IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2022

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

Crl.O.P.No.21428 of 2021 and
Crl.M.P.Nos.11671 & 11673 of 2021

Mohammed Sulaiman Basha

... Petitioner

Vs.

1.State Rep by
Sub-Inspector of Police,
CCB-EDF-I, Team – II,
Vepery, Chennai – 07.
(Crime No.207 of 2018)

2.Annamalaisamy

... Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in C.C.No.6802 of 2019 on the file of the Court of CCB & CBCID learned Metropolitan Magistrate, Egmore, Chennai and quash the same.

For Petitioner	:	Mr.N.S.Sivakumar
For Respondents	:	Mr.A.Damodaran, APP for R1
		No appearance for R2

ORDER

This Criminal Original Petition has been preferred to call for the records in C.C.No.6802 of 2019 on the file of the learned Metropolitan Magistrate, Court of CCB & CBCID, Egmore, Chennai and quash the same.

2. Heard Mr.N.S.Sivakumar, learned counsel for the petitioner and Mr.A.Damodaran, learned Additional Public Prosecutor appearing for the first respondent.

3. The case of the prosecution is that the defacto complainant is running wholesale rice business under the name and style of ATR Exports. The first accused by name Bharath H Shah was introduced to the defacto complainant by the second accused Mohammed Sulaiman Basha who is the petitioner herein, by stating that the first accused was conducting a catering business in the name of Sangeetha Catering at No.72, Market Road, Chromepet, Chennai -44. Between the period from April 2017 to September 2017. On several dates, the first accused purchased rice bags from the defacto complainant on wholesale rates by making part-payments.

3.1. The allegation of the defacto complainant is that the petitioners / accused 2 & 3 have stated that they are conducting catering business together with Bharath H Shah and on that basis, the defacto complainant was persuaded by them to supply lot of rice bags to the first accused. In this regard, the first accused is liable to pay Rs.62,79,920/-. When the second respondent / defacto complainant demanded the said amount, the first accused had given a written undertaking on 22.09.2017 and agreed to give Rs.25,00,000/- on 03.10.2017 and to pay the balance Rs.37,79,720/- on or before 10.10.2017. He also gave two cheques for the said amount on 22.11.2017 and 30.12.2017 respectively and when the cheques were put for collection, they returned as "payment stopped by the drawer". On enquiry, the defacto complainant came to know that there is no such concern called Sangeetha Catering functioning at the alleged address. On coming to know about the enquiries made by the defacto complainant, the first accused threatened the second respondent that he should not make such enquiries. On the basis of the above allegations, a case was registered in Crime No.207 of 2018 for the offence under Sections 420 & 506(i) r/w 120(B) of I.P.C.

4. The learned counsel for the petitioner submitted that it is a pure business transaction between the second respondent and the first accused; even the invoice raised in favour of the first accused would show that the petitioner / second accused is only a salesman of the defacto complainant; a pure business transaction for which a civil suit should be laid for recovery of money have been given with criminal colour; in support of the above contentions, the learned counsel for the petitioner cited the following decisions:

(i) Decision of the Hon'ble Supreme Court reported in 1992 Supp (1) Supreme Court Cases 335.

(ii) Decision of this Court reported in 2008 (2) MWN (Cr.) 271.

(iii) Decision of the Andhra Pradesh High Court reported in 2006 SCC Online AP 1188.

(iv) Decision of this Court reported in 2008 SCC Online Mad 589.

5. The learned Additional Public Prosecutor submitted that only because the second and third accused had persuaded the defacto complainant to supply large scale of rice bags to the first accused, the second respondent supplied them; without any business is conducted in the name Sangeetha

Catering, the first accused made the second respondent to deliver valuable goods at the instigation of the second and third accused; since the investigation would reveal that the offence had been committed due to the joint conspiracy between the accused 1 to 3, the petitioner / second accused should also to be subjected to trial.

6. The fact that the second respondent was conducting wholesale rice business under the name and style of ATR Exports was admitted in the complaint of the second respondent itself. Some of the invoices raised in the name of Sangeetha Catering would show that the salesman at the relevant point of time was the second accused and the third accused is the loadman. The allegation of the second respondent is that the second and third accused also aided the first accused to cheat the second respondent and they also played a role in inducing the second respondent to send rice bags in large quantity to the first accused.

7. The invoices available on record would show that the petitioner / second accused is a salesman who had sold the rice bags on behalf of ATR Exports to Sangeetha Catering. The third accused Ramalingam in his capacity as a loadman has acknowledged the goods and delivered it to the first accused by loading them in a vehicle bearing registration No. TN 22 CY 5537. The transaction was said to have been taken place between the period from April 2017 to September 2017.

8. Admittedly, the second accused is only the staff of the second respondent. The businessman like the second respondent should have his own judgments in assessing the reliability of his own customers who receive the goods on credit basis. It is understandable if the second respondent had delivered a few bags of rice on the recommendation of his staff *viz*., the petitioner / salesman and the loadman Ramalingam. But it is alleged that the second respondent had given goods worth of Rs.62,79,920/- by believing the words of his salesman and loadman and which is unnatural.

9. It is further alleged that the second and third accused were running catering business along with the first accused is also something imaginary. If the second and third accused were running a business on their own along with the first accused, the second accused would not have worked under the second respondent and the third accused would not be involved in loading and unloading the goods with his physical labour. No doubt, the allegations made in the complaint and the materials available on record would show that the transaction is predominantly civil in nature. It might be true that the first accused without having any business of his own in the name of Sangeetha Catering might have induced the second respondent to despatch rice bags on credit basis. But, it is difficult to believe the involvement of the second and third accused to wield that much of influence on the second respondent.

10. It is not the case of the prosecution that the second and third accused without the knowledge of the second respondent had stolen or smuggled the goods from the godown of the second respondent and transferred it to the first accused. But the case of the prosecution is that the staff of the defacto complainant had just induced their master who is the second respondent herein to deliver goods worth of several lakhs to the first accused. In this regard, it is relevant to cite the decision of the Hon'ble Supreme Court held in the case of ***State of Haryana and Others Vs. Bhajan Lal and Others, reported in 1992 Supp (1) Supreme Court Cases 335.*** In the said judgment, seven golden rules have been laid down to invoke the powers of the High Courts under Section 482 of Cr.P.C. In the said judgment, it is held as under:

"(1) Where the allegations made in the first information report or 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 a case against the accused.

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can every reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the Institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge"

11. I feel the facts of this case would fit into the principle No.5 of the above judgment. The improbability of the involvement of the petitioner / second accused and the third accused is patent and it is unnatural on the part of the defacto complainant to deliver goods worth of several lakhs on credit basis to a third party like the first accused. Though it might be true that the first accused had induced the second respondent to deliver goods by making him to believe that he was conducting catering business by name Sangeetha Catering, the second respondent could have verified himself and known that there was no such business concern by name Sangeetha Catering functioned at the address mentioned by the first accused. No doubt, there are some strong materials to show the intention on the part of the first accused to cheat the defacto complainant. However, there is no reliable materials produced against the second accused and third accused to make out any cognizable case. In such case, no purpose can be achieved by subjecting the second and third accused for trial. Hence I feel it is an appropriate case where the charge sheet should be quashed against the second and third accused alone. Though the petition has been filed by the petitioner / second accused alone, in view of the facts, circumstances and the materials available on record, I feel the benefit can be extended to the third accused as well.

12. In the result, this Criminal Original Petition is allowed and the proceedings in C.C.No.6802 of 2019 pending on the file of the learned Metropolitan Magistrate, Court of CCB & CBCID, Egmore, Chennai, is quashed as against the petitioner / second accused and the third accused alone.

So far as the case against the first accused is concerned, the trial shall go on.

Consequently, connected miscellaneous petitions are closed.

Index: Yes/No **28.09.2022**
Speaking / Non Speaking Order
gsk

To

1.The Metropolitan Magistrate,
Court of CCB & CBCID,
Egmore, Chennai.

2.The Sub-Inspector of Police,
CCB-EDF-I, Team – II,
Vepery, Chennai – 07.

3.The Public Prosecutor,
High Court, Madras.

R.N.MANJULA, J.

gsk

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