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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON 02.03.2022	ORDERS PRONOUNCED ON 04.04.2022
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CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

CRL.O.P.NOS.15662 OF 2015 AND 16412 OF 2015
AND

M.P.NOS.1 OF 2015 AND 1 OF 2015

CRL.O.P.NO.15662 OF 2015

1. M/s.Virudhunagar S.Vellaisamy Nadar,
Polytechnic College,
Represented by its Principal,
Ramesh Kumar,
Rosalpatti, Virudhunagar.

2. Nagendran,
(Previously) Principal,
Virudhunagar S.Vellaisamy Nadar,
Polytechnic College,
Rosalpatti, Virudhunagar.

... Petitioners/A1 & A2

.Vs.

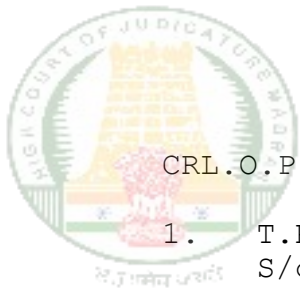
S.Karthikeyan,
Prop. C.Card Systems,
31, 1st Floor Bharath Bavan Road,
Mettupalayam - 641 301.

Presently having office at
B10/44, Rubini Apartment,
Venkidasamy Street, Bungalowmedu,
Mettupalayam - 641 301,
Coimbatore District.

... Respondent

PRAYER:-

Cr1.O.P.No.15662 of 2015 is filed under Section 482 Cr.P.C. to call for the records of the case pending in C.C.No.35/15 on the file of Judicial Magistrate, Mettupalayam and to quash the same so far as petitioners/A1 and A2 are concerned.



CRL.O.P.NO.16412 OF 2015

1. T.K.S.P.A.Shanmugamoorthy,
S/o.TKSP Arunachala Nadar,
Secretary,
S.Vellaisamy Nadar Polytechnic College,
(previously), Virudhunagar.
2. Kumaresan, S/o.C.S.Karuppiyah,
Public Relationship Officer (previously),
Virudhunagar.

... Petitioners/A3 & A6

.Vs.

S.Karthikeyan,
Prop. C.Card Systems,
31, 1st Floor Bharath Bavan Road,
Mettupalayam - 641 301.
Presently having office at
B10/44, Rubini Apartment,
Venkidasamy Street, Bungalowmedu,
Mettupalayam - 641 301,
Coimbatore District.

... Respondent

PRAYER:-

Crl.O.P.No.16412 of 2015 is filed under Section 482 Cr.P.C. to call for the records of the case pending in C.C.No.35/15 on the file of Judicial Magistrate, Mettupalayam and to quash the same so far as petitioners/A3 and A6 are concerned.

For Petitioners	:	Mr.M.Dinesh
In both Crl.O.P's		For Mr.G.Mariappan
For Respondent	:	Mr.S.Karthikeyan
In both Crl.O.P's		(Party-in-person)

COMMON ORDER

These Criminal Original Petitions have been filed to call for the records in C.C.No.35/15 on the file of Judicial Magistrate, Mettupalayam and to quash the same insofar as petitioners/A1, A2, A3 and A6 are concerned.

2. The complaint in C.C.No.35 of 2015 has been filed under Section 200 of Cr.P.C., for the offences under Sections 120-B,



406, 417 and 420 of IPC. The allegations made in the complaint, in brief, are as follows:-

The respondent/defacto complainant is running a business of Civil Engineering Software Equipments and Machineries under the name and style of "C CAD Systems". It is dealing with all the civil engineering testing machineries. First Accused (A1) is a polytechnic college, second accused (A2) is its Principal, third accused (A3) is its Secretary. Second and third accused are jointly responsible for the affairs of management and incharge of officers of first accused. Fourth accused (A4) is a senior lecturer in Civil Department. Fifth accused (A5) is Head of the Department and the Sixth accused is a Public Relation Officer in the first accused. Fourth accused contacted the respondent for supply of Torsion Testing Machine 20kg and a microprocessor based UTM 40 Ton capacity machine for their institution. On 08.05.2010, respondent gave a proposal offer to the first accused. Accused 2 to 6 personally called the respondent for final discussion for the purchase of machineries and on 17.12.2020, after elaborate discussion, accused 2 to 6 agreed to purchase the machineries from the complainant for Rs.9,00,000/- (Rupees nine lakhs only). On 18.12.2010, third accused sent a purchase order and on 24.12.2010, he deposited a sum of Rs.4,50,000/- as advance and assured to pay the balance amount later. Complainant sent machine foundation drawings to the first accused in first week of January 2011, to execute the foundation of machines. Accused 2 to 6 failed to execute the machine foundation as per the drawing till March 2011. Complainant supplied the first machinery ie., Torsion testing machine 20kg to the first accused and that was acknowledged on 02.03.2011. Microprocessor based UTM 40 (HEICO brand) was supplied to the first accused and acknowledged on 25.05.2011. Even after receiving the machineries, accused 2 to 6 have not taken steps to make foundation to install the machineries. A letter dated 17.06.2011 was sent making unnecessary new terms that accused would pay the balance amount only after completion of installation of machineries, calibration and drawing. That was replied by the complainant on 28.06.2011, denying new terms with the advise to follow the existing terms in the purchase order. Complainant sent his personal wooden tool box containing 15 items of tools, along with the machineries, that was acknowledged by A4 and A5. On 06.07.2011, on completion of installation of machineries, he tried to take his tools and accessories with him. Accused 3 to 6 jointly, in connivance, against the complainant, forced and restrained the complainant from taking his belongings. He was unnecessarily compelled to wait in the premises of A1 till 10.30p.m. Action of all the accused are against the interest of complainant. Accused have no right to retain the tools and accessories in the premises of first accused for more than past two years. Complainant sent a



letter on 18.07.2011 and that was received by the accused on 21.07.2011. Without returning the tools and accessories, accused just sent the cheque for Rs.4,50,000/-. On 03.08.2011, complainant sent a notice calling the accused to return the tools and accessories and to settle the complainant's claim in full. He returned the cheque for Rs.4,50,000/-. On 13.09.2011, A2 and A3 sent a reply claiming that tools are attached with machineries. Later, they contacted the complainant and negotiated for amicable settlement and agreed to return back the complainant's things, but they have not done so. Therefore, the complaint.

3. After recording the sworn statement of complainant and evidences of PW.1 and PW.2, learned Judicial Magistrate, Mettupalayam had taken cognizance of the case against the accused 1 to 6 for the offences under Sections 120-B, 406, 417 and 420 IPC. Challenging the taking cognizance of the case, petitioners have filed these petitions for quashing the proceedings against them.

4. Petitioners in Crl.O.P.No.15662 of 2015 are the accused 1 and 2 and petitioners in Crl.O.P.No.16412 of 2015 are the accused 3 and 6 in C.C.No.35 of 2015. Learned counsel for the petitioners submitted that there was a contract between the parties with regard to purchase of machineries. The dispute is purely civil in nature. The case of respondent is that the tools and accessories are not covered under the contract, but the case of petitioners is that the tools and accessories are covered in the contract and included in the invoice and they cannot be separated from the machineries. Out of total sum of Rs.9,00,000/-, Rs.4,50,000/- was paid as advance. The balance Rs.4,50,000/- was sent to respondent through cheque and the cheque was returned by respondent. Respondent had blocked the account and therefore, the sum could not be credited into his account. Respondent lodged a complaint with Virudhunagar East police station and after enquiry, the complaint was closed as civil dispute. First accused had given a complaint before the District Consumer Disputes Redressal Forum, Srivilliputhur in C.C.No.33 of 2012 alleging non-satisfaction with regard to functioning of machineries. The sum of Rs.4,50,000/- was deposited in the District Consumer Disputes Redressal Forum, Srivilliputhur by Demand Draft No.667836. None of the offences under Sections 120-B, 406, 417 and 420 IPC have been made out against the petitioners. In support of his submission, learned counsel for the petitioners produced the judgment reported in 2006(4) CTC 60 (Indian Oil Corporation ..vs.. NEPC India Ltd., others) for the proposition that the civil disputes cannot be converted into criminal cases and in such circumstances, the proceedings are liable to be quashed. The relevant paragraph is extracted hereunder:-



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"9. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few - Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre [1988 (1) SCC 692], State of Haryana vs. Bhajanlal [1992 Supp (1) SCC 335], Rupan Deol Bajaj vs. Kanwar Pal Singh Gill [1995 (6) SCC 194], Central Bureau of Investigation v. Duncans Agro Industries Ltd., [1996 (5) SCC 591], State of Bihar vs. Rajendra Agrawalla [1996 (8) SCC 164], Rajesh Bajaj v. State NCT of Delhi, [1999 (3) SCC 259], Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [2000 (3) SCC 269], Hridaya Ranjan Prasad Verma v. State of Bihar [2000 (4) SCC 168], M. Krishnan vs Vijay Kumar [2001 (8) SCC 645], and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [2005 (1) SCC 122]. The principles, relevant to our purpose are :

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused. For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few



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ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

5. In response, respondent, who appeared as party-in-person, submitted that the tool kit and accessories do not form part of the machineries supplied, as per the contract. The quotation and purchase order do not show that the tool kit and accessories form part of the machineries supplied and when that be the case, retaining tool kit and accessories against the will of the respondent by force is a criminal offence, liable to be prosecuted. Accused 3 to 6 had forced and restrained the complainant from taking the tools and accessories and kept it in the premises of first accused for more than two years. He is also not paid the balance consideration of Rs.4,50,000/-. Thus, he submitted that the accused had committed offences punishable under Sections 120-B, 406, 417 and 420 IPC.

6. Considered the rival submissions and perused the records.

7. From the facts of the case narrated above, it is clear that there are some admitted facts. They are:

1. Agreement was entered into between the respondent and petitioners for the supply of two machineries at the costs of Rs.9,00,000/-.
2. Supply of machineries is accepted.
3. Payment of Rs.4,50,000/- as advance prior to supply of machineries is accepted.



4. Sending cheque of Rs.4,50,000/- towards balance price after supply of machineries and its return by the respondent is accepted.

8. The issue here is that it is claimed by the respondent that the tools and accessories used for installation of machineries are his personal properties and they do not form part of machineries supplied. This contention of the respondent is refuted by the petitioners and their case is that the tools and accessories also form part of the machineries supplied and therefore, they belong to them and they have right to retain them. Respondent drew the attention of this Court to the proposal dated 08.05.2010 for supply of machineries, wherein it is not specifically stated that the tools and accessories would also be supplied. Even the purchase order dated 18.12.2010 do not indicate the supply of tools and accessories. Therefore, it is apparent that the tools and accessories would not form part of the supply of machineries and retaining respondent's personal tools and accessories used for installation of machineries by force would certainly attract the offences aforesaid. As narrated above, of the total consideration of Rs.9,00,000/-, a sum of Rs.4,50,000/- was paid as advance and a sum of Rs.4,50,000/- was paid through cheque after the supply of machineries. Respondent, for the reasons best known to him, had chosen to return the cheque for Rs.4,50,000/-. It is claimed by petitioners that respondent had blocked his account and therefore, this amount could not be deposited in the account of respondent. It is further submitted that the sum of Rs.4,50,000/- was converted as Demand Draft and deposited in C.C.No.33 of 2012 filed before the District Consumer Disputes Redressal Forum, Srivilliputhur by the first accused and it is available there.

9. This case had taken cognizance for the offences under Sections 120-B, 406, 417 and 420 IPC. Section 406 of IPC reads as follows:-

"406. Punishment for criminal breach of trust.—
Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

10. Section 415 of IPC reads as follows:-

"415. Cheating — Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so



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deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat". Explanation—A dishonest concealment of facts is a deception within the meaning of this section. "

11. There is no question of entrustment of any property by the respondent with the petitioners. There is also no question of cheating the respondent fraudulently or dishonestly inducing him to deliver any property. The machineries were supplied as per the agreement between the parties. The only dispute is whether the tools and accessories used for installation of machineries forms part of machineries supplied. As rightly pointed out by the respondent, quotation and purchase order do not specifically mention about the tools and accessories. In the absence of any specific contract regarding the supply of tools and accessories, this Court has to conclude that the machineries supplied do not form part of tools and accessories. Petitioners cannot retain them.

12. The charge against the petitioners is that the personal tools and accessories of respondent were retained by the petitioners by force and against the will of the respondent. It is admitted case of the petitioners that tools and accessories are with them. It is found that tools and accessories do not form part of machineries supplied and the petitioners are not entitled to retain them. Unfortunately this case has not been taken cognizance for the offence of wrongful confinement and extortion. This being the private complaint, charges would be framed against the petitioners after the examination of complainant and witnesses during the course of trial. Complaint shows prima facie case against A3 to A6 is made out that they forced and restrained the respondent from taking his belongings ie., tools and accessories and detained him in first accused premises till 10.30p.m. Thus, this Court finds that there is material available to proceed against A3 to A6 for wrongful confinement and detaining the tools and accessories of the respondent.

13. However, for the reasons aforesaid, this Court finds that there is no material available to prosecute the petitioners for the offences under Sections 120-B, 406, 417 and 420 IPC. Therefore, the case taken cognizance for the offences under Sections 120-B, 406, 417 and 420 IPC against the petitioners is quashed. Learned Judicial Magistrate, Mettupalayam is directed to proceed against A3 and A6/petitioners in Crl.O.P.No.16412 of 2015 for wrongful confinement and extortion.



14. In fine, Crl.O.P.No.15662 of 2015 is allowed and the case against the petitioners/A1 & A2 in C.C.No.35 of 2015 is quashed. Crl.O.P.No.16412 of 2015 is allowed in part that the case taken cognizance for the offences under Sections 120-B, 406, 417 and 420 of IPC is quashed. Learned Judicial Magistrate is directed to proceed against the petitioners/A3 & A6 for wrongful confinement and extortion under Sections 340 and 384 IPC. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

1. The Judicial Magistrate,
Mettupalayam.
2. The Public Prosecutor,
Madras High Court,
Chennai.

+4ccs to Mr.G.Mariappan, Advocate, S.R.Nos.23309 & 23310

CRL.O.P.NOS.15662 OF 2015
AND 16412 OF 2015

MT(CO)
PBS/13/04/2022