IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.02.2022

PRONOUNCED ON : 10.03.2022

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.Nos.1295 & 25724 of 2016
and
Crl.M.P.Nos.584 & 12555 of 2016

1.N.Ganesh S/o.Nagarajan
Assistant General Manager (Finance)
Sri Sai Supreme Textiles Private Limited,
Gurumampet, Pondicherry.

2.R.Dhanasegar S/o.Ramalingam
General Manager,
Sri Sai Supreme Textiles Private Limited,
Gurumampet, Pondicherry.

...Petitioners in
Crl.O.P.No.1295 of 2016

R.Sriram ...Petitioner in
Crl.O.P.No.25724 of 2016

.Vs.

1.The Union Territory of Pondicherry
Represented by Inspector of Police,
CBCID, Pondicherry.
(Ref Crime No.7/2014 dt.06.06.2014)

2.K.Bashyam
(the 2nd respondent is impleaded as per
order in Crl.M.P.Nos.10304 & 10390/2018 in
Crl.O.P.Nos.1295 & 25724 of 2016 dt.07.08.2018)

...Respondents in both Crl.O.Ps.

COMMON PRAYER : Criminal Original Petitions are filed under Section 482 Cr.P.C to call for the records and quash the proceedings as against the petitioners pending in C.C.No.145 of 2015 on the file of the Chief Judicial Magistrate, Pondicherry for offences under Sections 420, 423 r/w 34 IPC.

For Petitioners in both the cases : Mr.A.Ramesh Senior Counsel for Mr.C.Arun Kumar

For Respondent No.1 in both the cases : Mr.Balamurugane Additional Public Prosecutor

For Respondent No.2 in both the cases : Mr.K.Balu

COMMON ORDER

Both the petitions have been filed to call for the records in C.C.No. 145 of 2015 on the file of the Chief Judicial Magistrate, Civil Judge (Senior Division), Pondicherry and to quash the same.

2.Petitioner in Crl.O.P.No.25724 of 2016 is the first accused and the petitioners in Crl.O.P.No.1295 of 2016 are the third and fourth accused in the case. The first respondent is the Union Territory of Pondicherry represented by the Inspector of Police, CBCID, Pondicherry and the second respondent is the defacto complainant K.Bashyam.

3.K.Bashyam gave a complaint against the accused in this case alleging that he bought some lands in Chennai, Porur and was leading a happy life. His only son Sri Hariharan died of Heart Attack in 2008. Therefore, he decided to sell the properties in Chennai and settle at his native Pondicherry. Accused V.Sivaraman became his friend in 2010 and became very close. He is short of hearing and does not know English. He sold his property through the accused Sivaraman. Sivaraman deposited the sale consideration in the name of the defacto complainant and his wife. He settled at Pondicherry in 2012. One Chettu @ Jayamoorthi informed him that Sai Supreme Spinners Private Limited factory with it's building is for sale. He brought the former Manager of the Company Baskaran to his house. Then both of them went to the registered office at Sai Ramnath House. The accused Sivaraman accompanied him. Sriram Ramnath was in London. The Assistant General Manager Ganesan made arrangement to contact Sriram Ramnath through Phone. Sivaraman and Sriram Ramnath spoke through phone in English and made the defacto complainant to agree to buy the property for Rs.7.25 crores. Sriram Ramnath informed that if the defacto complainant pays

Rs.25,00,000/- immediately, he can come from London to Pondicherry and execute a sale agreement. Sivaraman took Demand Draft for Rs.25,00,000/-. He asked Sivaraman to find out from Sub Registrar, Villianur with regard to the bank loan before entering into the sale agreement. Sivaraman has not paid any attention to his request and he was bent upon getting money from him and handing over to Sriram Ramnath. A sum of Rs.62,00,000/- was paid through Demand Draft. On 26.09.2012, a sale agreement was prepared by Sriram Ramnath and Sivaraman in English acknowledging the receipt of Rs.1, 86,40,000/-. He told that sale agreement would be registered, instead the sale agreement was executed in the presence of Notary Advocate G.K.Govindasamy. Sriram Ramnath informed him that a loan amount of Rs.2.75 crores is charged on the property and he would clear the loan before 10.11.2012, get the document and execute a sale deed. He requested him to pay the advance for paying the loan amount. The defacto complaint, on believing him, paid Rs.94,00,000/- on various dates after the agreement. Totally a sum of Rs.2,80,40,000/- was paid. However, Sriram Ramnath has not come forward to complete the sale before 10.11.2012. On enquiry, he found that there is a loan more than 4 crores pending against the property. Indian Bank took possession of the property on 23.09.2011 and taking steps to realize the loan amount by selling the property. He came to know that Sriram Ramnath has not paid the sum of Rs.2,80,40,000/- received from the defacto complainant to Bank. When Sivaraman enquired this to Sriram Ramnath, he informed that if he pays the loan amount to the Bank, they could get the document and sale would be completed. He informed the General Manager Dhanasekaran and the accountant Manager Ganesan that he is prepared to pay the balance sale consideration of Rs.4,44,60,000/- and asked them to execute the sale deed immediately. They told him that since the agreement period is over, the sale deed would be executed only if an additional sum of Rs.40,00,000/- is paid as interest. The accused had cheated the defacto complainant, after knowing that Indian Bank took possession of the property, by entering into the sale agreement and getting money from the defacto complainant. Therefore, this complaint was given. On the basis of this complaint, the first respondent registered first information report against the accused for offences under Sections 420, 423 IPC r/w 34 IPC. After completion of the investigation, final report was also filed. Challenging the said final report, this criminal original petition has been filed for quashing the criminal case.

4.The learned counsel for the petitioners submitted that it is not as though the second respondent /defacto complainant was not aware of the pending loan against the property sought to be sold. The second respondent was informed about the pending encumbrance of loan orally and it is also specifically mentioned in the sale agreement. Since the bank was taking steps to sell the property, the first accused wanted to sell the property immediately and entered into the sale agreement with the second respondent/defacto complainant. The sale was to be completed on or before 10.11.2012. The defacto complainant has not come forward to pay the sale price and complete the sale. The first accused was always ready and willing to receive the balance sale consideration and complete the sale before 10.11.2012 but it was the defacto complainant, who was not ready with the money and that caused all the problems. It is evident from the various communications between the parties. Important details are suppressed in the complaint. Company is the owner of the property but it is not added as an accused. Because of the false complaint and one of the staff member was arrested. The first accused has discharged the loan only on 06.08.2012 because of the litigation. A civil litigation is converted as a criminal prosecution and the accused/petitioners are maliciously prosecuted. Thus the learned counsel for the petitioners prayed for quashing the case in C.C.No.145 of 2015.

5.The learned counsel for the petitioners relied on the following judgments in support of his submission that Company must be added as an accused.

(i).*R.Kalyani Vs.Janak C.Mehta and others* reported in *(2009) I Supreme Court Cases 516*, wherein, the relevant paragraph Nos.41 & 42 are extracted hereunder:

> *"41.If a person, thus, has to be proceeded with as being variously liable for the acts of the company, the company must be made an accused. In any event, it would be a fair thing to do so, as legal fiction is raised both against the company as well as the person responsible for the acts of the company.*
>
> *42.For the reason aforementioned, we do not find any legal infirmity in the impugned judgment."*

(ii).*Sharad Kumar Sanghi Vs. Sangita Rane* reported in *(2015) 12 Supreme Court Cases 781*, wherein, the relevant paragraph Nos.12 & 13 are extracted hereunder:

> "12.*At this juncture, it is interesting to note, as we have stated earlier, that the learned Magistrate while passing the order dated 22.10.2001, had opined, thus:*
>
> *"It appears prima facie from the complaint filed by the complainant, documents, evidence and arguments that the accused company has committed cheating with the complaint by delivering old and accidented vehicle to her at the cost of a new truck. Accordingly, prima facie sufficient grounds exist for registration of a complaint against the accused under Section 420 IPC and is accordingly registered."*
>
> *13.When the company has not been arraigned as an accused, such an order could not have been passed. We have said so for the sake of completeness. In the ultimate analysis, we are of the considered opinion that the High Court should have been well advised to quash the criminal proceedings initiated against the appellant and that having not been done, the order is sensitively vulnerable and accordingly we set aside the same and quash he criminal proceedings initiated by the respondent against the appellant.*

(iii).Judgment in *Moti Lal Songara vs. prem prakash alias pappu and another* reported in *(2013) 9 Supreme Court Cases 199*, is relied for the proposition that suppression of material facts would dis-entitle the relief.

> *"19.The second limb of the submission is whether in the obtaining factual matrix, the order passed by the High Court discharging the respondent accused is justified in law. We have*

clearly stated that though the respondent was fully aware about the fact that charges had been framed against him by the learned trial Judge, yet he did not bring the same to the notice of the Revisional Court hearing the revision against the order taking cognizance. It is a clear case of suppression. It was within the special knowledge of the accused. Anyone who takes recourse to method of suppression in a court of law, is, in actuality, playing fraud upon the court, and the maxim suppressio veri, expressio falsi i.e.suppression f the truth is equivalent to the expression of falsehood, gets attracted. We are compelled to say so as there has been a calculated concealment of the fact before the Revisional Court. It can be stated with certitude that the respondent -accused tried to gain advantage by such factual suppression. The fraudulent intention is writ large. In fact, he has shown his courage of ignorance and tried to play possum."
and

(iv).Judgment in *International Advanced research Cenre for Powder Metallurgy and New Masterials (ArcI) and others Vs. Nimra Cerglass Technics Private Limited and another* reported in *(2016) I Supreme Court Cases 348*, is relied to highlight the ingredients registered for the prosecution under Section 420 IPC.

" 15.the essential ingredients to attract Section 420 IPC are: (i) cheating; (ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security; and (iii) mens rea of the accused at the time of making the inducement. The making of a false representation is one of the essential ingredients to constitute the offence of cheating under Section 420 IPC. In order to bring a case for the offence

> *of cheating, it is not merely sufficient to prove tat a false representation had been made, but, it is further necessary to prove that the representation was false to the knowledge of the accused and was made in order to deceive the complainant.*
>
> *16.The distinction between mere breach of contract and the cheating would depend upon the intention of the accused at the time of alleged inducement. If it is established that the intention of the accused was dishonest at the very time when he made a promise and entered into a transaction with the complainant to part with his property or money, then the liability is criminal and the accused is guilty of the offence of cheating. On the other hand, if all that is established is that a representation made by the accused has subsequently not been kept, criminal liability cannot be foisted on the accused and the only right which the complainant acquires is the remedy for breach of contract in a civil court. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown at the beginning of the transaction.*

6.Per contra, the learned counsel for the second respondent submitted that the accused had suppressed the material fact that the possession of property was with the Indian Bank even with the sale agreement was executed. It is a material suppression made with the intention to cheat the defacto complainant. The original documents were not in possession of the first accused and he had not taken any steps to get the original documents before the execution of the sale deed. The defacto complainant is short of hearing and he did not know English. He was duped to enter into this agreement and made to part with the money to the accused. It is clear that from the complaint allegations and evidence collected during the course of investigation, the accused had cheated the defacto complainant and they have to face trial.

7.Considered the rival submissions and perused the records.

8.It is seen from the submissions of the parties that the execution of the sale agreement between the first accused and the defacto complainant and his wife is admitted. The sale agreement was executed on 26.09.2012 in the presence of Notary Public. The allegation made by the defecto complainant is that suppressing the loan amount and that Indian bank had taken possession of the property and taken steps to sell the property, the first accused had entered into the sale agreement with him and made him to part with the money. On the other hand, the case of the first accused is that the defacto complainant was informed about the existing loan liability with the Indian bank and only to get out of the loan liability, he wanted to sell the property.

9.The reading of the sale agreement dated 26.09.2012 between the first accused and the defacto complainant and his wife shows that the agreement was entered into for the purchase of the land to an extent of 03 kani, 59 kuzhi, 1 veesan and 43 787sq.ft of ACC cement roof factory shed and building from M/s. Sri Sai Supreme Textiles Private Limited., represented by its Managing Director Sriram Ramnath, who is the first accused in this case. The sale consideration was fixed at Rs.7,25,00,000/-. A sum of Rs.1,86,40,000/- was agreed to be paid immediately as advance. The balance sale consideration of Rs.5,38,60,000/- to be paid to the vendor on or before 10.11.2012. Among other terms, term No.10 reads that " the vendor declares that it has created charge on the schedule mentioned properties by way of availing loan from Indian Bank, Pondicherry and the vendor undertakes to clear all the dues with the bank within the aforesaid period. Term No.12 reads that the parties agree that Time is the essence of this agreement and the sale will be completed after full payment as described above is received as full consideration on or before 10.11.2012." These two terms of the agreement make it explicitly clear that the time for the performance of contract was consciously made essence of the agreement. The sale has to be completed on or before 10.11.2012. It is also made clear that the first accused had clearly informed by incorporating a clause to the second respondent/defacto complainant that he has created charge over scheduled mentioned properties by way of availing loan from Indian Bank Pondicherry and he undertakes to clear all the dues with the Bank within the aforesaid period.

10.It is submitted by the learned counsel for the petitioner/first accused that only to get out of the bank loan, the first accused wanted to sell the property. The defacto complainant/second respondent has not come forward to settle the bank dues, and therefore it was not possible to complete the sale.

11.The defacto complainant had sent notice dated 24.12.2012 to the first accused and N.Ganesan demanding performance of the contract. It was responded by the first accused through the letter dated 27.12.2012. It was mentioned in this reply that the defacto complaint was informed about the outstanding due to the Indian Bank. The relevant portion reads that, "What was agreed with the buyer (defacto complainant) was that the balance due to the bank or any statutory authorities can be paid by them directly once they had settled the balance amount to us. In other words, we had made a reasonable proposal that they settle the sale amount of Rs.7.25 crores less what was due to the Indian Bank and other statutory dues to us. In fact, your client requested us to assist him in transferring our liabilities with the bank on to him so that he can just pay the net amount due to him. We were even willing to do so provided he was willing to pay us the difference."

12.However, it is alleged that the defacto complainant delayed the sale process. In fact, the challenge was made to the defacto complainant to produce the Demand Draft for the balance sale amount of Rs.4,56,00,000/- crores on or before 31.12.2012, on which date, the property could be registered. This reply makes it clear that though the time for completion of sale was fixed as 10.11.2012, the first accused extended the time till 31.12.2012 for the defacto complainant to pay the balance sale consideration to settle the Bank loan and to complete the sale process.

13.Again, in a letter dated 11.01.2013, the first accused intimated the defacto complainant that "you were welcome to pay a separate amount in the name of Indian Bank for the loan out standing, so that we can collect the title deeds from them" and sale could be completed on 09.01.2013. Through a letter dated 13.01.2013, the defacto complainant informed the first accused that he would be in a position to clear the loan with the Indian Bank on or before 31.01.2013 and settle the balance sale consideration whereupon the first accused may retrieve the original documents and execute the conveyance in favour of the defacto complainant and his wife after settling the other sundry creditors. This letter by the defacto complainant shows that he was willing to pay the bank loan. Thus, it is clear from these letter communications that the defacto complainant was made aware of pending loan liability with the Indian Bank and in fact, he agreed to settle the bank loan and complete the sale. However, in the complaint dated 06.06.2014, none of these matters find a place.

14.The defacto complainant and his wife filed a suit in O.S.No.7 of 2014 against the first accused for the return of Rs.2,80,40,000/- with interest and for other reliefs. Criminal Crp.PD.Nos.1348 & 1349 of 2014 are filed by the first accused to strike off the plaint in O.S.No.7 of 2014. The order was passed referring the matter to Mediation and Conciliation Centre. This suit was filed and order in Crp.PD.No.1348 & 1349 of 2014 was passed prior to giving the complaint on 06.06.2014 but none of these proceedings are referred in the complaint. Even in the complaint, it is alleged that the first accused informed him about the Bank loan to the tune of Rs.2.75 crores pending with the Indian Bank. It is also claimed that he paid money to settle the bank loan.

15.As a purchaser, the defacto complainant should have verified the exact loan amount and then proceeded with the sale agreement. He has not taken care to do that despite he was informed about the pending loan due with Indian Bank. The complaint allegation and other letter communications between the parties show that the defacto complainant was clearly informed about the pending loan due with Indian Bank and only after knowing the loan, he entered into the sale agreement with the first accused. There is no intention to cheat the defacto complainant either on the part of the first accused or on the part of the other accused.

16.One more important aspect is that as per the sale agreement, M/s Sri Sai Supreme Textiles Private Limited., is the owner of the property. It is represented by its Managing Director R.Sriram Ramnath. However, the defacto complainant/ second respondent has not shown Sri Sai Supreme Textiles Private Limited, as an accused in the complaint. As found from the judgments referred above, it affects the very basis of the case.

17.For the reasons aforesaid, this Court is of the considered view that a civil litigation is sought to be converted as a criminal litigation by the defacto complainant. The ingredients to prosecute the petitioners for the offences under Sections 420, 423 IPC r/w 34 IPC are not made out in this case and therefore, the continuance of criminal case in C.C.No.145 of 2015 against the petitioners would be a futile exercise. In this view of the matter, the proceedings against the petitioners in C.C.No.145 of 2015 pending on the file of the Chief Judicial Magistrate, Civil Judge (Senior Division) is quashed. Accordingly, these criminal original petitions are allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

sms

To

1.The Chief Judicial Magistrate,
Civil Judge (Senior Division)
Pondicherry.

2.The Inspector of Police,
The Union Territory of Pondicherry,
CBCID, Pondicherry.

3.The Public Prosecutor Puducherry,
High Court, Madras.

+2cc to Mr.C.Arun Kumar, Advocate, S.R.No.16408

Crl.O.P.Nos.1295 & 25724 of 2016
and
Crl.M.P.Nos.584 & 12555 of 2016

CP(CO)
RN(22/03/2021)