BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.12.2021

Delivered on : 04.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.OP(MD)Nos.3506 and 4418 of 2019
and
Crl.M.P(MD) Nos.2003 and 2688 of 2019

S.Suthakar ... Petitioner/Accused No.1
(in Crl.O.P(MD) No.3506 of 2019)

S.Prabhakar .... Petitioner/Accused No.2
(in Crl.O.P(MD) No.4418 of 2019)

-vs-

1. The State, Represented by
The Inspector of Police,
Sattur Town Police Station,
Virudhunagar District.
(Crime No.23 of 2019) .... 1st respondent/ Complainant
(in both cases)

2. Jeyaveerapandian ... 2nd Respondent/Defacto Complainant
(in both cases)

COMMON PRAYER : Criminal Original Petitions filed under Section 482 Cr.P.C, to call for the records relating to Crime No.23 of 2019 pending on the file of the first respondent police and quash the same as against the petitioners.

For Petitioners : Mr.G.Karuppasamy Pandian
(in both Crl.O.Ps)

For R1 : Mr.R.Sivakumar
Government Advocate (Crl Side)
(in both Crl.O.Ps)

For R2 : Mr.S.G.L.Rishwanth
(in both Crl.O.Ps)

COMMON ORDER

These Criminal Original Petitions have been filed seeking orders to call for the records relating to Crime No.23 of 2019 pending on the file of the first respondent police and quash the same.

2. The petitioner in Crl.O.P(MD) No.3506 of 2019 is the first accused and the petitioner in Crl.O.P(MD) No.4418 of 2019 is the second accused in the case registered in Crime No.23 of 2019 on the file of the Sattur Town Police Station, Virudhunagar District.

3. On the basis of the complaint lodged by the second respondent, FIR came to be registered in Crime No.23 of 2019 against five persons including the petitioners herein for the alleged offences under Sections 420, 406, 294(b) and 506(i) IPC.

4. Admittedly, the second accused is the brother of the first accused and they were running the company by name "Aqua Designs Private Limited".

5. The case of the prosecution is that the petitioner's company took a tender worth about Rs.33,87,63,000/- for laying underground drainage on 24.02.2016, that the fourth and fifth accused, who were the employees of the said Company had approached the second respondent and asked to him to do the work of laying underground drainage and pipeline works in Zone -1, that the company had agreed to provide pipes only and directed the second respondent to manage all other properties, that the second respondent met the accused 1 to 3 at their office and commenced his work on 23.03.2017, that he received a mail on 07.04.2017, stating that he is doing only sub-contract work and when the same was questioned, by the second respondent, they had informed that order was given wrongly and they would direct their office to issue fresh orders, that the second respondent has received another mail on 18.05.2017 with purchase order and in that purchase order, the second respondent has been referred as supplier, and when the same was enquired, accused Nos.4 and 5 informed that the same relates to the office issue and no explanation need be given, that since the second respondent had invested huge amount, he was forced to continue the work, that the second respondent has handed over bill for the work done for the period from 23.03.2017 to 18.12.2017 to the tune of Rs.39,33,255/-, that the company had paid a sum of Rs.19,57,000/- on various occasions that the remaining balance amount to the tune of Rs.19,76,255/- is not yet paid and that, when the second respondent demanded the accused to pay the balance amount, he was abused and threatened with dire consequences.

6. The main contention of the petitioners is that as per the purchase order issued on 29.03.2017, the second respondent has to lay 150 Manholes per month and agreed to complete the work within

six months, that there was enormous delay on the part of the second respondent in carrying out the work, that the second respondent has completed only 84 man holes for the first two months and 27 man holes for the next four months, that whenever the petitioner's company approached the second respondent to speed up the works, the second respondent gave lame excuses and promised to complete the work order, that since the second respondent has not completed the work as agreed by him, the petitioner's company terminated the contract on 18.12.2017 after 9 months and that the petitioner's company suffered huge loss and the tender work was also terminated by TWAD board, due to the inability of the second respondent. It is their further contention that as per the statement of account, the second respondent has been paid excess of Rs.1,61,058/- and that the second respondent, by suppressing all the above factual aspects has preferred the false complaint.

7. It is pertinent to mention that the second respondent in his complaint itself has specifically admitted the receipt of purchase orders referring him as sub contractor and supplier, and according to him, when the same was questioned by him, the accused 3 and 4 had replied that the purchase order was given wrongly and subsequently they have informed that since the same related to their office issue, no explanation need be given. Admittedly, the second respondent has not sent any letter or notice disputing the contents of the purchase orders.

8. At this juncture, it is necessary to refer the judgments of the ***Hon'ble Supreme Court in Binod Kumar and others vs- State of Bihar, reported in 2014 (10 SCC 663) and the Honourable Apex Court*** while considering the prayer for quashing of the complaint for the offence under Sections 406 and 420 of IPC, examined ingredients of the offence and whether the complaint on its face disclosed the commission of any offence, and held as follows:-

> "*14. At this stage, we are only concerned with the question whether the averments in the complaint taken at their face value make out the ingredients of criminal offence or not. Let us now examine whether the allegations made in the complaint when taken on their face value, are true and constitute the offence as defined under Section 406.*
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> 15. Section 405 IPC deals with criminal breach of trust. A careful reading of the Section 405 IPC shows that a criminal breach of trust involves the following ingredients:
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> (a) a person should have been entrusted with property, or entrusted with dominion over property;

(b) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or wilfully suffer any other person to do so;

(c) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.

16. Section 406 IPC prescribes punishment for criminal breach of trust as defined in Section 405 IPC. For the offence punishable under Section 406 IPC, prosecution must prove:

(i) that the accused was entrusted with property or with dominion over it and

(ii) that he (a) misappropriated it, or (b) converted it to his own use, or (c) used it, or (d) disposed of it.

The gist of the offence is misappropriation done in a dishonest manner. There are two distinct parts of the said offence. The first involves the fact of entrustment, wherein an obligation arises in relation to the property over which dominion or control is acquired. The second part deals with misappropriation which should be contrary to the terms of the obligation which is created.

17. Section 420 IPC deals with cheating. Essential ingredients of Section 420 IPC are:- (i) cheating; (ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security, and (iii) mens rea of the accused at the time of making the inducement.

18. In the present case, looking at the allegations in the complaint on the face of it, we find no allegations are made attracting the ingredients of Section 405 IPC. Likewise, there are no allegations as to cheating or the dishonest intention of the appellants in retaining the money in order to have wrongful gain to themselves or causing wrongful loss to the complainant. Excepting the bald allegations that the appellants did not make payment to the second respondent and that the appellants utilized the amounts either by themselves or for some other work, there is no iota of allegation as to the dishonest intention in misappropriating the property. To make out a case of

criminal breach of trust, it is not sufficient to show that money has been retained by the appellants. It must also be shown that the appellants dishonestly disposed of the same in some way or dishonestly retained the same. The mere fact that the appellants did not pay the money to the complainant does not amount to criminal breach of trust.

19. Even if all the allegations in the complaint taken at the face value are true, in our view, the basic essential ingredients of dishonest misappropriation and cheating are missing. Criminal proceedings are not a short cut for other remedies. Since no case of criminal breach of trust or dishonest intention of inducement is made out and the essential ingredients of Sections 405/420 IPC are missing, the prosecution of the appellants under Sections 406/120B IPC, is liable to be quashed".

9. The condition necessary for an act to constitute an offence under Section 415 of IPC is that there was dishonest inducement by the accused. Cheating is an essential ingredient to an offence under Section 420 of IPC. The prosecution has to show that the accused was having dishonest intention even from the very beginning of the transaction.

10. Regarding the offence under Section 294(b) IPC, it is settled law that mere utterance of abusive/obscene words are not sufficient, but there must be a further proof to show that the same caused annoyance to the others. As rightly contented by the learned counsel for the petitioners, the second respondent has not even alleged that the incident was occurred at the public place and that the uttering of abusing words by the petitioners caused annoyance to the others.

11. Now turning to the offence under Section 506(I) of IPC, mere expression of any words without any intention to cause alaram would not be sufficient and it must be shown that the threat is real and substantial. Though the second respondent alleged that the accused had threatened him, it is not the case that he was criminally intimidated.

12. In the case on hand, admittedly, the second respondent has received a sum of Rs.19,57,000/- on various occasions and according to him, a sum of Rs.19,76,255/- is still due to him by the petitioner's Company. As rightly contented by the learned counsel for the petitioners, it is not the case of the second respondent that the accused were having dishonest intention at the time of contract alleged to have been entered into between the second respondent and the petitioner's company. Moreover, there is absolutely no averments in the complaint that the petitioners had dishonestly induced the second respondent to deliver any property.

13. The condition necessary for an act to constitute an offence under Section 405 of IPC is that the accused was entrusted with some property, or has dominion over property.

14. In the present case, as rightly contented by the learned counsel for the petitioners, there is no allegation of entrustment of property. Moreover, it is not sufficient enough to show that the money has been retained by the accused, and the prosecution has to show that the accused dishonestly disposed of the same in some way or dishonestly retained the same. Even assuming for the sake of arguments that the accused are liable to pay the balance amount, as alleged by the second respondent, the same would not amount to criminal breach of trust. Even, if the averments in the complaint are taken as true, the basic ingredients for dishonest, mis-appropriation and cheating and for dishonest intention of inducement are not made out.

15. As rightly contented by the learned counsel for the petitioners, the second respondent, by lodging the above complaint, has been attempting to convert the civil dispute into a criminal dispute. Hence, this Court is of the view that the complaint lodged by the second respondent constitutes an abuse of process of law and the same is liable to be quashed.

16. In the result, these Criminal Original petitions are allowed and the FIR in Crime No.23 of 2019 on the file of the first respondent against the petitioners is quashed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2022

Sub Assistant Registrar

Note :
In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To
1. The Inspector of Police,
Sattur Town Police Station,
Virudhunagar District

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.S.G.L.RISHWANTH, Advocate (SR-4708[F] dated 08/02/2022)
+1 CC to M/s.S.G.L.RISHWANTH, Advocate (SR-4710[F] dated 08/02/2022)

Order made in
CRL.OP(MD)Nos.3506 and 4418 of 2019
and Crl.M.P(MD) Nos.2003 and 2688 of 2019
04.02.2022

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