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IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 16.02.2022

PRONOUNCED ON : 26.05.2022

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.Nos.10985 & 8958 of 2015
and M.P.Nos.1, 1, 2 of 2015

In Crl.O.P.No.10985 of 2015:-

1.South India Music Companies Association,
3A, III floor,
47, Ramanujam Street, CIT Nagar,
T.Nagar,
Chennai - 600 017.

2.Sridhar

3.Rajesh Dhupad

4.Jagdeep Grover

5.S.Kalyanasundaram

6.Poonamchand

7.J.Swaminathan

...Petitioners

In Crl.O.P.No.8958 of 2015:-

Sudha Ragunathan

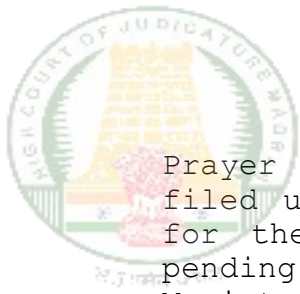
...Petitioner

Vs.

In both Crl.O.P.'s:-

Gemini Audio & Gemini Entertainment Mobile India Services,
A unit of Gemini Industries & Imaging Limited,
Represented by Chief Executive Officer,
Mr.Ajmal Dastagir aged 33 years,
S/o Mr.Dastagir,
No.601, Parson Complex, Teynampet,
Chennai - 600 006.

...Respondent



Prayer in both Crl.O.P.'s:- Criminal Original Petitions are filed under Section 482 of Code of Criminal Procedure, to call for the records and quash the proceedings in C.C.No.980/2015 pending on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai for offences under Sections 420 and 506 (ii) I.P.C.

In both Crl.O.P.'s:-

For Petitioner : Mr.A.Ramesh (Senior Advocate)
for Mr. S.S.Rajesh, Advocate

For Respondent : Mr.K.R.Ramesh Kumar

ORDER

These petitions are filed to call for the records in C.C.No.980 of 2015 pending on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai and quash the same.

2.Respondent filed the private complaint against the petitioners under Section 200 Cr.P.C. read with 190 (1) of Cr.P.C. for the offences under Section 420 and 506 (ii) I.P.C. Gemini Audio and Gemini Entertainment Mobile India Services/respondent herein, is South India's fastest growing record label that discovers and develops recording artists and promote their music across a wide array of formats and platforms. Respondent is doing large scale of film and audio business. As a genuine business proposal, with the approval of the present President of the first accused company namely Sudha Raghunathan, it was agreed that first accused company would give their license of the members content exclusive to Gemini Auto to digitize and deploy across all mobile platforms worldwide for a period of three years. Accused 2 to 8 personally promised and induced the defacto complainant/respondent company to make payment promising to license their members content to Gemini Audio to digitalize and deploy across all mobile platforms worldwide. Second accused Sudha Raghunathan personally guaranteed and promised, visited the complainant's office at Parson complex along with other accused many times and induced the complainant's company to make payment. At the instruction of the present President Sudha Raghunathan, eighth accused Swaminathan, Secretary of the first accused entered into an agreement with the complainant on 14.09.2012. A sum of Rs.2.70 crores was paid on different dates by way of RTGS and cheque payments in September 2012. After receiving the money, the accused coerced complainant's company's joint managing director A.Manohar Prasad to sign an agreement with frivolous and fictitious content. Accused cheated the complainant's company



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with the hidden agenda with an intention to defraud the complainant's company with full of false and frivolous database. Complainant came to understand that first accused had existing arrangements with an external party and that had expired on 1st September 2012. Accused failed to arrange the supplementary agreements and invoices. Left with no option complainant had to sign the agreement dated 14.09.2012. Apart from the first accused individual members (Audio labels) failed to submit the invoices to the complainant company to enable their payments. Accused have not coordinated with the members (audio labels) for collecting the supplementary agreements, invoices and contents along with the meta data and handover to the complainant's company. Believing the words of the accused, complainant's company transferred Rs.2.27 crores. Complainant was able to collect music content in one 2TB hard disc without any content in it. Till now accused have neither given the content nor the money to the complainant's company. When complainant's company's Managing Director Manohar Prasad contacted the accused Sudha Raghunathan and other accused and asked them to return the money. But, accused Sudha Raghunathan started threatening him with dire consequences. Other accused also continuously threatening him. Therefore Manohar Prasad, Managing Director, gave a complaint to the Commissioner of Police, Chennai on 22.10.2013. But, no first information report was registered. The accused have committed the offences punishable under Section 420 and 506 (ii) I.P.C. Therefore, this complaint. This complaint was taken on file in C.C.No.980 of 2015 on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai for the offences under Section 420 and 506 (ii) I.P.C. Challenging the same, this quash petition is filed.

3.Learned counsel for the petitioners submitted that the respondent and South India Music Companies Association (SIMCA) entered into an agreement on 14.09.2012 to facilitate the respondent to exploit the music labels/copy rights through Mobile Service Providers, for a period of three years. Respondent agreed to pay SIMCA a minimum guaranteed amount for three terms for three years between 2012-2013, 2013-2014 and 2014-2015. Respondent has to hand over entire payment of Rs.8.5 crores for the term 2012-2013 before 14.09.2012. The agreement will stand automatically terminated, if the payments are not made within the time stipulated. Between September and December 2012, several cheques issued by respondent in favour of the members of SIMCA have been returned for want of funds. Respondent had not made payment of the minimum guaranteed amount within the stipulated time and thus the agreement dated 14.09.2012 stood automatically terminated. The dispute between the parties are mainly civil dispute. There is absolutely no criminality involved in the transaction between the respondent and first petitioner. The ingredients of Section 420 and 506



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(ii) I.P.C. are not made out. The allegations are made only for the purpose of making out the case for the Court to take cognizance. If any dispute arises with reference to the agreement entered into between the parties, clause 10 (8) of the agreement provide for dispute resolution process through arbitration. Repeated allegations are made in the complaint without any specific details supported by documentary evidence. There is no prima-facie case made out for the Court to take cognizance and proceed with the case. Therefore, learned counsel for petitioners prayed for quashing the proceedings. Learned counsel for the petitioners relied on the following judgments,

i) Judgment reported in 2018 SCC Online Pat 1628 Andal Arumugam (Dr.) Vs. State of Bihar, for the proposition that, when the complaint allegations do not make out the case for prosecuting under Section 406 and 420 I.P.C, it is nothing but an abuse process of Court trying to convert a civil dispute into a criminal case. There is growing tendency in business community to convert the purely civil disputes into criminal cases. The idea is that civil remedy is time consuming and do not adequately protect the interests of lenders/creditors. Any effort to convert civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.

ii) Judgment reported in (2015) 8 SCC 293 Vesa Holdings Private Limited and another Vs. State of Kerala, is relied for the proposition that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In other words, for the purpose of constituting an offence of cheating, complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of culpable intention at the time of making initial promise being absent, no offence under Section 420 of Indian Penal Code, 1860, can be said to have been made out. It is observed that,

12. From the decisions cited by the appellant, the settled proposition of law is that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In other words for the purpose of constituting an offence of cheating, the complainant



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is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under [Section 420](#) of the Indian Penal Code can be said to have been made out.

13. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under [Section 420](#) IPC. In our view the complaint does not disclose any criminal offence at all. Criminal proceedings should not be encouraged when it is found to be malafide or otherwise an abuse of the process of the court. Superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and the High Court committed an error in refusing to exercise the power under [Section 482](#) Criminal Procedure Code to quash the proceedings.

iii) Judgment reported in (2009) 10 SCC 184 Neelu Chopra and another Vs. Bharti, is relied for the proposition that, in order to lodge a proper complaint, mere mention of the Sections, the language of those Sections is not the be all and end all of the matter. What is required to be brought to the notice of the Court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing that offence. When the complaint is vague and does not show as to which accused has committed what offence and what is the exact role played by the accused in the commission of the offence, continuance of proceedings is an abuse process of law. It is observed that,

9. In order to lodge a proper complaint, mere mention of the Sections, the language of those Sections is not the be all and end all of the matter. What is required to be



brought to the notice of the Court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence.

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iv) The judgment reported in (1998) 5 SCC 749 Pepsi Foods Ltd and another Vs. Special Judicial Magistrate and others, is relied for the proposition that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has examined the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers and find out the truthfulness of the allegations or otherwise and then examine if any offence is prima-facie committed by all or any of the accused. It is observed that,

28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. The order of the Magistrate summoning the accused must reflect that he is applying mind facts of the case and the law applicable thereto. He has examined the nature of allegations made in the complaint and the evidence both oral and documentary in support of thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and make even himself put questions to the complainant and its witnesses to elicit answers and find out the truthfulness of the allegations or otherwise and then examine if any offence is prima-facie committed by all or any of the accused.

4. Thus, the learned counsel for the petitioners submitted that a vague and pointless allegations are made against all the petitioners/accused without giving specific details as to the details of the offence committed. In fact, it is the respondent who failed to comply the terms of the agreement, resulting in its cancellation. If at all, there is any grievance in the cancellation of the agreement, respondent has to move only to



Civil Court appropriately. When there is no offence made out, filing a criminal case and taking cognizance is nothing but an abuse process of law and therefore, learned counsel for petitioners prayed for quashing the proceedings.

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5. In response, learned counsel for the respondent submitted that petitioners have made the respondent to pay money to them on the basis of an agreement to permit the respondent to use music labels through Mobile Service Providers for a period of three years. However, they have not honoured their commitment. 2 TB hard disk handed over to the respondent on August 2013 and one of which did not have any content in it. Respondent paid to the tune of Rs.2.27 crores to the first petitioner. The intention to cheat from the beginning of the contract is evident from the day petitioners failed to honour terms of the agreement. The agreement with the labelholders got expired on 01.09.2012 and the petitioners have no right over the labelholders. Suppressing this fact, they entered into agreement with respondent on 14.09.2012, without any right to enter into agreement. This proves that, there is an intention to cheat the respondent from the beginning of the contract. Labels have not cheated the respondent but only the accused cheated the respondent. First petitioner has not taken any steps to execute the supplementary agreement and did not pay money to labelholders. Not only that, the accused have also threatened the respondent. Since, the prima-facie case had been made out against the petitioners for taking cognizance of the case under Section 420 and 506 (ii) I.P.C, trial Court has taken cognizance of the offence. The disputed facts are to be decided only in the trial. He relied on the judgment reported in (2013) 10 SCC 581 Vinod Raghuvanshi Vs. Ajay Arora and others, for the proposition that the Courts should not "kill a still born child" and prosecution should not be stifled unless there are compelling circumstances to do so. If the prosecution is to be quashed at the initial stage, the test to be applied by the Court is whether the un-controverted allegations as made, prima-facie establish the offence. At this stage, neither the Court embark upon an enquiry, whether the allegations in the complaint are likely to be established by evidence nor should the Court judge the probability, reliability or genuineness of the allegations made therein. It is observed that,

30. It is a settled legal proposition that while considering the case for quashing of the criminal proceedings the court should not "kill a still born child", and appropriate prosecution should not be stifled unless there are compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegations have some substance. When a prosecution at the initial stage is to be quashed, the test to be





9. The perusal of the documents filed by the petitioners in the form of typed set of papers shows that respondent had shown one Ajmal Dastagir Chief Executive Officer, Manohar Prasad, Joint Managing Director and T.R.Srinivasan, Company Secretary as the witnesses. It had produced the following documents along with the complaint. They are 1) Address proof, 2) Authorisation letter, 3) Agreement dated 14.09.2012, 4) Copy of the complaint given to the commissioner of Police dated 22.10.2013, 5) Statement of accounts, 6) RTGS details. Sworn statement of Ajmal Dastagir, Chief Executive Officer, alone recorded. On the basis of the complaint allegations, the sworn statement of the complainant and the aforesaid documents, the learned Magistrate had taken cognizance of the case against the petitioners for the offences under Section 420 I.P.C. and 502 (ii) I.P.C.

11. It is alleged in para 4 of the complaint that all the accused personally promised and induced the complainant to make payment promising to license of their member's content exclusive to Gemini Audio to digitize and deploy across all of Mobile platforms worldwide. The second accused Sudha Ragunathan personally guaranteed and promised and visited the complainant's office at Parson complex along with other accused so many times and induced complainant company to make payment. However, there is no specific details as to when all the accused personally promised and induced the complainant and when second accused along with other accused visited complainant's office. It is alleged in para 6 of the complaint that the first petitioner/accused and the office bearers of the first



petitioner, accused 2 to 8 coerced the complainant's company's Joint Managing Director A.Manohar Prasad to sign agreement with frivolous and fictitious contents. It is not known how complainant's Joint Managing Director A.Manohar Prasad can be coerced to enter into an agreement. If really he was coerced to enter into an agreement, why at all he executed the agreement? Assuming that he entered into an agreement under coercion, why no action was taken against the petitioners immediately? No explanation. It is again reiterated in para 7 of the complaint that all the accused visited so many times to the complainant's office at Parson complex. However, there is no details available with regard to the date (s) of visit.

12.In para 8 of the complaint, it is alleged that the existing arrangements with the external party and South India Music Company Association expired on 1st September 2012. Despite, that the agreement dated 14.09.2012 was entered. It is not known how the complainant came to know that existing arrangement with the external party and South India Music Company's Association expired on 01.09.2012. There is no material produced in this regard. As already stated, there is no details with regard to the criminal intimidation alleged to have been made by petitioner's 2 to 7 in CrI.O.P.No.10985 of 2015 and petitioner in CrI.O.P.No.8958 of 2015. In para 9, it is alleged that second accused Sudha Ragunathan and other accused continuously threatened company's Managing Director. As already stated, there is no detail as to the date of threatening and the details of threatening. The careful reading of the complaint, shows that repeated allegations are made against the accused alleging that they have cheated and criminally intimidated without any specific details and with regard to date and the manner in which they have cheated and criminally intimidated.

13.The reading of the agreement dated 14.09.2012, shows that respondent agreed to pay the minimum guaranteed amount of Rs.8.5 crores, Rs.9.35 crores and Rs.10.285 crores for first, second and third terms. It is agreed between the parties that respondent shall hand over 100% payment to all the labels for first year at the time of signing of the supplementary agreements which shall not be later on 14.09.2012. The agreement shall become operational subject to handing over the cheques and their realization, failing which the agreements shall stand terminated automatically.

14.It is the submission of learned counsel for petitioners that the respondent has not paid the amount as agreed and entered into supplementary agreements. In this regard petitioners produced cheques issued by the respondent to show that the cheques had been dishonoured, meaning thereby that the respondent had not honoured the payment for the first year as



agreed. Petitioners also produced e-mail communications between the first accused and the complainant with regard to the payment, return of cheque etc.

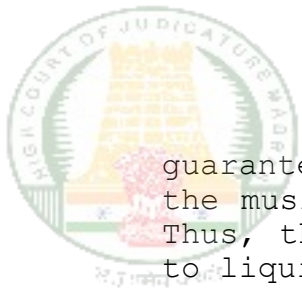
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15. The learned counsel for the respondent submitted that the genuineness of his documents have to be tested only in the trial. Therefore, those documents cannot be looked into now. This contention of the respondent cannot be accepted for the reason that the cheques belong to the respondent and the cheques show that they had been dishonoured.

16. The memos issued by the banks for return of cheques are also produced. The e-mail from the first accused to Manohar Prasad, Joint Managing Director of respondent shows that the cheques issued by the respondent were returned as insufficient funds. Therefore, no payments had been made to labels. It is also brought to the notice of the respondent that, agreement shall become operational subject to the handing over of the cheques and their realization failing which this agreement shall stand terminated automatically.

17. E-mail dated 28.11.2012 from Sharanya Louis on behalf of the respondent to Rajesh of first accused shows that respondent would be receiving finance by this week and requested extension of time for payment until December 15th as three part payments as per the following structure. December 1st - Rs.1 crore, December 2nd week 50% of the remaining, December 3rd week 50% of the remaining. Then on 31.12.2012, a letter was sent from the first accused to the Joint Managing Director of the respondent informing that the respondent has not paid the minimum guaranteed amount of Rs.8.5 crores for the first year as per agreement dated 14.09.2012 and therefore, the agreement becomes automatically terminated. In response to this, letter Sharanya Louis of respondent sent a mail to Rajesh of the first accused requesting to hold the cancellation for a day as respondent is in the process of releasing payment towards SIMCA.

18. Subsequently, respondent sent legal notice to the first accused on 21.04.2015, claiming a sum of Rs.2,70,00,000/- along with an interest at 24%. This was replied by the first accused through a reply dated 09.05.2015. It is mentioned in this reply that respondent failed to honour the contractual payment as per agreement dated 14.09.2012 and the terms of transactional deal memo dated 05.09.2012. It is also claimed that respondent exploited first accused client's musical contents from 1st September 2012 to 31st December 2012. Respondent is liable to pay Rs.1crore towards damages for non payment of entire minimum



guaranteed amount. The exploitation of usage of copy rights of the musical contents for four months, comes to Rs.2,83,00,000/-. Thus, the respondent is liable to pay Rs.10,30,000/- in addition to liquidated damages of Rs.1 crore.

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19.The consideration of the materials placed before this Court, shows that the dispute between the parties is only purely a civil dispute. There is most obviously a breach of contract resulted on the failure of the respondent to pay a minimum guaranteed amount as agreed to be paid by him in the agreement dated 14.09.2012. When the first accused refused to pay the money paid by him, that is Rs.2.7 crores, on the ground that respondent exploited the musical contents of first accused members, it appears that respondent had given this complaint. As already stated, the complaint is bereft of details with regard to the dates on which the accused 3 to 8 said to have threatened him in connection with the agreement, criminally intimidated him etc. The allegations against the accused are generalized in nature and no specific overtact was alleged against each accused. It is apparent that to settle a civil dispute namely a commercial dispute and reclaim his money, respondent converted the dispute as a criminal case by giving a complaint. It is clearly an abuse process of law and it has to be deprecated and discouraged.

20.Clause 8 of the agreement provides for arbitration for resolving any disputes, differences or claims whatsoever related to this agreement. The fact that without resorting to arbitration or civil remedy, filing of the criminal complaint against the petitioners is nothing but an abuse process of law. It would be an harassment to the petitioners, if they are asked to appear before the Court to face the trial, when there is absolutely no offence is made out, even if the complaint allegations are taken as true. The records produced show that it is the respondent who was responsible for the breach of the contract. No grounds are made out for taking cognizance for the offence under Section 420 and 506 (ii) I.P.C. However, the trial Court without considering the dictum laid down in (1998) 5 SCC 749 Pepsi Foods Ltd and another Vs. Special Judicial Magistrate and others, has mechanically taken cognizance of the matter, which, in the considered view of the Court is not correct and liable to be set aside. In this view of the matter, proceedings against the petitioners in C.C.No.980 of 2015 on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai, is quashed.



21. In fine, Criminal Original Petitions in CrI.O.P.No.10985 of 2015 and CrI.O.P.No.8958 of 2015 are allowed. Consequently, connected miscellaneous petitions stand closed.

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Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

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To

1. The XVIII Metropolitan Magistrate,
Saidapet,
Chennai.
2. The Public Prosecutor,
Chennai.
3. The Chief Metropolitan Magistrate,
Egmore, Chennai (For Information)

+2ccs to Mr.S.S.Rajesh, Advocate SR.No.31731

+1cc to Mr.K.R.Ramesh Kumar, Advocate SR.No.31724

CrI.O.P.Nos.10985 & 8958 of 2015
and M.P.Nos.1, 1, 2 of 2015

VSN I(CO)
GMY(06/06/2022)