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Crl.O.P.No.27100 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.27100 of 2016

and

Crl.M.P.No.13720 of 2022

Deepak Ghosh, Age 45
Son of Late Jatindranath Ghosh,
Proprietor of M/s.Annapurna Rice Mill, Village-Kolabagan,
Post Office Habibpur,
Police Station – Ranaghat,
District – Nadia, West Bengal Pin-741201.

... Petitioner

Vs.

Energex System (I) Pvt. Ltd.,
Represented by its Proprietors,

1.Mathu Philips,
Director Energex System (India) Pvt. Ltd.,
No.04/01, 5th Cross Road,
Hitchins Roax, Cooke Town,
Bangalore 560 084, Karnataka.

2.Devamony Paramasadu,
Director Energex System (India) Pvt. Ltd.,
No.832/3, PD Road, Annamalai Nagar,
Hosur - 635 126, Tamil Nadu.

3.Jill A.Terrace,

1/8



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Director Energex System (India) Pvt. Ltd.,
Nasamony Alex Cottage,
Shiva Temple Road,
Nagashettihalli,
Bangalore 560 094, Karnataka.

... Respondents

PRAYER: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the entire records connected within C.C.No.5648 of 2016, on the file of the Second Court of Judicial Magistrate, Hosur, Krishnagiri District and quash the same.

For Petitioner : Mr.A.Raja Mohamed

For Respondents : Mr.C.Gunasekaran (for R1 & R2)
Legal aid Counsel

Mr.S.Vijayakumar (for R3)

ORDER

The Petitioner, who is Accused in C.C.No.5648/2016, facing trial on a private complaint filed by the Respondent for the offences under Sections 208, 420 & 465 of IPC.

2.The contention of the Petitioner is that the Petitioner placed orders with the Respondent for the supply of boiler for his rice mill viz., Annapoorna Rice Mills. The price fixed at Rs.13,75,000/-. The Petitioner



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paid advance in instalments viz., a sum of Rs.4,00,000/- on 20.02.2012 and sum of Rs.5,00,000/- on 08.03.2012 and another a sum of Rs.5,02,500/- on 08.03.2012. The respondent had received the same and also acknowledged it by way of receipt Nos.39, 40 & 41. Thereafter within the stipulated time, the Respondent was unable to deliver the boiler. Hence the Petitioner sent a legal notice dated 15.12.2012, cancelling the agreement order and calling upon the Respondent to pay a sum of Rs.26,50,500/-. Thereafter, the Respondent sent a reply on 02.01.2013, in which the Respondent admitted about non-supply of the boiler within the stipulated period and for various reasons on their side. Further, he acknowledged the receipt of Rs.14,02,500/- and also issuance of receipts. Thereafter Petitioner filed complaint before the State Consumer Disputes Redressal Commission, West Bengal in C.C.No.19 of 2013. The Respondent entered appearance through his counsel viz., Mr.Falguni Badhopadhyay, who filed vakalath. He participated in the proceedings before the State Consumer Disputes Redressal Commission and later absented. Thus, State Consumer Disputes Redressal Commission by its order dated 29.09.2015, directed the Respondent to pay a sum of Rs.13,75,000/- as compensation, within 30



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days, further to pay a sum of Rs.3,00,000/- as compensation and also imposed costs. Against which, the Respondent filed Appeal before the National Consumer Disputes Redressal Commission in First Appeal No.341 of 2016. At that time, the National Consumer Forum questioned the Petitioner as to whether any police complaint filed to substantiate that the purchase order unilaterally cancelled. For this reason, the present complaint has been filed as though the Petitioner produced forged invoice before the State Consumer Forum, wherein the signature of the Respondent is disputed. The Petitioner thereby committed offence of forgery and cheating. The complaint on the face of it is not maintainable.

3.The case of the respondent is that the forged documents have been produced before the Consumer Forum and sanction order under Section 195 of IPC has not been obtained in this case. The trial Court has entertained the same, which is against the law. From the admitted facts, it is seen that this Petition is nothing but harassment and abuse of process of law.



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4.Learned counsel for the Respondent submitted that the specific case of the Respondent is that the Petitioner forged invoices and receipts, the 3rd Respondent denied his signature found in the proforma invoice. The Petitioner had unilaterally cancelled the orders placed and thereby made the respondent to suffer huge loss. The Petitioner for the purpose of availing loan from the Union Bank of India, chose to project as if he is installing boiler and placed order. After availing loan from Union Bank of India, had cancelled and thereafter, approached the State Consumer Forum, taking advantage of the Respondents, who are the resident of Hosur and thereafter obtained an order. The issue raised by the Petitioner are factual in nature, which to be decided during trial.

5.Considering the submissions made by the learned counsels and perusal of records, it is seen that the Petitioner had placed orders for supply of boiler for his Rice Mill for which an agreement entered between the parties. The boiler price fixed at Rs.13,75,000/-. The Petitioner had paid advance on three occasions viz., 20.02.2012, a sum of Rs.4,00,000/-, on 08.03.2012 a sum of Rs.5,00,000/- and Rs.05,02,500/-, in total a sum of



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Rs.14,02,500/- has been paid, which is acknowledged by receipts.

Thereafter, Respondent failed to supply the boiler. The Petitioner had taken loan from the Union Bank of India for the purchase of machinery for his rice mill, as the machine was not supplied, he had faced difficult situation with the Bank authorities. For this reason, the agreement was cancelled. The Petitioner also sent a legal notice on 15.12.2012, which is acknowledged and replied by the Respondent on 02.01.2013, in which the receipt of Rs.14,02,500/- is admitted. Thereafter, now making allegation as though, the Petitioner had unilaterally cancelled, violating the agreement is not proper, added to it, the State Consumer Forum in C.C.19/2013 had found that the Respondent had not supplied the Machinery and hence, ordered for returning of amount. Respondent participated in the proceedings. Thereafter, failed to appear before the State Consumer Forum. Then approached the National Forum, which was also ended in favour of the Petitioner.

6.The complaint ought not to have taken by the Judicial Magistrate on file for the reason that the complaint is filed for the forged documents, which



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have been produced before the State Consumer Forum, which falls under the chapter XI of the IPC, for giving false evidence against public justice. For such offence, the prosecution under Section 195 IPC has to be taken. In this case Respondent had not made any application or complaint before the State Consumer Forum or National Consumer Forum. On the other hand, filed private complaint, which is without sanction and authority, the Court below taking the case on file, without jurisdiction.

7.In view of the same, continuing the proceedings would amount to abuse of process of law. Hence, this Petition is allowed and accordingly, C.C.No.5648 of 2016, on the file of the Second Court of Judicial Magistrate, Hosur, Krishnagiri District is quashed. Consequently, connected Miscellaneous Petition is closed.

15.11.2022

Internet : Yes/No

Index : Yes/No

Speaking order/Non-speaking order

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M.NIRMAL KUMAR, J.

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To

1.The learned Judicial Magistrate,
Hosur, Krishnagiri District.

2.The Public Prosecutor,
High Court, Madras.

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and
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