



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.08.2021

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

Crl.O.P. (MD) .No.5226 of 2018

and

Crl.M.P. (MD) Nos.2530 & 2531 of 2018

Kathiravanathan

... Petitioner

-vs-

S.Ganapathy Anand
Proprietor,
Karviya Pharma,
Plot No.14, Kamaraj Nagar,
Opposite to District Court,
Palayamkottai,
Tirunelveli - 627 002.

... Respondent

PRAYER : Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in pursuant to the charge sheet in C.C.No.4 of 2018 on the file of the Judicial Magistrate No.1, Tirunelveli, and quash the same.

For Petitioner	:	Mr.T.Selvakumaran
For Respondent	:	Mr.Balamurugan for J.Ashok

O R D E R

This Criminal Original Petition has been filed praying to quash the proceedings in C.C.No.4 of 2018, on the file of the learned Judicial Magistrate No.1, Tirunelveli.

2.The short facts leading to filing of the present petition reads as follows:-

(i) The petitioner/accused and the respondent/complainant were doing business of purchase and sale of Pharmaceuticals medicines in the market. The respondent was doing business in the name of 'Karviya Pharma' at Palayamkottai, Tirunelveli. The petitioner approached the respondent that he offered to send medicines of worth about Rs.3,62,169/-, to the respondent and the same was accepted by him. The respondent received the goods from the



petitioner through transport service and paid the cost of the goods by cheque.

(ii) While opening the corrugated boxes, the medicines worth about Rs.91,082/- were damaged. Thereafter, the respondent contacted the petitioner and informed about the damage of goods. Subsequently, as promised by the petitioner, the respondent sent back the damaged goods, for repayment of money. Since there is no response from the petitioner, the respondent made a complaint through online to the Commissioner of Police, Thirunelveli City, on 18.08.2017, regarding the cheating by the petitioner. Pursuant to the complaint, on 21.08.2017, the respondent was called for enquiry by the Inspector of Police, Palayamkottai Police and the petitioner was advised to approach the appropriate Court having jurisdiction to seek remedy. Hence, the respondent filed a case in C.C.No.4 of 2018, on the file of the learned Judicial Magistrate No.I, Tirunelveli.

3. The learned counsel appearing for the petitioner / accused would state that it is only transaction of goods and if the respondent has any grievance, he has to approach the Consumer Redressal Forum. Already 138 proceedings is pending before the Court of ACJ (S.D), Roorkee, against the respondent herein. Instead of paying due amount to the petitioner, the respondent filed the case in C.C.No.4 of 2018, on the file of the learned Judicial Magistrate No.1, Tirunelveli. If the goods are damaged, the respondent ought to have returned the goods immediately to the petitioner, but it has been returned after a long period of 8 months, which shows there is a fraud on the part of the respondent. Hence, the learned counsel prayed to quash the proceedings in C.C.No.4 of 2018 on the file of the Judicial Magistrate No.1, Tirunelveli.

4. Per contra, the learned counsel appearing for the respondent / complainant would state that the petitioner approached the respondent stating that he offered to send medicines of worth about Rs.3,62,169/-, to the respondent and the same was accepted by him. The respondent received the goods worth about Rs.91,082/- in a damaged condition. Immediately, the respondent contacted the petitioner and informed about the damage of goods. The petitioner asked the respondent to send back the damaged goods and agreeing to refund the same. But, the petitioner has not acted, as promised. Therefore, the respondent filed a complaint to the Commissioner of Police, Thirunelveli City, on 18.08.2017. Pursuant to the complaint, on 21.08.2017, the respondent was called for enquiry by the Inspector of Police, Palayamkottai Police and the petitioner was advised to approach the appropriate Court having jurisdiction to seek remedy. Hence, the respondent filed a private complaint before the learned Judicial Magistrate No.I, Tirunelveli, which was taken on file in C.C.No.4 of 2018. It is his further submission



5. Heard the learned counsel for the petitioner as well as the learned counsel for the respondent.

6. Admittedly, it is a case of business transactions. In purchase and sale of pharmaceuticals, the petitioner had sent medicines worth of Rs.3,62,169/-, to the respondent, which was received by the respondent through transport service and the entire costs was paid by the respondent. Thereafter, while opening the medicine box, it was found that the medicines worth of Rs.91,082/- were damaged and thereafter, the respondent contacted the petitioner and informed about the damage of goods. As promised by the petitioner, the respondent sent back the damaged goods, for repayment of money. Since there was no response from the petitioner, the respondent filed a complaint to the Commissioner of Police, Thirunelveli City, on 18.08.2017.

7. According to the petitioner, the respondent was called for enquiry by the Inspector of Police, Palayamkottai and the petitioner was advised to approach the appropriate Court having jurisdiction to seek remedy and thereafter, the respondent has filed a case in C.C.No.4 of 2018.

8. Perusal of records shows that it is a business transaction between the petitioner and the respondent. It appears that the petitioner and the respondents were doing business transaction with each other for a long period and the dispute arose out of the business transaction. If at all the respondent is aggrieved, he has to approach the civil forum for his remedy and therefore, I am inclined to quash the criminal proceedings in C.C.No.4 of 2018, on the file of the learned Judicial Magistrate No.1, Tirunelveli.

9. In the result, this Criminal Original Petition is allowed and the proceedings in C.C.No.4 of 2018, on the file of the learned Judicial Magistrate No.1, Tirunelveli, stands quashed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

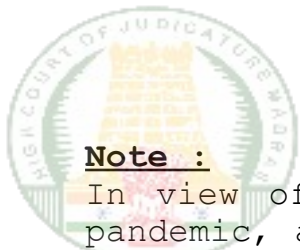
Assistant Registrar (CS III)

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/ /2021

Sub Assistant Registrar(CS)

mpk/epsi



Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Judicial Magistrate No.1,
Tirunelveli.

+1 CC to M/s.T.SELVAKUMARAN, Advocate(SR-27697[F] dated
31/08/2021)

Crl.O.P. (MD) No.5226 of 2018
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MGJ(17.12.2021) 4P 3C