

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2021

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl. OP No.31819 of 2019
and Crl. MP Nos.17424 of 2019 & 773 of 2020

1. Mr.Suresh
Managing Director of
M/s.SP Caring Products India Pvt Ltd.,
No.32, Thiruvalluvar Nagar,
Sivananda Puram, Saravanampatti,
Coimbatore - 641 035.
2. Shanmuga Priya
M/s.SP Caring Products India Pvt Ltd.,
No.32, Thiruvalluvar Nagar,
Sivananda Puram, Saravanampatti,
Coimbatore - 641 035.Petitioner/Accused-1 & 2

vs.

1. State rep by
The Inspector of Police,
CCB. II,
Chennai.
Crime No.161 of 2019Respondent / Complainant
2. RameshRespondent / Defacto Complainant

* Amended as per order in Crl MP No.3419 of 2020
in Crl.OP No.31819 of 2019 dated 17/03/2020

PRAYER: Criminal Original Petition filed under Section 482 of
the Code of Criminal Procedure, to call for the records in Crime
No.161 of 2019 on the file of the first respondent and quash the
proceedings.

For Petitioners : Mr.V.Viswanathan

For Respondents : Mr.C.Raghavan
Government Advocate (crl. Side)
for R1

Mr.K.Kannan, for R2

ORDER

This petition has been filed challenging the FIR registered by the respondent Police in Crime No. 663 of 2019 on 19.09.2019, which is altered as Crime No.161 of 2019 on the file of CCB.II, Chennai, as per the order dated 17.03.2020 in Criminal MP No.3419 of 2020 in CrI. OP No.31819 of 2019.

2. The second respondent has given a complaint against the petitioners alleging that the petitioners have received a sum of Rs.36,00,000/-, in order to conduct the business and agreed to repay a sum of Rs.50,00,000/-. When the amount was demanded, the petitioners refused to repay back the amount and hence they have committed the offence of cheating. Based on the complaint given by the second respondent, an FIR has been registered by the respondent Police for an offence under Sections 406 and 420 of the Indian Penal Code.

3. Heard Mr.V.Viswanathan, learned counsel appearing for the petitioners and Mr.C.Raghavan, learned Government Advocate (CrI. Side) appearing for the first respondent and Mr.K.Kannan, learned counsel appearing for the second respondent.

4. When this Court considers a petition to quash the First Information Report, the allegations made in the complaint alone will have to be taken into consideration. In the present case, the allegation is that a sum of Rs.36,00,000/- was paid to the petitioners and they promised to repay back a sum of Rs.50,00,000/- and this amount was not repaid. Even if the allegation made in the complaint is taken as it is, no offence of Criminal breach of trust or cheating has been made out and at the best it only amounts to breach of contract. The Hon'ble Supreme Court in International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) and Ors. Vs. Nimra Cerglass Technics (P) Ltd. and Ors., reported in 2016 (1) SCC 348, has clearly brought out the difference between cheating and the breach of contract. The petitioners have taken a stand in the quash petition that it was a business transactions between the parties and it is the second respondent, who has to make payment to them. This Court cannot go into this issue, since it is a disputed fact.

5. The facts of the present case clearly make out a civil transaction between the parties, wherein an attempt has been made by the second respondent to give it a criminal colour. In the considered view of this Court, the failure in the repayment of the loan amount by itself will not constitute an offence of Criminal breach of trust or cheating.

6. In view of the above, this Court has no hesitation to interfere with the FIR registered by the first respondent in Crime No.161 of 2019 and accordingly, the same is quashed. The Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

jv

To

1. The Inspector of Police,
CCB. II,
Chennai.
Crime No.161 of 2019

2. The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

+1cc to Mr.V.Viswanathan, Advocate, S.R.No.3765

Crl. OP No.31819 of 2019
and Crl. MP Nos.17424 of 2019 & 773 of 2020

NMI (CO)
KKV/22/02/2021

सत्यमेव जयते
WEB COPY