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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 14.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. Nos.19505 and 21574 of 2017 and
Crl.M.P.Nos.11786, 11787, 12690 and 12691 of 2017

1.K.Kalappa
2.K.Lakshmi
3.S.Sharanamma
4.Ratnamma

. . . Petitioners/ Accused 1 to 4
(In Crl.O.P.No.19505/17)

S.M.Subramaniam

. . . Petitioner / Accused No.5
(In Crl.O.P.No.21574/17)

Versus

S.Ramesh

. . . Respondent/Complainant
(In both Crl.O.Ps)

COMMON PRAYER : Criminal Original Petitions filed under Section 482 Cr.P.C., to call for the records in C.C. No.449 of 2016, on the file of the Learned Judicial Magistrate, Mettupalayam, and quash the same.

For Petitioners : Mr.M.Guruprasad
(In both Crl.O.Ps)

For Respondent : Mr.N.Ponraj
(In both Crl.O.Ps)

C O M M O N O R D E R

These criminal original petitions have been filed to quash the private complaint initiated against the petitioners in C.C. No.449 of 2016, for the offences under Sections 120B, 269, 278, 406, 420 and 427 IPC, on the file of the Learned Judicial Magistrate, Mettupalayam.

2.The crux of the allegation of the complaint is that the 5th accused, who is the Power Agent of accused No. 1 to 4 came to the shop of the complainant and took order for supply of rice from the firm, namely M/s.Sri Lakshmi Srinivas Industries. As per the order, the rice was supplied on 22.06.2013. Thereafter,



again the rice was supplied. Later, it came to be known that the quality of rice was not good, it was of inferior quality. The complainant could sell only 221 bags of rice out of 680 bags of rice supplied by the accused. Despite repeated requests made by the complainant to take back the unsold rice bags, the accused have not removed the same. Thereafter, the accused have filed a suit in O.S.No.104 of 2016 on the file of Senior Civil Judge at Gangavathi, for recovery of a sum of Rs.7,90,830/- along with interest. Therefore, the private complaint has been filed for the offence under Sections 120B, 269, 278, 406, 420 and 427 IPC. The learned Magistrate appears to have taken cognizance of the matter.

3. The learned counsel appearing for the petitioners mainly submitted that the entire complaint is an abuse of process of law and this has been filed 3 years after the supply of rice, which was given in the year 2013 itself. As the petitioner did not pay the amount, they have filed a suit for recovery of money in the Court of the Senior Civil Judge, Gangavathi in O.S.No.104 of 2016. Only after filing of the suit, the present criminal case pressed into service. It is his further contention that the present complaint is said to have been filed by the power agent of the complainant, the court ought not to have taken cognizance, without the complainant being examined and submitted that the entire complaint is nothing but an abuse of process of law.

4. The learned counsel appearing for the respondent submitted that the petitioners supplied rice bags on the promise that the rice is of good quality, whereas it was found to be inferior quality. Despite the requests made by the respondent for removing the unsold stock, the same was not removed by the petitioners. However, they have filed a suit for recovery of money. Therefore his contention that non removal of the rice bags which caused nuisance to the respondent and hence offence have been made out, the court has taken cognizance, therefore the same cannot be quashed at this stage.

5. Heard the learned counsel appearing on both sides and perused the entire materials available on record.

6. This Court is of the view that when the materials available on record indicate prima facie to proceed against the accused, certainly this Court will not interfere by exercising its power under Section 482 Cr.P.C. At the same time, when the allegation was pressed in to service, purely in a commercial dispute that too, to overcome the suit filed by other side for recovery of money and such complaint appears to have been an abuse of process of law, the court can very well interfere with it and quash the proceedings, to prevent the abuse of process of



law.

7. In the case on hand, the private complaint has been filed not by the complainant, the so called aggrieved person, but by the staff of the complainant, who is said to be the power agent. Though it is stated that he also appears to have knowledge about the prosecution, the fact remains that he is not an aggrieved person.

8. Be that as it may, the entire complaint has been carefully scanned. It is the specific allegation of the complainant that as per the supply order, 680 bags of rice were supplied. The only grievance of the complainant is that he is not able to sell the entire rice bags. He could sell only 221 bags out of 680 bags due to inferior quality of rice. Therefore, according to him, the accused have cheated him and thereby they committed the offence and other offences alleged.

9. The entire complaint did not indicate that the supply itself was made by playing fraudulent activities or with dishonest intention right from the very inception to attract the offence under Section 420 Cr.P.C. It is admitted case that the petitioners have already filed a suit for recovery of money, as the de-facto complainant has not paid the money for the rice supplied to his shop. Such being the position, the present complaint came to be filed in the year 2016, after the suit has been filed for recovery of money for the alleged supply of rice, which was effected in the year 2013, which itself clearly indicates that present complaint is nothing but an abuse of process of law, as a counter blast to the suit filed for recovery of money against the de-facto complainant.

10. It is also relevant to note that the court can take cognizance of offence on a complaint, shall examine upon both the complainant and the witness present. In this case, though the power agent filed a complaint and that the complainant has not given evidence before the court, without being examined, the complainant who is said to be aggrieved party, the court ought not to have taken cognizance of the matter. In such view of the matter, when a specific offence under IPC is alleged against the petitioners/accused, aggrieved person ought to have filed the complaint properly before the Court of Law, which has not been done so. In such view of the matter, this Court is of the view that this complaint is nothing but an abuse of process of law. Hence, the proceedings in C.C. No.449 of 2016, on the file of the Learned Judicial Magistrate, Mettupalayam is liable to be quashed.

11. Accordingly, these criminal original petitions are allowed. The proceedings initiated against the petitioners in



C.C. No.449 of 2016, on the file of the Learned Judicial Magistrate, Mettupalayam is quashed. Consequently, the connected criminal miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

psa/asr

To

The Judicial Magistrate,
Mettupalayam.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.67157

+1cc to Mr.N.Ponraj, Advocate, S.R.No.66489

Cr1. O.P. Nos.19505 and 21574 of 2017

RLD(CO)
CT 29/12/2021