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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2022

CORAM

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CRL.O.P.NOS.22497 & 27079 OF 2014

AND

M.P.NOS.1 & 1 OF 2014

CRL.O.P.NOS.22497 OF 2014

Prabir Chatterjee,
S/o. Mr.Deba Prasad Chatterjee,
General Manager,
Euroasian Ventures FZE,
84/1, Russa Road,
East 2nd lane, Tollygunge,
Kolkatta 700033.

...Petitioners / Accused 5

Vs

Coimbatore Pioneer Fertilizers Ltd.,
Rep. by its Executive Director,
Mr.S.Velumani,
Muthugoundanpudur Post,
(via) Sulur,
Coimbatore- 641 406

...Respondents / Complainant

CRL.O.P.NOS.27079 OF 2014

1.Messrs Euroasian Ventures FZE
Rep. by its Direcotor Navneet Manaksia
PO Box 17707
Jafsa view 19, 25th floor,
Office No.7
Jebel Ali Free Zone,
Dubai UAE.

2.Navneet Manaksia
S/o.Mr.Basant Kumar Agrawal
Director M/s.Euroasian Ventures FZE
Rep. by its Dirctor
Navneet Manaksia
PO Box 17707
Jafsa view 19, 25th floor,
Office No.7
Jebel Ali Free Zone,
Dubai UAE.



3.Amitava Ghosh
S/o.Late Sailandra Narh Ghosh Dastidar,
Director, M/s.Euroasian Ventures FZE
Rep. by its Director
Navneet Manaksia
PO Box 17707
Jafsa view 19, 25th floor,
Office no.7
Jebel Ali Free Zone,
Dubai UAE.

4.Pradeep Warriier
S/o.Muriamangalathu Sankara Warriier
Finance Manager
M/s.Euroasian Ventures FZE
Rep. by its Director
Navneet Manaksia
PO Box 17707
Jafsa view 19, 25th floor,
Office No.7
Jebel Ali Free Zone
Dubai UAE.

...Petitioners / Accused 1-4

Vs

Coimbatore Pioneer Fertilizers Limited
Rep. by its Executive Director
Mr.S.Velumani,
Muthugoundanpudur Post,
(Via) Sulur
Coimbatore - 641 406.

...Respondent / Complainant

Prayer in CrI.O.P.No.22497 of 2014 : The Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records relating to the complaint in C.C.No.532 of 2013 on the file of the Judicial Magistrate No.VII, Coimbatore and quash the same as far as the petitioners are concerned.

Prayer in CrI.O.P.No.27079 of 2014 : The Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records and quash the proceedings in C.C.No.532 of 2013 pending on the file of the Judicial Magistrate No.VII, Coimbatore and for offences as against the petitioners.

For Petitioners : Mr.V.Karthic, Senior Advocate,
in both O.Ps. for M/s. Fox Mandal and Associates

For Respondents : Mr.D.Jayasingh
in both O.Ps.



O R D E R

Both the Criminal Original Petitions have been filed to quash the criminal proceedings in C.C.No.532 of 2013 pending on the file of the learned Judicial Magistrate No.VII, Coimbatore, against the petitioners.

2. Totally, there are 5 accused. A1 to A4 filed CrI.O.P.No.27079 of 2014 and A5 filed CrI.O.P.No.22497 of 2014. Since the issue involved in both the CrI.O.Ps is one and the same, they are heard together and dispose of by this common order.

3. The case of the complainant, before the trial Court, is that the complainant engaged in manufacturing the Single Superphosphate Fertilizer and other various products for the fertilizer industry. A1 is a company at Dubai, UAE, dealing with supply of Rock Phosphate and other chemicals required for manufacturing fertilizers. A2 and A3 are Directors. A4 is the Finance Manager and A5 is the General Manager of A1 company. According to the complainant, A1 to A5 has induced the complainant company to place orders for supply of 7000 MT of Rock Phosphate and also received a sum of Rs.2,03,62,569/- from the complainant and assured to deliver 4186 MTS of Rock Phosphate initially and they have agreed to deliver the remaining quantity at Kochi Port. It is condition in the agreement that, they should be send goods in a vessel, which is under 35 years to carry the goods. However, the accused, deliberately, sent the goods in a vessel called M.V.St. Sophia, which was 38 years old and the vessel was not permitted to carry the goods beyond Suez Canal and the goods could not reach the Port as promised by them. In the said circumstances, the complainant was compelled to sell the goods at a throw away price and they could able to realize a meagre sum of Rs.57,29,455/- and they have incurred loss of Rs.1,46,33,114/-. Alleging that the petitioners/accused have cheated the complainant, complainant company had given a complaint before the police. Since no action has been taken, the present private complaint has been filed.

4. Earlier, the complaint was dismissed for non prosecution on 25.10.2013. Challenging the same, the complainant filed a Criminal Revision in CrI.R.C.No. 103 of 2014 before this Court and this Court by an order dated 11.02.2014, set aside the order of dismissal and directed the Judicial Magistrate to receive the complaint and proceed further in accordance with law. Thereafter, the learned Judicial Magistrate taken cognizance of the offence and issue process. Now, to quash the private complaint, the present petitions have been filed under Section 482 of Cr.P.C.



5. Mr.V.Karthic, learned Senior Advocate, appearing for the petitioners/accused submitted that, predominantly, it is a civil dispute between the parties. The agreement entered between the parties containing various conditions, if at all any violation of those conditions, it could be resolved through arbitration and admittedly, the complainant also gone for arbitration and the same is pending. Simultaneously, the complaint giving criminal flavour to the civil dispute filed the present complaint, which is not maintainable.

6. The learned Senior counsel further submitted that as per the agreement, the goods were sent by a vessel, called, M.V.St.Sophia. Earlier, the petitioners booked two vessels, but due to certain exigencies, the same has been cancelled. Subsequently, the goods were sent in another vessel called M.V.St.Sophia. The same was also communicated to the complainant, for which, he has no objection and the vessel set sail to Kochi Port with 4186 MT of Rock Sulphate. But the above vessel has been arrested by its crews at Limasol Port, Cyprus for non payment of salary. Thereafter, the cargo was unloaded and reshipped to Ukraine through another vessel, namely, M.V.Natasha and sold to a Ukranian Company, everything done as per the agreement. In order to harass the petitioners, the defacto complainant has given a criminal colour and filed the present complaint with vague allegations, and no pramafacie case is made out against the petitioners.

7. The learned senior counsel further submitted that entire occurrence has been taken place at Dubai. Hence, under Section 188 Cr.P.C., the complainant should necessarily get a sanction from the Central Government for initiating a criminal proceedings against the petitioners. Without a valid sanction, the offence cannot be enquired into or tried in India. The learned Senior Counsel also submitted that earlier, the complaint was dismissed for non prosecution. However, in a revision petition filed by the complainant, this Court has set aside the order of dismissal and directed the Judicial Magistrate to receive the complaint and proceed further in accordance with law. But, the learned Judicial Magistrate, construed the order as if this Court has directed to take cognizance of the offence, without satisfying himself that any prima facie case is made out against the petitioners to take cognizance and there is sufficient ground available for proceeding against the petitioner, simply issued process, which is not permissible. On that ground also, the private complaint is necessarily be set aside.

8. Mr. V.Selvaraj, learned counsel appearing for the complainant raised a preliminary objection on the maintainability of the present petition under Section 482 of



Cr.P.C. He submitted that earlier, on the revision filed by the complainant against the order of dismissal of the complaint by the Judicial Magistrate, this Court has held that a prima facie case is made out and directed the Judicial Magistrate to receive the complaint and proceed in accordance with law. Pursuant to the order passed by this Court, the learned Judicial Magistrate, took cognizance and issue summons to the accused. Already, this Court, after perusal of materials, has held that a prima facie case is made out against the petitioners, and the order also become final. Now, it is not open to the accused to file the petition to quash the complaint on the ground that no prima facie case is made out against them and hence, the petitions itself are not maintainable, on merits.

9. The learned counsel further submitted that the petitioners, deliberately, loaded the cargo in a old vessel and also knowing the fact that the vessel was engaged in a legal issue. Subsequently, that vessel has been arrested and the complainant was compelled to sell the goods in throw away price and suffered loss. The accused, from the very inception, has an intention to cheat the complainant and hence, the offence under Section 420 of IPC is clearly made out in this case and it is not a civil dispute between the parties. Hence, there is no case made out for quashing the complaint.

10. This Court considered the submissions made on either side and perused the materials available on records carefully.

11. Since a preliminary objection has been raised by the complainant, it has to be considered at the first instance. From the perusal of the records, it could be seen that earlier, after taking sworn statement, the complaint was returned by the Judicial Magistrate, on the ground that, as per the agreement between the parties, the settlement should be resolved by the Arbitrator and the transaction took place in Dubai and the place of discharge is Port of Kochi and hence, the Court has no jurisdiction to entertain the complaint. However, on being satisfied with reasons addressed by the complainant, sworn statement of the complainant was recorded by the Judicial Magistrate on 16.08.2013. Thereafter, for further witness, it was adjourned for various dates and the complainant did not appear and the matter was listed on 25.10.2013. On that date also the complainant absent. Hence, the complaint was dismissed. Challenging the same, the complainant filed a Criminal Revision Before this Court, in CrI.R.C.No.103 of 2014, and this Court by an order, dated 11.02.2014, set aside the order of dismissal and directed the Judicial Magistrate to receive the complaint and proceed further in accordance with law. The relevant portion of the order reads as follows:-

"4. Considering the facts and circumstances,



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I am of the view that a prima facie case has been made out as against these respondents. Hence, the order passed in C.C.No.532 of 2013 on the file of the Judicial Magistrate No.VII, Coimbatore, dated 25.10.2013 is hereby set aside and the learned Judicial Magistrate NO.VII, Coimbatore is directed to receive the complaint of the petitioner and proceed further in accordance with law. "

Thereafter, the learned Judicial Magistrate, by an order dated 05.04.2014, taken cognizance and issue process. The order of the learned Judicial Magistrate reads as follows:-

"05.04.2014:-

Hon'ble High Court set aside the order of this Court and directed this Court to receive complaint. Hence, TOF. Issue S.S. to the accused to appear on 11.06.2014. "

12. From the perusal of the order passed by this Court, it could be seen that, though this Court has stated that a prima facie case has been made out against the accused, ultimately, this Court only directed the Judicial Magistrate only to receive the complaint and proceed further in accordance with law. The Magistrate wrongly construed the order as if this Court has directed the Judicial Magistrate to take cognizance, without even look into the complaint and being satisfied that any prima facie case is made out against the accused and there are sufficient grounds available to proceed against them, simply issued process, and it is also pertaining to note that this Court did not direct the Judicial Magistrate to take cognizance and issue process, but only directed the Judicial Magistrate to proceed further in accordance with law.

13. The learned Judicial Magistrate is expected to look into the complaint and other materials and satisfy himself whether any prima facie case is made out against the accused to proceed further, only thereafter, the learned Judicial Magistrate can issue process. However, the learned Magistrate, straight away issued process, without even taking cognizance of the offence, which is not permissible under law. Hence, the very issue of process itself is illegal.

14. At this stage, the learned counsel appearing for the petitioner, and respondent/complainant submitted that the matter may be remanded back to the learned Judicial Magistrate enabling him to look into the complaint and other materials and decide any materials available to take cognizance against the accused.



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15. Considering those circumstances, without going into the merits of the case, this Court is inclined to set aside the order passed by the learned Judicial Magistrate VII, Coimbatore, and the matter is remanded back, to consider the same afresh.

16. In the result, both the Criminal Original Petitions are allowed and the order passed by the Judicial Magistrate No.VII, Coimbatore, is set aside and the matter is remanded back to the Judicial Magistrate No,VII, Coimbatore. The learned Judicial Magistrate is directed to consider the materials available on records and find out whether any prima facie case is made out against the accused to proceed further and pass suitable order. the above exercise should be completed within a period of 3 months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

mrp

To

1.The Judicial Magistrate No.VII,
Coimbatore,

2.The Public Prosecutor,
High Court, Madras.

+2ccs to M/s.Fox Mandal & Associates, Advocate Sr.No.5547, 5548

CrI.O.P.Nos.22497 & 27079 of 2014

SRA (CO)
RVM(24/02/2022)