dispute and the entire complaint taken at their face value does not constitute any offence, such prosecution or FIR cannot be permitted to continue, as the same would infringe the right of the parties to face ordeal of the trial. The entire allegation in the FIR indicates that there were business dealings and in the said business dealings, there is a due of money. In the complaint, it is not at all stated that the accused have dishonestly or fraudulently induced to part with the chemicals by the defacto complainant, thereby committed an act of cheating. The entire allegation in the complaint further



indicates that the business is running from the year 2006 till the year 2015 and only during such transaction, there was some due, therefore, breach of contract and promise, in the considered opinion of this Court, does not constitute any offence under Section 420 IPC. Further, to attract the offences mentioned in the FIR, there must be intention to cheat and dishonestly induce the person deceived to deliver the property to any person, which is not the case herein.

8. Similarly, offence under Sections 406 or 420 IPC will not get attracted, there is no entrustment of the property, whereas supply has been made and there were running account between the parties, such transaction cannot constitute misappropriation to attract offence under Sections 406 or 420 of IPC. The allegation in the FIR, does not show any offence by misappropriation. Even taking it at its face value, except the allegation of mere threat, which is empty in nature, no other serious allegation is made and hence offence under Sections 341, 294(b), 120(b) and 506(i) of IPC also will not be attracted. In such view of the matter, the continuance of prosecution in a pure commercial and civil dispute is accordingly quashed.

In the result, the present criminal original petition is allowed and the Crime No.918 of 2016 on the file of the 1st respondent is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Inspector of Police,
Tiruppur North Police Station,
Tiruppur District.
2. The Public Prosecutor,
High Court, Madras.

CRL.O.P.NO.28207 OF 2017 &
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