



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2022

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No.27461 of 2017
and CRL.M.P.Nos.15687 &15688 of 2017

1.Yogendra Vasupal

2.Sachit Singhi

... Petitioners/Accused No.1 & 2
Vs.

1. State represented by
The Inspector of Police,
Central Crime Branch-EDF-II, Team IV,
Vepery, Chennai.
(Crime No.71 of 2017)

... 1st Respondent/Complainant

2.Aditya

... 2nd Respondent/
defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code,praying to call for the records of the Impugned charge sheet/case in C.C.No.8790 of 2017 on the file of the Learned Special Metropolitan Magistrate Court for CCB&CBCID Cases, Chennai and to quash the same.

For Petitioners : Mr.A.Ramesh, Senior Counsel
for Mr.K.Rajamanickam

For Respondents : Mr.S.Vinoth Kumar for R1
Government Advocate(Crl.Side)
Mr.V.Karthik, Senior Counsel
for Mr.D.Sankar for R2

ORDER

This Criminal Original Petition has been filed to quash the final report filed by the respondent police for the offence under Section 420 of IPC r/w 34 of IPC.

2. The crux of the prosecution is that the petitioners are the Directors of Inasra Technologies Private Limited and have given the job of looking after the advertisement of his company to the defacto complainant proprietorship called Aditya of



Jigsaw Advertising and Solutions. The main service of the company is Outdoor Advertisement, Airline sheet baggage, tag Advertisement and also consultancy. The accused/petitioners, in the year 2015 sought services of the defacto complainant for Outdoor and Airline Advertisement from the month of January 2016 to June 2016. As per the order, the defacto complainant has raised the bill from February 2016 till May 2016 totally to the tune of Rs.1,69,36,735/-. However, after availing the services, the petitioners had not paid the amount. On the other hand, they caused criminal intimidation to the defacto complainant. Thereby, they committed offence under Sections 406, 420 and 506 (ii) of IPC.

3. The learned senior counsel appearing for the petitioners submitted that there is no offence made out and final report itself would indicate that there were business dealings between the parties from the year 2014 and final report has been filed only with regard to the pending bills relating to the year 2016. Though, there were business transactions to the tune of Rs.8 crores, more than Rs.6 crores has already been paid. Only some defaults were made in subsequent years, thereby, a criminal case has been pressed into service. Hence, it is his contention that there is no deception played by the petitioners/accused to constitute any offence under Section 420 of IPC. Similarly, mere non-payment of certain amount in the business transaction will not constitute any offence under Section 420 of I.P.C. Therefore, even the proceedings filed by the mother of the respondent before the Hon'ble Apex Court clearly indicates that the criminal case is not with regard to the recovery of money but only with regard to the alleged threat made by the petitioners. Therefore, the entire case is nothing but abuse of process of law and do not constitute any offence. Hence, the same has to be quashed.

4. Per contra, the learned Senior Counsel for the defacto complainant submitted that the final report itself indicates that a sum of Rs.1,72,36,735/- has not been paid and there are prima facie materials available to show that the accused has played deception and fraud on the defacto complainant. Therefore, when the final report itself indicates that there was intention on the part of the accused to deceive the defacto complainant, this Court cannot make a roving enquiry on the validity of the statements at this stage. Hence, the final report cannot be quashed at this stage.

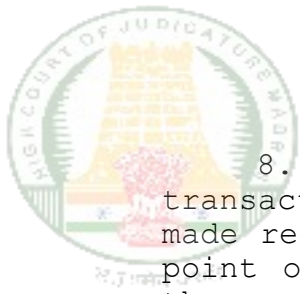
5. This Court has perused the entire materials available on record. This Court is aware of the fact that the FIR or final report cannot be quashed as a matter of right. At the same time, if the entire final report is nothing but motivated and criminal colour is given in the civil dispute, the same can be



quashed by this Court under Section 482 Cr.P.C. At the outset, it is well settled that when the materials unearthed by the prosecution agency show that there are prima facie materials to proceed against accused, this Court cannot exercise its powers under Section 482 of Cr.P.C to interfere with the final report and at the same time, when the entire materials unearthed by the prosecution when taken on the face value do not constitute any offence, but still forcing the party to face the ordeal of trial is nothing but abuse of process of law.

6. The crux of the final report itself indicates that the accused under the pretext of obtaining the orders in advertisement, failed to pay a sum of Rs.1,72,36,735/-. Further, a perusal of the final report itself indicates that though the final report proceeded as if such deception started in the year 2015-2016, the materials unearthed by the investigation agency, particularly, the final report itself indicates that there were continuous business transactions between the defacto complainant and accused from the year 2014. The final report itself indicates that, prior to the year 2016, a sum of Rs.6 crores have been paid by the petitioner to the defacto complainant and what remains to be paid is only a sum of Rs.1,72,36,735/-, the same clearly indicates that the business transaction continued between the parties from the year 2014 and not as alleged by the Investigating Officer or the defacto complainant.

7. A running account has been maintained between the defacto complainant and accused and the amounts had been paid from the very inception till the year 2016. When the substantial portion of the amount had already been paid to the tune of Rs.6 crores in the business transaction, merely because there is some default which occurred in subsequent years, it cannot be said that there was a deception from the very inception to deceive the defacto complainant in order to attract the offence under Section 420 of IPC. The intention to deceive the persons who are deceived must be present from the very beginning, whereas the very final report itself indicates that it is only a continuous business transaction and the payments have been repeatedly made till 2016. Therefore, it cannot be said that there was any deception or intention to deceive the person on the part of the petitioner from the very inception. In this regard, it is useful to refer the judgment of the Hon'ble Apex Court in the case of Vesa Holdings Private Limited and another Vs State of Kerala and others [(2015) 8 SCC 293] wherein, the Hon'ble Apex Court has held that every breach of contract would not give rise to an offence of cheating and the breach of contract would amount to cheating only in those cases where there was any deception played at the very inception. If the intention to cheat has been developed later on, the same cannot amount to cheating.



8. Therefore, this Court is of the view that as the transaction continued from the year 2014 and payments have been made regularly, mere default in certain payments at the relevant point of time cannot be said there was a deception played from the very inception. In such view of the matter, even on the basis of the final report, the offence under section 420 of I.P.C would not be attracted in this case.

9. In such view of the matter, it is a fit case that the final report has to be quashed, and the same is quashed. Accordingly, this Criminal Original Petition is allowed. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

msv/nr

To

1. The Special Metropolitan Magistrate Court
for CCB&CBCID Cases,
Chennai .
2. The Inspector of Police,
Central Crime Branch-EDF-II, Team IV,
Vepery, Chennai.
3. The Public Prosecutor,
High Court, Madras.

+4ccs to Mr.H.Rajasekar, Advocate, S.R.No.29
+1cc to Mr.D.Sankar, Advocate, S.R.No.65

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VSN -II(CO)
CT 24/01/2022