



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.04.2022

PRONOUNCED ON : 20.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMARA SUKUMARA KURUP

CRIMINAL ORIGINAL PETITION NO.5412 OF 2019

AND

CRL.M.P.NO.3094 OF 2019

1.S.Arunachalam

2.A.Dinesh

... Petitioners

Versus

1. State represented by
The Inspector of Police,
M-7, Manali New Town Police Station,
Chennai.
(Crime No.11 of 2019)

2. P.P.Babu

... Respondents

Prayer: Criminal Original petition filed under Section 482 of the Code of Criminal Procedure, seeking to call for the records relating to the Crime No.11 of 2019 on the file of M-7, Manali New Town Police Station, Chennai and quash the same by allowing this Criminal Original Petition.

For Petitioners	:	Mr.M.Guruprasad
For R1	:	Mr.R.Vinothraja Government Advocate (Crl.Side)
For R2	:	Mr.A.E.Ravichandran

ORDER

This Criminal Original Petition has been filed to call for the records relating to the case registered in Crime No.11 of 2019 on the file of M-7, Manali New Town Police Station, Chennai and quash the same by allowing this Criminal Original Petition.



2. The learned Counsel for the Petitioners invited the attention of this Court to the averments in the First Information Report filed along with the typed set of copies by the Petitioners. He would further submit that on a perusal of the complaint itself it could be noticed that the dispute is civil in nature which had been converted into a criminal case by invoking criminal laws. It is the further contention of the learned Counsel for the Petitioners that the contractor had purchased substandard material. Therefore, there was dispute between the Petitioners and the Respondents. That is why, the respondent was prevented from proceeding with further construction of the second warehouse.

3. Mr.M.Guruprasad, learned Counsel for the Petitioners submitted the following rulings in support of his contention seeking to quash the First Information Report:-

(1) 2019 (1) MWN (Cr.) 204 SC [Prof. R.K. Vijayasathy and another vs. Sudha Seetharaman and another.

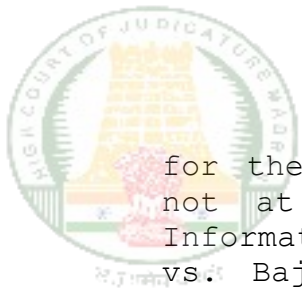
(2) (2015) 7 Supreme Court Cases 423 [Manik Taneja and Another vs. State of Karnataka and Another].

(3) 2019 (1) MWN (Cr.) 204 SC [Prof.R.K.Vijarasathy and other vs. Sudha Seetharam and another]; and

(4) (2015) 7 Supreme Court Cases 423 [Manik Taneja and Another vs.State of Karnataka and Another].

4. The learned Counsel appearing for the Second Respondent/De-facto Complainant strongly objects to the line of arguments of the learned Counsel for the Petitioners seeking to quash the First Information Report. Further, the learned Counsel for the Second Respondent/De-facto Complainant read out from the contents of the First Information Report and submitted that prima facie offences are made out against the Petitioners under Sections 406, 420 and 506(1). After registering the case, the Investigation Officer is proceeding with the Investigation. At that stage, the Petitioners had filed this petition and had obtained stay. Therefore, the Investugation Officer could not proceed further with investigation.

5. The learned Government Advocate (Crl.Side) appearing for the first respondent/Complainant submitted his arguments in support of the De-facto Complainant stating that due to interim stay granted by this Court, the Investigation Officer is unable to proceed with the investigation. There are prima facie materials available. Further, the learned Government Advocate (Crl.Side) submits that the submissions of the learned Counsel



for the Petitioners is to be considered only during trial and not at the stage of investigation. For quashing the First Information Report the Hon'ble Supreme Court in State of Haryana vs. Bajanlal case, has laid down guidelines that are to be followed while invoking the inherent powers of this Court under Section 482 of Cr.P.C., As per the said decision, such powers has to be used sparingly only in case where there are no materials as against the persons against whom the complaint was given and this is not a case to exercise the inherent jurisdiction under Section 482 of Cr.P.C.

6. On perusal of the rulings cited by the learned Counsel for the Petitioners in 2019 (1) MWN (Cr.) 204 (SC), it is found that the Hon'ble Supreme Court had discussed the ingredients under Sections 406 and 420 of IPC. It was held that if those ingredients are found, the Court shall not exercise discretion under Section 482 of Cr.P.C., and quash the First Information Report. If those ingredients are not found, the Court is within its power to quash the First Information Report. Here as per the submission of the learned Government Advocate (Crl.Side) appearing for the first respondent, FIR is the initial complaint where almost all the offences are made out and those offences have to be tried at the time of trial based on the materials collected by the investigation officer. On considering the above, here the ingredients of the offences under Sections 406 and 420 of IPC are made out from the wordings in the FIR. When there is prima facie material not available, only then powers under Section 482 of Cr.P.C., should be exercised and the First Information Report quashed.

7. The ruling relied on by the learned Counsel for the Petitioners in (2015) 7 SCC 423 is for a different offence. It relates to an offence under Section 353 of IPC, for having criticised the Police officials on face book. Sections 506 and 503 of IPC were also included in that case for having committed the offence of criminal intimidation, threat of injury through facebook posts criticising the Police Officials. Therefore, it was held that it is not a criminal intimidation by itself. In the same ruling it was observed by the Hon'ble Supreme Court that Court may quash the FIR where it is found that the complaint itself is an abuse of criminal process even at a preliminary stage. However, it was cautioned that inherent power ought to be exercised judiciously. Routine investigative or judicial process should not be stalled unless abuse is manifest from circumstances.

8. In this case, it is the case of the complainant that he was engaged by the Petitioners herein to construct two warehouses. He was made to believe that they will provide



materials and once he started with the work he was asked to procure materials on his own. The Petitioners undertook to pay the money as per the agreement with the Second Respondent later. The Second Respondent had built one of the warehouses and procured materials for the other warehouse. Subsequently, the Petitioners prevented the Second Respondent from entering into the premises wherein he had to proceed with the construction. At that time, there was outstanding dues with the Petitioners to be paid to the Second Respondent as per the work done by him and as per the materials procured by him at his own cost which he sought from the Petitioners. The Petitioners are said to have adopted delaying tactics. Therefore, the Respondent had no other way than to approach the Police officials.

9. On perusal of the complaint, it is found that the ingredients of Sections 406 and 420 of IPC are attracted. Section 405 of IPC defines criminal breach of trust and Section 406 of IPC is the offence which describes punishment for the criminal breach of trust. Therefore, the Police had rightly included the offences under Sections 406 and 420 of IPC also. The Petitioners, who are the father and son, are alleged to have threatened the Second Respondent/De-facto Complainant with dire consequences which amounts to intimidation. Therefore, Section 506(2) of IPC is also included. The reliance placed upon the reported ruling in 2019 (1) MWN (Cr.) 204 (SC) is not applicable to the facts and circumstances of the present case. For the same proposition, reliance is placed by the learned Counsel for the Petitioners in (2015) 7 SCC 423 [Manik Taneja and Another vs. State of Karnataka and Another. Therefore, the arguments of the learned Counsel for the Petitioners/Accused is liable to be rejected.

10. The learned Counsel for the Second Respondent Mr.A.E.Ravichandran, vehemently objected to the submission of the learned Counsel for the Petitioners and stated that the ingredients of the offences under Sections 406, 420 and 506(2) of IPC are attracted is found acceptable. Particularly, the reliance placed upon by the learned Counsel for the Second Respondent on the guidelines issued by the Hon'ble Supreme Court to the High Courts in exercising the discretion under Section 482 of the Code of Criminal Procedure as per the ruling of the Hon'ble Supreme Court in State of Haryana vs. Bajanlal case, wherein, it was held that routine investigative or judicial process should not be stalled unless abuse is manifest from circumstances.

11. The filing of the present petition by the Petitioners who are the Accused and who are the father and son utilising the services of the De-facto Complainant/R2 viz., P.P.Babu made him



to part with his own hard earned money for the benefit of the Petitioners under the guise of repayment. Later on, not paying the due as per the promise is a breach of trust and cheating which attracts the provisions of Section 406 and 420 of IPC. Added to that, the Petitioners have filed this petition in the year 2019 and stalled and scuttled the investigation for more than three years, after obtaining an order of interim stay at the stage of the admission of the Criminal Original Petition. This is found to be against the guidelines of the Hon'ble Supreme Court invoking powers of High Courts under Section 482 of Cr.P.C., to prevent an abuse of process of Court.

12. Here the Petitioners have exploited the avenue of the High Court and indulged in abuse of the process of the Court, thereby, delaying the investigation and thereby, denying justice to the Second Respondent/De-facto Complainant.

13. In support of his contention, the learned Counsel for the Petitioners relied on the following decisions of the Hon'ble Supreme Court:

- (i) (2015) 7 SCC 423 [Manik Taneja and another -vs- State of Karnataka and another]
- (ii) 2019 (1) MWN (Cr.) 204 (SC) [Prof.R.K.Vijayasathya and another -vs- Sudha Seetharam and another]

As per his submission, the ingredients of breach of contract under Section 405 of the Indian Penal Code is not at all attracted. Further, the offences under Section 406 of IPC - breach of contract and offence under Section 420 of IPC - cheating are contradictory to each other. Section 405 of the Indian Penal Code is extracted as under:

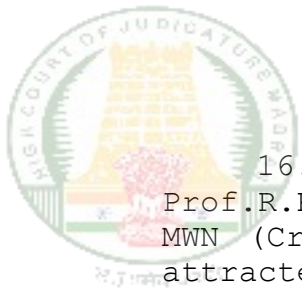
"405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust"."

14. As per the ratio laid down by the Hon'ble Supreme Court in the case reported in 2019 (1) MWN (Cr.) 204 (SC) [Prof.R.K.Vijayasathya and another -vs- Sudha Seetharam and another], if the case of the Second Respondent/De-facto Complainant is assessed, he had purchased goods believing the words of the Petitioners herein, father and son, that they will



pay the amount after completion of the work. The Second Respondent/De-facto Complainant was entrusted with the construction of two warehouses after the initial payment by the Petitioners and the Petitioners made the Second Respondent/De-facto Complainant to believe the words that he will procure the materials for construction of two warehouses on his own. The Petitioners undertook to pay the entire outstanding after completion of the work including the amount for construction and labour cost. Therefore, the Second Respondent/De-facto Complainant undertook the work and completed construction of one warehouse and subsequently procured materials for construction of another warehouse in the same site. The Petitioners herein cleverly restricted/restrained the Second Respondent/De-facto Complainant from entering the premises to proceed with the construction. Therefore, he was forced to give a complaint to the Manali New Town Police Station, based on which, FIR in Crime No.11 of 2019 of Manali New Town Police Station had been registered. The Petition to quash the First Information Register had been filed.

15.As per the submission of the learned Counsel for the Petitioners, the Second Respondent/De-facto Complainant had not handed over any properties attracting breach of contract. The representation made by the Petitioners to the Second Respondent/De-facto Complainant to purchase materials to put up warehouses on his own costs and after completing the construction, they will pay the entire dues itself amounts to criminal breach of trust attracting the ingredients of entrustment of property, materials procured by the Second Respondent/De-facto Complainant at his own costs and keeping it for the construction in the premises handed over by the Petitioners. The overt act of the Petitioners herein - father and son in making the Second Respondent/De-facto Complainant to believe to procure the materials on his own costs and making him to keep it in safe custody in the premises of the Petitioners to put up construction of the warehouses and subsequently restraining the Second Respondent/De-facto Complainant from entering the premises and not allowing him to put up construction of warehouses had caused loss to the Second Respondent/De-facto Complainant of his hard-earned money and also threatening him with dire consequences amount to attracting the provisions of ingredients of Section 405 of IPC. The materials that are in the custody of the premises of the Petitioners are purchased by the Second Respondent/De-facto Complainant. Therefore, the Petitioners had misappropriated the properties which were purchased by the Second Respondent/De-facto Complainant which are contrary to the terms of obligation imposed on the Second Respondent/De-facto Complainant by the Petitioners.



16. In the light of the rulings in the case of Prof. R.K. Vijayasathy -vs- Sudha Seetharam reported in 2019 (1) MWN (Cr.) 204 (SC), the ingredients of Section 406 of IPC is attracted. Further, whether the ingredients of Section 406 of IPC are contrary to the ingredients of Section 420 IPC are to be considered only during trial. As rightly pointed out by the learned Government Advocate (Crl. Side), what had been argued by the learned Counsel for the Petitioners cannot at all be considered at this stage since the investigation had been stayed by the Court as per the interim order granted by this Court. Only when the investigation proceeds, materials collected by the Investigation Officer will result in filing of final report by the Investigation Officer. At this stage, based on legal opinion obtained by the Investigation Officer, the Investigation Officer within his discretion to file appropriate final report under the relevant Sections of Law either under 406 of IPC or 420 of IPC or other provisions under offence "white collar crime". At this stage, if the FIR is quashed, as per the prayers of the Petitioners, it amounts to killing the baby in the foetus as observed by the Hon'ble Supreme Court in the reported ruling in the case of State of Haryana and others -vs- Bhajan Lal and others reported in 1992 SCC (Cri) 426 wherein guidelines had been issued to the High Court with a request that power under Section 482 of Code of Criminal Procedure shall be used sparingly and only if the Court arrives at a conclusion that it is only an abuse of process of Court and not leniently thereby quash the FIR or quash the Charge Sheet amount to kill the baby in the foetus. In the light of the above discussion, the reliance placed by the learned Counsel for the Petitioners is rejected. The arguments of the learned Counsel for the Petitioners are also rejected.

Considering the arguments of the learned Government Advocate (Crl. Side) and the learned Counsel for the Respondent/De-facto Complainant, this Criminal Original Petition is dismissed as not maintainable. The Investigation Officer is directed to proceed with the investigation and file final report of the investigation within a reasonable time before the Court concerned. The interim stay already granted by this Court is ordered to be vacated.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

ssi/srm



To:

1. The Inspector of Police,
M-7, Manali New Town Police Station,
Chennai.

2. The Public Prosecutor,
High Court, Chennai.

Copy To

The Section Officer,
Criminal Section/Records,
High Court, Madras.

+1cc to Mr.A.E.Ravichandran, Advocate, S.R.No.27074

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.27393

Cr1.O.P.No.5412 of 2019

RGN(CO)
RLP(19/05/2022)