



Crl.O.P (MD) Nos.18505 and 19120 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.11.2022

PRONOUNCED ON : 25.11.2022

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.O.P (MD) Nos.18505 and 19120 of 2022

and

Crl.M.P.(MD) Nos.12434 and 12922 of 2022

Crl.O.P.(MD) No.18505 of 2022:-

Aman Batra

...Petitioner

vs

1.The Inspector of Police,
District Crime Branch,
Dindigul,
Dindigul District.

2.Boopathi

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C,
praying to call for the records in connection with the case in Crime No.27 of
2022 on the file of the first Respondent and quash the same.

For Petitioner : Mr.Anantha Padmanaban

For R1 : Mr.B.Nambi Selvan

Additional Public Prosecutor



Crl.O.P (MD) Nos.18505 and 19120 of 2022

For R2 : Mr.J.Lawrance

Crl.O.P.(MD) No.19120 of 2022:-

1.Shreshth Mani

2.Kamaljit Kaur

...Petitioners

VS

1.The Inspector of Police,
DCB Police Station,
Dindigul District.
Crime No.28 of 2022

2.Boopathi

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the entire records relating to the impugned FIR in Crime No.28 of 2022 on the file of the first Respondent police and to quash the same in so far as the Petitioners are concerned.

For Petitioners : Mr.G.Prabhu Rajadurai

For R1 : Mr.B.Nambi Selvan
Additional Public Prosecutor

For R2 : Mr.J.Lawrance



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COMMON ORDER

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Crl.O.P.(MD) No.18505 of 2022 had been filed to quash the FIR in Crime No.27 of 2022 on the file of the first Respondent.

2. Crl.O.P.(MD) No.19120 of 2022 had been filed to quash the FIR in Crime No.28 of 2022 on the file of the first Respondent.

3. As far as Crl.O.P.(MD) No.18505 of 2022 is concerned, the learned Counsel for the Petitioner submitted that the Petitioner had entered into a contract with the second Respondent, who is supplying clothes to the Petitioner. The Petitioner is alleged to have received goods from the second Respondent/De-Facto Complainant and he had transferred money through Bank accounts. It is the further contention of the learned Counsel for the Petitioner that the Petitioner is carrying on business in Delhi. He used to procure clothes from the second Respondent from his Mill at Dindigul. In support of his contention, he had furnished the copies of the business transactions, wherein, crores of rupees transacted through Bank accounts on the GST number of the De-Facto Complainant.



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4. While so, without giving any notice regarding repayment, the De-Facto Complainant had approached the Respondent Police, as though the Petitioner had committed offences attracting Sections 406, 420 and 506(1) IPC. It is the further contention of the learned Counsel for the Petitioner that as per the contents of FIR, it is purely a business transaction. From the invoices, the learned Counsel for the Petitioner submitted that within 90 days, the amount had to be paid. The Petitioner was prompt in paying the amount. He has to collect it from his clients. During COVID-19 lockdown, there had been delay in payments from the clients of the Petitioner, which caused delay in payment to the De-Facto Complainant. Instead of seeking clarification by issuing notice or calling the Petitioner, the De-Facto Complainant had rushed to the Police. It is clearly an abuse of process of law. Therefore, the Petitioner seeks to quash the FIR registered by the Respondent Police based on the complaint of the De-Facto Complainant/Second Respondent in Cr.No.27 of 2022 on the file of the first Respondent.



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5. In support of his contention, the learned Counsel for the Petitioner relied on the following reported Rulings:

“(a) (2009) 3 SCC 78 (V.Y.Jose and another vs State of Gujarat and another)

(b) (2014) 10 SCC 663 (Binod Kumar and others vs State of Bihar and another)

(c) (2019) 16 SCC 739 (Prof.R.K.Vijayasathy and another vs Sudha Seetharam and another)”

5.1 In *V.Y.Jose and another vs State of Gujarat and another* reported in **(2009) 3 SCC 78**, it had been stated as follows:-

“A. Criminal Procedure Code, 1973 jurisdiction under S. 482- - Ss. 482 and 483 Exercise of When warranted Case essentially involving a civil dispute - Held, S. 482 serves a salutary purpose that a person should not undergo harassment of litigation even though no case has been made out against him Besides, S. 483 casts a duty on High Court to supervise functioning of trial courts -Therefore, a matter which essentially involves dispute of civil nature should not be allowed to become subject-matter of criminal proceedings which may be resorted to as a short cut to execution of a non-existent decree Complaint alleging cheating filed against appellants whereas the case in fact involved civil dispute relating to a contract- Held, High Court ought to have exercised its power under S. 482- - Civil Suit - Civil



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*Procedure Code, 1908 S. 9 Contract and Specific Relief - -
Remedies/Relief Public Law/Writ Remedies Initiation of criminal - -
proceedings in case of breach of contract- Contract Act, 1872-S. 73*

*B.Penal Code, 1860 Ss. 420 and 415- Cheating and dishonest
inducement to deliver property Ingredients of offence - Fraudulent or -
dishonest intention at the time of making promise or representation-
Need for-Held, in the absence of culpable intention at the time of
making initial promise, offence under S. 420 is not proved-Further
held, mere breach of contract does not necessarily involve cheating
Contract and Specific Relief- Remedies/Relief- Remedies for breach of
contract Broadly - Breach of contract and offence of cheating-
Contract Act, 1872, S. 73 Held:”*

5.2 In ***Binod Kumar and others vs State of Bihar and another***
reported in ***(2014) 10 SCC 663***, it had been stated as under:-

*“A.Criminal Procedure Code, 1973-S.482-Quashment of
Complaint-Civil liability cannot be converted to criminal liability –
Abuse of process of Court.”*

In ***Prof.R.K.Vijayasathya and another vs Sudha Seetharam and
another*** reported in ***(2019) 16 SCC 739***, it had been stated as follows:-

*“(A) Criminal Procedure Code, 1973- Section 482- Quashing
of criminal proceeding - Criminal proceeding can be quashed where*



allegations made in complaint do not disclose commission of an offence under Penal Code- Complaint must be examined as a whole, without evaluating merits of allegations - Though law does not require that complaint reproduce legal ingredients of offence verbatim, complaint must contain basic facts necessary for making out offence under Penal Code. (Para 11) (B) Indian Penal Code, 1860- Sections 405, 406, 415 and 420 read with Section 34- Criminal Procedure Code, 1973 Section 482 - Criminal breach of trust and cheating Common intention Money dispute between parties - Son of appellants has instituted civil suit for recovery of money against first respondent which is pending - First respondent has filed complaint against appellants six years after date of alleged transaction and nearly three years from filing of suit Averments in complaint, read on its face, do not disclose ingredients necessary to constitute offences under Penal Code - Attempt has been made by first respondent to cloak a civil dispute with a criminal nature despite absence of ingredients necessary to constitute criminal offence Where ingredients required to constitute criminal offence are not made out from a bare reading of complaint, continuation of criminal proceeding will constitute abuse of process of court - Judgment of High Court set aside and criminal proceedings quashed. (Paras 23, 24 and 25) Facts of Case: Instant appeal arises from judgment and final order dated 1 January 2016 of High Court of Karnataka, rejecting prayer of appellants to quash criminal proceedings instituted by first respondent against them. High Court stayed criminal proceedings till disposal of a pending civil suit instituted by son of appellants against first respondent. Primary question before this Court is whether High Court has erred in



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rejecting plea of appellants for quashing criminal proceedings against them. Findings of Court: Son of appellants has instituted a civil suit for recovery of money against first respondent. Suit is pending. First respondent has filed the complaint against appellants six years after date of alleged transaction and nearly three years from filing of suit. Averments in complaint, read on its face, do not disclose ingredients necessary to constitute offences under Penal Code. Attempt has been made by first respondent to cloak a civil dispute with a criminal nature despite absence of ingredients necessary to constitute a criminal offence. Complaint filed by first respondent against appellants constitutes abuse of process of court and is liable to be quashed. Result : Appeal allowed. ”

6. The learned Additional Public Prosecutor in Crl.O.P.(MD) No. 18505 of 2022 by way of reply vehemently objected to the line of arguments of the learned Counsel for the Petitioner stating that FIR was registered only on 24.09.2022 and FIR is not an encyclopedia. It is in the initial stage of investigation. Only in the course of investigation, the Investigation Officer collects materials and while filing final report, the Investigation Officer, if able to come to a conclusion that one of the offences is made out and other offence is not made out, has the discretion to close or to alter the Sections of offence. Instead, at the threshold, the Petitioner cannot seek to quash the FIR stating that the offence under Section 406 IPC is not attracted.



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7. Further, he submitted that as per the reported ruling of the Honourable Supreme Court in the *Arnesh Kumar vs State of Bihar and another*, reported in *(2014) 8 SCC 469*, the Investigation Officer, after registering the FIR in Cr.No.27 of 2022, had issued summons to the Petitioner at Delhi as per the provisions of Cr.P.C. However, the Petitioner refused to attend the enquiry with the first Respondent stating that he was sick and he will appear later. Instead of appearing before the Investigation Officer, he had approached this Court. Therefore, the learned Additional Public Prosecutor seeks dismissal of this Petition as not maintainable. Further, He relied on the reported ruling of Honourable Supreme Court in the case of *Rajeev Kourav vs Baishab and others*, reported in *(2020) 3 SCC 317*.

8. As far as Crl.O.P.(MD) No.19120 of 2022 is concerned, it is the contention of the learned Counsel for the Petitioner that the Petitioner had been in the business transaction with the second Respondent who is having Mill at Dindigul District. In the course of the business transaction the Petitioner had purchased clothes from the Mill belonging to the second Respondent. Money transaction was carried out through Bank account of



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the Petitioner with the second Respondent's Bank account. In support of his contention he had placed copies of the transactions from 29.12.2020 till the last transaction on 23.06.2022. Further the learned Counsel for the Petitioner submit that if the ingredients under Section 406 and 420 of IPC are to be invoked there shall be criminal intention right from the inception. Here there had been transactions and money had been deposited in the account of the defacto Complainant by the Petitioner through Bank transaction. For which he has also furnished records from the Bank. Computer print out of the Bank transaction as additional typed set along with the Bank statement. Further it is the contention of the learned Counsel for the Petitioner that during covid-19 lockdown the entire world had been suffering economically. Here also the Petitioner is unable to collect the dues from his clients and it has been informed to the defacto Complainant. Still the defacto complainant converted the civil dispute into a criminal dispute. Therefore he seeks to quash the First Information Report in Crime No.28 of 2022 on the file of the first Respondent Police.

9. The learned Additional Public Prosecutor in Crl.O.P.(MD) No. 19120 of 2022 would submit that the occurrence are said to have taken

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place on 01.09.2020. The First Information Report was registered on 25.09.2022. He would also submit that the first Respondent had issued notice under Section 41 (A) of Cr.P.C. After receipt of notice the Petitioner herein did not appear before the first Respondent. Instead he had filed this petition seeking to quash the First Information Report. He would also submit that connected petition in Crl.O.P(MD) No.18505 of 2022 is pending before this Court.

10. The learned Additional Public Prosecutor would further submit that the facts of the case had been made out. The FIR is not an encyclopedia. The Investigation Officer had to collect the materials. If this Court does not grant stay, the Investigation Officer shall proceed with the investigation, collect the materials and undertake to file the Charge Sheet before the Court concerned within the shortest period of time.

11. The learned Additional Public Prosecutor would further submit that the fact remains that the accused did not pay the dues properly within sequential manner and that with a view to cheat the de-facto Complainant, attempted a camouflage by making payment in a haphazard manner and in-



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fact has not even raised a civil dispute by stating that they are not liable to pay the remaining amount and that the de-facto Complainant was deprived of a huge amount without any rhyme and reason.

12. As stated by the Hon'ble Supreme Court in the case referred to by the Petitioners herein reported in **2021 (4) RCR (Cri) 496**, there can be no doubt that a complaint disclosing civil transactions may also be a criminal texture and that only because a civil remedy is available may not be a ground to quash criminal proceedings. The investigation is a nascent stage and that it is flowing in an even keel. In-fact preliminary enquiry disclosing *prima facie* case of cheating, criminal breach of trust and acting in an intimidating manner to proceed against the accused in terms of *Lalithakumari's case*, the complaint was reduced into First Information Report. In the meanwhile the Petitioners in both the Petitions have come out with the present quash petitions by raising un-sustainable grounds liable for rejection *inlimine*.

13. The learned Additional Public Prosecutor would further submit that the Hon'ble Supreme Court in catena of cases held that Economic



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Offenders are race apart and have to be dealt with iron hands as in the case of ***Criminal Appeal No. 730 of 2013 arising out of S.L.P. (Crl) No. 3404 of 2013*** in ***Y.S. Jegan Mohan Reddy v/s. Central Bureau of Investigation*** observed that "Economic offences constitute a class apart and need to be visited with a different approach". A bench-mark was also formulated to treat the offenders involved in economic offences in isolation by taking into consideration of the fraud committed by them which has to be weighed against the society at large. The same dictum was echoed in the decision rendered by the Hon'ble Supreme Court in the case of ***RohitTandon v Directoate of Enforcement*** reported in ***2018 (11) SCC 46***.

14. In a similar issue in the case of ***Anthony Michel Prince v Sub Inspector of Police, Central Crime Branch Chennai City*** in ***Crl.O.P. No. 26885 of 2018 dated 27.02.2022***, it was pleased to dismiss the quash petition by holding that criminal element need to be gone into and the disputed question of facts needs to raised and adjudicated only at the time of trial before the competent criminal court of law. Further, the Textile Industry, which was once the prima donna in the industrial hemisphere over the years, has lost its sheen and many an industry has been closed over the



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years. It is seen that the Businessman adopt the above practice of cheating the mill owners, which is likely to result in closure of the units causing anguish to the working force serving in such industrial units. Hence the Petitioners in both the Petitions are not entitled for the relief of quashing the FIR, as the disputed questions will have to be raised and adjudicated only before the Trial Court. Therefore, the learned Additional Public Prosecutor sought for dismissal of these petitions.

15. On consideration of the rival submissions, the submission of the learned Counsel for the Petitioners is found acceptable in the facts and circumstances of the case. As rightly pointed out by the learned Counsel for the Petitioners, the Bank accounts of the Petitioners had been furnished regarding the transactions. The invoices for procuring materials from the second Respondent/defacto complainant (Mill owner from Dindigul) had also been furnished by them.

16. As per the invoices of the Respondent, within 90 days from the date of issue of invoices to the Petitioners, the amount had to be sent by the Customers/Petitioners, failing which penalty will be imposed on the



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Customers/Dealers. Accordingly, all the transactions had been carried out through e-Bank. While so, during COVID-19 pandemic, there was difficulties in getting back the amount for the materials supplied by the Petitioners, who are the wholesale dealers in Delhi. The Petitioners and the second Respondent were in contact regarding repayment of the money. The Petitioners had been seeking time. The second Respondent had been pressurizing for the amount outstanding. It is true that without issuing any notice seeking repayment of the amount, the second Respondent had approached the District Crime Branch, Dindigul and registered the case, as though the Petitioners had committed the offence under Sections 406 and 420 IPC. To attract Section 420 IPC, ingredients of Section 415 is to be made out.

17. Here, in this case, the amounts had already been disbursed from time to time as per the invoices. Therefore, it is a business transaction. For business transaction, the second Respondent has discretion to approach the Civil Court. Not only that, this is the commercial transaction, for which, the Hon'ble Supreme Court had directed the High Courts to form commercial divisions in all the Districts, where there are large number of commercial



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disputes. In places, where there are no notified commercial Courts, the Principal District Judge of the District has to take up the cases as commercial Division Courts. Therefore, the second Respondent could have availed those opportunities. Even otherwise he could have issued notice and appointed an Arbitrator for early disposal of the dispute. He had converted a civil dispute into a criminal dispute attracting the guidelines issued in the reported decision of the Hon'ble Supreme Court in the case of ***State of Haryana vs. Ch. Bhajan Lal*** reported in ***(AIR) 1992 SC 604***, which squarely applies to the facts of the present case.

18. Only to cause harassment to the Petitioners herein, the second Respondent had converted a civil dispute into a criminal case and threatened them by taking the Police Officials from Dindigul Crime Branch up to Delhi in front of his shop/Establishment and issuing summons under Section 41-A Cr.P.C. Therefore, the Petitioners were forced to file these Criminal Original Petitions seeking to quash the FIR.

19. The learned Counsel for the second Respondent admitted that 75% of the business transactions were honoured by the Petitioners, but 25%



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of the business transaction was outstanding. On repeated request, the Petitioners evaded, forcing the second Respondent to file the criminal complaint. The submission of the learned Counsel for the Petitioners cannot be accepted in the facts and circumstances of the case. What are all argued by the learned Counsel for the Petitioners is to be considered as valuable defense available to the Petitioners during trial and these petitions are to be dismissed.

20. In the light of the above discussions and in the light of the materials placed by the learned Counsel for the Petitioners in the typed set of papers, which are sterling documents regarding invoices between the Petitioners and the second Respondent, the Bank transactions carried out through e-Bank are sterling documents, as per the reported ruling of the Hon'ble Supreme Court in the case of *State of Haryana vs.Ch.Bhajan Lal* reported in *(AIR) 1992 SC 604*, which can be looked into by the Court.

21. Further, it is an admitted fact by both the parties that there had been business transactions between them. The second Respondent is the Mill owner. The Petitioner in Crl.O.P.(MD) No.18505 of 2022, Aman Batra



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and the Petitioners in Crl.O.P.(MD) No.19120 of 2022, Shreshth Mani and Kamaljit Kaur herein are the Dealers procuring clothes materials from the second Respondent for years together. There had been dispute between them only subsequent to the COVID-19 lock down and its restrictions, which had affected the economy worldwide. Therefore, the Court necessarily has to take judicial notice of the fact of economic slow down and the economic impact of COVID-19 affecting the common man as well as the businessess worldwide. Therefore, even accepting the second Respondent's contention that there is outstanding, that cannot be converted into a criminal case threatening the Petitioners.

22. In the light of the above circumstances, the submission of the learned Counsel for the second Respondent and the learned Additional Public Prosecutor for the first Respondent that this petition is to be dismissed and the Investigation Officer had to be permitted to take the investigation to its logical conclusion cannot be accepted considering the nature of the dispute as civil dispute based on business transactions. It is nothing but an abuse of the process of the Court making the Police Officials as collecting agents of the second Respondent.

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23. It is found under 482 Cr.P.C., roster that there are umpteen number of cases, where the common man seeks directions from this Court to register the FIR with the Police in all the Districts under the jurisdiction of Madurai Bench. When so many petitions are coming for directions, here it is the case, where the Police are overzealous to arrest the businessman from Delhi and produce him in Dindigul on the light of an FIR for the offences under Sections 406 and 420 IPC, in which there had been clear transactions through Bank.

24. The action of the first Respondent in taking the Police Officials up to Delhi to threaten the Petitioners is found unacceptable and indecent behavior. The same is the case with the second Respondent, who had been in business transactions with the Petitioners invoking the police powers which is also found unacceptable and indecent behavior, converting a civil dispute into a criminal dispute.

25. In the light of the above discussion and in the light of the reported rulings of the Hon'ble Supreme Court in the case of ***V.Y.Jose and another***

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vs State of Gujarat and another reported in *(2009) 3 SCC 78*, the case of

Binod Kumar and others vs State of Bihar and another reported in *(2014)*

10 SCC 663 and the case of *Prof.R.K.Vijayasathy and another vs Sudha*

Seetharam and another reported in *(2019) 16 SCC 739*, these Criminal

Original Petitions are allowed. The FIR in Crime Nos.27 and 28 of 2022 on

the file of the first Respondent are quashed. Consequently, connected

Miscellaneous Petitions are closed.

Internet :Yes./No

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Index :Yes/No

cmr/aav/mm

To

1.The Inspector of Police,
District Crime Branch,
Dindigul,
Dindigul District.

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



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SATHI KUMAR SUKUMARA KURUP, J.

cmr/aav/mm

Common Order made in
Crl.O.P (MD) Nos.18505 and 19120 of 2022

25.11.2022