IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.27279 of 2018
and
C.M.P.No.15754 of 2018

Selvam @
Tamilchelvan Kandasamy ... Petitioner

Vs.

1.The State by
Inspector of Police,
CCB, Chennai.
[Cr.No.17/2015]

2.K.Jayapreetha ... Respondents

Prayer : Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code to call for the records pending trial in C.C.No.6016 of 2018 on the file of the Court of Special Judge [CCB & CBCID], Allikulam, Chennai and quash the same.

For Petitioner : Mr.M.A.Mudimannan

For Respondents
R1 : Mr.L.Baskaran
Government Advocate [Crl. Side]

R2 : Mr.C.Gunasekaran
Legal Aid Counsel

ORDER

The petitioner/A2 in C.C.No.6016 of 2018 on the file of the learned Special Judge [CCB & CBCID], Allikulam, Chennai facing trial for offence under Sections 406, 420 r/w. 34 IPC, filed this quash petition.

2.The case of the prosecution is that the defacto complainant Jayapreetha, residing in Chennai was running a business in the name of M/s.J.K.S Exports dealing in clothes at No.6, Armenian Street, Mannady. On 27.08.2013, one Muthu/A1 of Dharapuram, Tiruppur District came to the business establishment of the defacto complainant, informed that he is dealing in clothes and for his business and he needs supply of clothes on credit basis for a short period of one week. Further, he is also known to father-in-law of the defacto complainant, Manickam/L.W.2. In view of the same, the goods were supplied to the tune of Rs.60,73,370/- by way of invoice Nos.154, 155, 156 and 157. The invoices were signed by the defacto complainant's Manager/L.W.5, who transported the goods through Mohan Transport and the goods were delivered on 20.08.2013. A1 received the goods, one week thereafter the defacto complainant's father-in-law Manickam went to his native to meet Muthu and collect the money. At that time, he was informed that Muthu/A1 gone to Malaysia and to collect the money, L.W.2 also went to Malaysia, wherein A1 informed that he along with his relatives carrying on the business in the name of India Silks. Further, A2/Selvam assured that A1 would pay the amount of Rs.60,73,370/- within one week and when he failed to do so, L.W.2 contacted A2 but he was evasive. After receipt of the goods, the said Muthu/A1 along with A2/Sevam misappropriated and cheated the defacto complainant. Hence, complaint was lodged by the defacto complainant. On completion of investigation, charge sheet filed against the petitioner and the accused listing L.W.1 to L.W.9 and documents.

3.The contention of the learned counsel for the petitioner is that the petitioner is a citizen of Malaysia, his parents settled there, the petitioner is a permanent resident of Singapore, his full name is Tamilchelvan and he was called by his friends and relatives as Selvam. The petitioner is working as Salesman in Malaysia and the petitioner's parents are the native of Dharapuram, Tiruppur District, who hail from the respectable family. He would submit that the petitioner was arrayed as an accused with an ulterior motive to extract money from him for a business transaction between the defacto complainant and one Muthu/A1. He further submitted that the petitioner never joined hands with Muthu and defrauded, in fact the petitioner has got no knowledge about any business transaction between the defacto complainant and A1. The entire transaction took place in Chennai and admittedly, during the transaction the petitioner was not present. The uncontroverted statement of the witnesses, if taken as a whole would prove that no offence was made out against the petitioner. He further submitted that in this case L.W.1 to L.W.3 are the defacto complainant, her father-in-law and her husband, who speak about A1 approaching them, placing orders, seeking one week deferred payment for the goods supplied and thereafter failed to make the payment. L.W.4/Shajahan, who is the Manager of A1 received the goods and signed in the supply invoices. L.W.5 is the Manager of the defacto complainant, who raised the invoices and transported the goods. L.W.6 and L.W.7 are the witnesses for the arrest and confession of A1, admittedly there is no recovery from the alleged confession. L.W.8 is the Sub-Inspector of Police, who registered FIR and L.W.9 is the Investigating Officer who filed the charge sheet. He further submitted that from the statement and materials, nowhere it is seen that the petitioner made any representation, more so, false representation, signed any documents, he was not entrusted with any property and made any false representation. Hence, the case against the petitioner/A2 to be quashed.

4.The learned counsel appearing for the second respondent/defacto complainant submitted that A1 who hails from the native of her father-in-law/L.W.2, came to her business establishment, placed orders for supply of clothes and sought one week time for deferred payment. Since, A1 hails from the same Village and on his promise, goods were supplied through invoices. L.W.5 is the Manager of the defacto complainant who raised the invoices, packed the goods and transported the same through Mohan Transport. The goods were received by L.W.4, Manager of A1 and thereafter, no payments received. Hence, L.W.2 went to the native where he was informed that A1 left to Malaysia. Following him, L.W.2 went to Malaysia, enquired A1 who informed that he carry out business in Malaysia in the name of India Silks. He would submit that A2 assured L.W.2 that he would stand as a guarantor and ensure that the amount of Rs.60,73,370/- would be paid to the defacto complainant within one week. Believing the assurance given by A, L.W.2 returned to India, later the assurance of payment did not materialize, again L.W.2 contacted A2 and he was evasive. On a discreet enquiry by L.W.2, it was found that A1 and A2 joined together with a common intention, misappropriated the goods sent and cheated the defacto complainant and hence, the defacto complainant lodged the complainant. On registration of FIR, enquiry conducted, statement of witnesses recorded, documents collected, from which it is confirmed that the goods were supplied by the defacto complainant, received by A1 and thereafter, no payment was made. He further submitted that entrustment was proved and it is for the accused to prove the discharge of entrustment by tangible materials with some positive evidence. In this case, except for mere denial there is nothing more. He would further submit that L.W.2 clearly states that he met A2 at Malaysia who assured to ensure that A1 repays the amount covered by the invoices within one week. He further submitted that A1 and A2 were business partners in Malaysia and therefore, the points raised by the petitioner cannot be decided in a quash petition. Hence, he prayed for dismissal of this petition.

5. The learned Government Advocate [Crl. Side] appearing for the first respondent submitted that on the complaint of the defacto complainant, L.W.8 registered the FIR, witnesses were examined, L.W.1 to L.W.3 clearly state about A1 approaching them, made representation for supply of goods on credit basis, goods supplied through four invoices which was prepared by L.W.5/Manager of the defacto complainant and the goods were transported which was received by L.W.4/Manager of A1 and acknowledged the invoices, hence the entrustment was proved. But as per the representation made by A1, the payment for the goods supplied within one week was not

honoured. L.W.2 went in search of A1 to his native where he was informed that A1 left to Malaysia and following him, L.W.2 also went to Malaysia, where A2 assured that the amount would be paid by A1 within one week, but it was only a false promise. Since the payment was made as assured by A2, L.W.2 contacted A2 but he was evasive. He further submitted that both A1 and A2 with common intention misappropriated the goods and cheated the defacto complainant. In this case, L.W.1 to L.W.3 would state about the transaction, L.W.5 raised the invoices, L.W.4/Manager of A1 received the goods and acknowledged the invoices. A1 on receiving the goods to the tune of Rs.60,73,370/- not made any payment. Thereafter, it is also seen that A1 and A2 are doing business, they utilized these goods and hence, both the accused committed the offence. In the absence of any payment being made for the goods supplied, the offence of A2 can be considered only during trial. Hence, he prayed for dismissal of this petition.

6.Considering the submissions made and on perusal of the materials, it is seen that it is the case of the prosecution that A1 approached L.W.1 and L.W.2, A1 and L.W.2 hail from Dharapuram, Tiruppur District, L.W.1

supplied the goods covered by invoices on the promise made by A1 to make deferred payment for the goods within one week. The goods were covered by invoices and transported to A1 as per the statement of L.W.5. L.W.4, who is the Manager of A1 received the goods. Admittedly, in this case it was A1 who approached L.W.1 to L.W.3 and on his representation, goods were supplied but A2 was not present at that time. Further, invoices raised were acknowledged by L.W.4/Manager of A1. The only overtact as against A2 is that when L.W.2 went to Malaysia demanding money for the goods supplied, at that time A2 is said to have assured L.W.2 that he would ensure thatA1 makes the payment within a week for the goods covered by invoices. Thereafter, for some reason A1 failed to make payment for which A2 cannot be proceeded for misappropriation and cheating when there is no false representation by A2. Further, merely on the confession of A1, A2 cannot be proceeded for the criminal offence, more so, in the absence of any recovery from the confession. Thus, looking the case from any angle it is clear that there is no material or statement against the petitioner/A2. In view of the same, the continuation of the proceedings against the petitioner/A2 would amount to abuse of process of law. Hence, this Court is inclined to quash the proceedings pending in C.C.No.6016 of 2018 on the file of the learned Special Judge [CCB & CBCID], Allikulam, Chennai as against the petitioner/A2 alone.

7.Further, it is seen that the case in C.C.No.6016 of 2018 on the file of the learned Special Judge [CCB & CBCID], Allikulam, Chennai is pending from the year 2018. Therefore, the Trial Court is directed to conclude the trial within a period of six months from the date of receipt of a copy of this order since there are only nine witnesses. In the event of A1 adopting any dilatory tactics, the learned Magistrate shall take coercive action following the dictum of the Apex Court in the case of ***P.K.Shaji vs. State of Kerala*** reported in ***[2005] AIR SCW 5560*** and ensure that the trial is completed within the stipulated time.

8.Accordingly, this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petition is closed.

9.This Court appreciates Mr.C.Gunasekaran, appointed as legal aid counsel for the second respondent in thorough preparation, effectively defending the second respondent and rendering his sincere efforts in this regard.

17.10.2022

cse
Index : Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order

To

1.The Inspector of Police,
CCB, Chennai.

2.The Special Judge
[CCB & CBCID],
Allikulam, Chennai

M.NIRMAL KUMAR, J.

cse

Crl.O.P.No.27279 of 2018

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