



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2022

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P.NO.5625 OF 2019

AND

CRL.M.P.NO.3193 OF 2019

B.Shyam Prasad

... Petitioner/Accused

Versus

1. State by
The Inspector of Police,
Crimes,
H-8, Thiruvotriyur Police Station,
Chennai - 600 019.

... 1st Respondent/Complainant

2. C.Vasanth Kumar

... 2nd Respondent/Defacto Complainant

Prayer: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code to call for the records in C.C.No.318 of 2016 pending before the Judicial Magistrate, Thiruvotriyur, Chennai and quash the same.

For Petitioner : Mr.L.Rajasekar

For R1 : Mr.R.Vinothraja
Government Advocate (Crl.Side)

For R2 : No appearance

ORDER

This Criminal Original Petition has been filed seeking to quash the C.C.No.318 of 2016 pending before the Judicial Magistrate, Thiruvotriyur, Chennai.



2. The learned Counsel for the Petitioner invited the attention of this Court to Page No.7 of the Typed set of papers, which is the gist of the charge sheet and also invited the attention of this Court to Page No.11 of the typed set of papers, which is the statement under Section 161 of Cr.P.C. He had also invited the attention of this Court to the date of FIR, which is 31.12.2015 and the charge sheet was filed on 30.11.2016 before the Judicial Magistrate, Thiruvotriyur, Chennai.

3. It is the submission of the learned Counsel for the Petitioner that the Petitioner herein had ordered for purchase of goods from the second Respondent over a period of time. He used to pay regularly for the outstanding of Rs.15,46,577/- and the Petitioner by way of installments paid Rs.3,95,308/- for the outstanding dues. The second Respondent/defacto Complainant had preferred a complaint before the first Respondent/ Thiruvotriyur Police Station. Based on which, FIR in Page No.1 had been registered. In continuation of the FIR, investigation had been completed and laid the final report of investigation before the Court of the learned Judicial Magistrate, Thiruvotriyur. Therefore, the learned Counsel for the Petitioner seeks to quash the charge sheet.

4. The learned Government Advocate (Crl.Side) for the first Respondent submits that admittedly it was a business transaction. In the course of the business transaction, the Petitioner had availed the goods, but, had not paid for the same. As per the complaint, there were outstanding dues from the Petitioner approximately for a sum of Rs.15,00,000/-. Out of which, the Petitioner herein had approximately paid only a sum of Rs.3,00,000/-. For the approximate outstanding amount of Rs.10,00,000/-, he was delaying and evading to pay, which forced the second Respondent/defacto Complainant to approach the first Respondent Police and lodged a complaint. Based on the complaint, FIR was registered. In continuation of the same, investigation carried out and there had been sufficient materials by the Investigation Officer, based on which, final report of the investigation laid before the Court of the learned Judicial Magistrate, Thiruvotriyur.

5. It is the further submission of the learned Government Advocate (Crl.Side) that the submissions of the learned Counsel for the Petitioner is to be considered only before the trial Court during the trial and not at this stage while exercising discretion under Section 482 of Cr.P.C. Therefore, the learned Government Advocate (Crl.Side) vehemently objects to quash the charge sheet and seeks dismissal of this petition as per the reported ruling of the Hon'ble Supreme Court in the case of State of Haryana Vs. Bhajan Lal, the Hon'ble Supreme Court had



deprecated practice of exercising discretion under Section 482 of Cr.P.C. leniently in quashing the FIR and quashing the charge sheets and had issued guidelines for the High Court while exercising discretion under Section 482 of Cr.P.C. It is advised, it shall be used sparingly and not leniently.

6. On consideration of the above ruling, the submissions of the learned Counsel for the Petitioner even though it is reasonable, it is a valuable defence of the accused before the trial Court, where the charge sheet having been filed. By exercising Section 482 of Cr.P.C. leniently, this Court cannot quash this charge sheet at this stage.

7. As has been rightly pointed out by the learned Government Advocate (Crl.Side) there are materials in support of the transaction. The submissions of the learned Counsel for the Petitioner is to be considered only during the trial.

8. The learned Government Advocate (Crl.Side) has also pointed out that at the time of admission of this petition, interim stay was granted by this Court. Therefore, the trial was stayed. In the light of the above, the learned Judicial Magistrate, Thiruvotriyur is directed to proceed with the trial and dispose of the same within a reasonable period of three months from the date of receipt of a copy of this order or from the date of uploading of this order in the website of the High Court.

9. With the above direction, this Criminal Original Petition is dismissed. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
Crimes,
H-8, Thiruvotriyur Police Station,
Chennai - 600 019.



2. The Judicial Magistrate,
Thiruvotriyur,
Chennai.

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

+1cc to Mr.L.Rajasekar, Advocate, S.R.No.25538

Cr1.O.P.No.5625 of 2019
and
Cr1.M.P.No.3193 of 2019

GPL (CO)
RLP (02/05/2022)