IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.11.2023

Pronounced on : 05.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRL.O.P.No.773 of 2021 and
Crl.M.P.Nos.448 & 452 of 2021 and 18563 of 2023

Abhishek Pesala ... Petitioner

Vs.

1.The State rep by its
Sub Inspector of Police,
Team EDF-1 Central Crime Branch,
Chennai

2.Manjit Singh Nayar ... Respondents

PRAYER:

Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records in CC.No.1569 of 2020 on the file of the Chief Metropolitan Magistrate Court at Egmore, Chennai and to quash the same.

For Petitioner : Mr.S.T.S.Moorthy,
Senior Counsel
for Mr.M.Krishnamoorthy

For Respondents
For R1 : Mr.A.Gopinath,
Government Advocate(crl.side)

For R2 : Mr.K.P.Anantha Krishna

ORDER

This criminal original petition has been filed to quash the proceedings in CC.No.1569 of 2020 on the file of the Chief Metropolitan Magistrate Court at Egmore, Chennai, thereby taken cognizance for the offence under Sections 420 and 120(b) of IPC as against the petitioners.

2. The case of the complainant is that Gaurav Tripathi (A2) approached the defacto complainant through some contacts from Punjab National Bank where he had an account. The Gaurav Tripathi (A2) was then working as the Assistant General Manager of Phillips India Private Limited, Health Care division. Gaurav (A2) offered two business modules mainly one of institutional Trading (purchase directly from Philips) and the other of buying from the Distributors and selling to their dealers. In order to induce confidence with Philips India, Gaurav (A2) impressed the complainant that he needs to build a track record with the present existing distributor who was GK Health care. Gaurav (A2) also represented that he would find the buyers for the

commodity and that the product purchased from GK health Care could be given to the identified buyer. Gaurav Tripathi (A2) introduced a company called M/s. Joy Marketing who would purchase the products from the complainant. Gaurav Tripathi (A2) also wanted the complainant to build a track record of dealing with products of Philips India and this would aid to show bosses namely Philips India, financial net worth. Further represented that he could impress Philips India to directly give the complainant distributorship. The agreement with the distributor as represented was that he would give the complainant a margin of 10% or less and that he could claim the same amount from M/s. Joy marketing as profit. Gaurav Tripathi (A2) lured the complainant into by saying he has market orders worth Rs.120 crores and based on this, he could ensure that the complainant became a distributor within a period of six months.

2.1 Believing the words of Gaurav (A2) and led by the fact that Philips India was a well-recognised and reputed company and being a distributor of this company would be of reputation the complainant agreed to do this business. The first transaction took place with GK Health care Private Limited which was an authorised distributor of Philips India. It is informed that after a few initial transactions, Gaurav Tripathi (A2) approached the complainant and said that there is another authorised distributor from whom also they could buy the commodity/products namely RBS India. When questioned the reason given by Gaurav was that GK health care and other Distributors did not have sufficient stock and that RBS then, the new distributor had ready stock and there would be instant dispatch of materials whereby we could satisfy the urgent requirement of M/s Joy marketing. RBS India would always insist on advance money being paid for the stock to be supplied. The complainant was in the dark about these companies and was completely led by the statements of Gaurav Tripathi (A2). The end buyer always remained as Joy marketing. This company M/s. Joy marketing was run by Abishek Pesala (A1/ petitioner herein). Both the accused personally visited the complainant regularly. They insisted on quick delivery of the products. Abhishek (A1) however would increase the Purchase and attempt to increase the credit repayment period to a minimum 30 days credit period. The accused made it appear a genuine transaction. Gaurav Tripathi (A2) also supported the complainant always and together induced confidence on the complainant to do business on their methods and terms.

2.2 The main business was managed by the complainant. The complainant is the owner and maintain many businesses. The company used to receive the material as given by GK health care and repack the same after confirming the contents received. In the process, my manager made regular markings as approval for the goods received by them and subsequently sold to Joy marketing. This is also done to ensure that the same material is returned in the event of any warranty related issues. Later purchases began from the new distributor namely RBS India. To the shock of the company persons, the complainant realised their own markings/ handwriting appearing on the materials supplied by RBS India.

2.3 When the complainant's office brought this to the complainant's notice, a deeper scrutiny was done. Enquiries revealed that no person from the complainant's company had ever met/ interacted with any person of RBS except through the accused (Gaurav and Abishek). It was then realised that the accused (Gaurav and Abhishek) never permitted any person to visit the new distributor (RBS) but would just say that the material would be supplied instantly. In this manner, even the genuinity of the existence of a distributor could not be identified as there was no physical interaction or transaction with the new distributor.

2.4 The transactions were completely done by Gaurav Tripathi (A2) more so in the presence of Abishek (A1). Then the complainant's company person visited the address of the new distributor RBS India only to realise that it was the same office of Joy marketing. Further investigation revealed that RBS India was also concerned that it is owned and controlled by Abhishek (A1) and his wife both of them incharge and responsible for the day-to-day affairs of this company (RBS India). It transpires that they have floated this company only to deal with the complainant. In other words, Abhishek(A1) made the complainant pay the amount for the goods by making advance payments to RBS India and then received the same from the complainant on credit basis for Joy Marketing. In this manner, the money for the goods were completely paid by the complainant and the goods continued to reach and remain with the accused until sold. The accused enjoyed the goods on credit without making any payment and was able to do business at the complainant's cost. This candidly brings out the criminality in the case and the intent of the accused. This was done by both the accused jointly and in collusion.

2.5 The whole transaction period was three months and Rs.8,01,15,575/-have been the total transaction with the accused. The wrongful loss traceable is Rs.3,79,52,709/- as the materials are also presently not traceable nor is there money with the accused in the bank. The first accused has appropriated and converted to his use the money received from the complainant and from the sale of the products resulting in loss. Hence, the complaint. The first respondent registered FIR in crime No.400 of 2018 for the offence punishable under Section 420 r/w 120(b) of IPC. After completion of investigation, final report was filed and the same has been taken cognizance by the trial court.

3. Mr.S.T.S.Moorthy, the learned Senior Counsel appearing for the petitioner submitted that the entire transactions are commercial in nature and civil in nature. The present proceedings is nothing but arm twisting method in order to extract money from the petitioner. There are totally two accused, in which the petitioner is arrayed as A1. Even according to the second respondent, in the transaction, part of amount received out of total due of Rs.4,30,54,724/-. Further a sum of Rs.1,34,37,130/- was paid to purchase material from RBS India for which no material was received. Therefore, no

offence under Section 420 of IPC is attracted as against the petitioner. The entire transaction revolves around sale of goods. Therefore, no criminality was committed by the petitioner. In support of his contention, he relied upon the judgment in the case of ***Haji Iqbal alias Bala Through S.P.O.A Vs. State of UP and others*** reported in ***2023 SCC Online SC 946***, wherein the Hon'ble Supreme Court of India held that the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines.

3.1 He further submitted that the entire transactions are civil in nature. In this regard, he also relied upon the judgment in the case of ***Paramjeet Batra Vs. State of Uttarakhand and others*** reported in (2013) 11 SCC 673, wherein the Hon'ble Supreme Court of India held as follows:

7. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash criminal proceedings to prevent abuse of process of court.

3.2 He also relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Satishchandra Ratanlal Shah Vs. State of Gujarat and Another*** reported in ***(2019) 9 SCC 148***, wherein it is held that the distinction between mere breach of contract and cheating would depend upon the fraudulent inducement and *mens rea*. The mere inability of the appellant to return the loan amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction as it is this *mens rea* which is the crux of the offence. Therefore, in the case on hand, on perusal of the materials on their face value, no such dishonest representation or inducement could be found or inferred.

3.3 He also relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Mitesh Kumar J.Sha Vs. State of Karnataka and others*** reported in ***(2022) 14 SCC 572***, wherein it is held as follows:

> *38. Having considered the relevant arguments of the parties and decisions of this court we are of the considered view that existence of dishonest or fraudulent intention has not been made out against the Appellants. Though the instant dispute certainly involves determination of issues which are of civil nature, pursuant to which Respondent No. 2 has even instituted multiple civil suits, one can by no means stretch the dispute to an extent, so as to impart it a criminal colour. As has been rightly emphasised upon by this court, by way of an observation rendered in the case of M/s Indian Oil Corporation Vs. M/s. NEPC India Ltd & Ors.7, as under :-*

"14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law."

39. It was also observed:-

"13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors….There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged."

40. On an earlier occasion, in case of G. Sagar Suri and Anr. Vs. State of UP and Ors.8, this Court has also observed:-

"8. Jurisdiction under Section 482 of the Code has to be exercised with a great care. In exercise of its jurisdiction High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of civil nature, has been given a

cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

4. Heard, the learned counsel appearing on either side.

5. On perusal of records and the counter filed by the second respondent revealed that there are totally two accused, in which the petitioner is arrayed as A1. The second respondent has account with Punjab National Bank. Second accused was working as Assistant General Manager of Phillips India Private Limited, Health Care Division. He offered two business modules, one of institutional trading (purchase directly from Philips) and the other of buying from the distributors and selling to their dealers. The second accused also assured that he would find buyers for the commodity. The second respondent was impressed on the offer made by the second accused. He agreed for the same. In turn, the second accused introduced company called M/s.Joy

Marketing who would purchase the products from the second respondent. The second accused also lured the second respondent by saying that he had market orders worth about 120 crores and as such, the second respondent became a distributor within a period of six months. He also stated that another authorised distributor from whom also they could buy the commodity i.e. RBS India. It always insisted advance money for the stock to be supplied. Both the companies are completely led by the second accused. The end buyer always remained as Joy Marketing. It was run by the petitioner.

6. After the said offer, both the accused personally visited the second respondent and insisted for quick delivery of products. The petitioner herein would increase the purchase and attempt to increase the credit repayment period to a minimum 30 days credit period thereby made it appear to be a genuine transaction. The second respondent is the owner and maintain so many businesses. They used to receive the material as given by GK Healthcare and repacked the same after confirming the contents received. In the said process, the Manager of the second respondent used to make regular markings as approval for the goods received by them and subsequently sold to Joy Marketing. It is also done to ensure that the same material is returned in the

event of any warranty related issues. Later purchases began from the new distributor i.e. RBS India. Then only they have realised that their markings/ handwriting appearing on the materials supplied by RBS India. It was brought to the notice and on scrutiny revealed that no person from the company had ever met / interacted with any person of RBS. The accused never permitted any person to visit the new distributor, but would just say that the material would be supplied instantly. Thereafter, they came to understand that both the distributor i.e. RBS India and Joy Marketing are one and the same. It is owned and controlled by the petitioner and his wife and they are responsibility for day to day affairs of the Company RBS India. Therefore, the petitioner made the second respondent to pay the amount for the goods by making advance payments and then received the said goods from the second respondent on credit basis for Joy Marketing.

7. In this manner, the money for the goods were completely paid by the second respondent and goods continued to reach and remain with the accused until sold. Thereby, the accused enjoyed the goods on credit without making any payment and was able to do business at the cost of the second respondent. Therefore, it appears to be a commercial transaction but fraudulent

intention categorically available at the first instance itself from the accused in order to cheat the defacto complainant. They misappropriated huge amount under the guise of commercial transaction. Therefore, the initiation of the present prosecution would not amount to arm twisting method or cloak the criminal act. Further, the amount was collected from the second respondent and the petitioner is doing business and never intended to make payment towards the first set of material purchased or the material on credit. Therefore, the judgments cited by the learned Senior Counsel appearing for the petitioner are not helpful to the case on hand since there are ingredients to attract the offence under Sections 420 and 120B of IPC. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India rendered in ***Crl.A.No.579 of 2019*** dated ***02.04.2019*** in the case of ***Devendra Prasad Singh Vs. State of Bihar & Anr.,*** wherein it is held as follows:-

> *" 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the*

appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13.In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

8. The Hon'ble Supreme Court of India dealing in respect of the very same issue in ***Crl.A.No.1572 of 2019*** dated 17.10.2019 in the case of ***Central Bureau of Investigation Vs. Arvind Khanna,*** held as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20.In our view, the assessment made by the High Court at *this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."*

9. Further the Hon'ble Supreme Court of India also held in the order dated ***02.12.2019*** passed in ***Crl.A.No.1817 of 2019*** in the case of ***M.Jayanthi Vs. K.R.Meenakshi & anr,*** as follows:

> *"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.*
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> ....
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> *13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage..................."*

10. In view of the above discussion, this Court is not inclined to quash the impugned proceedings and this criminal original petition is liable to be dismissed. Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petitions are closed.

05.12.2023

Index :Yes/No
Internet : Yes/No
Speaking order/non-speaking order
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To

1.The learned Chief Metropolitan Magistrate Court at Egmore,
Chennai
2.Sub Inspector of Police,
Team EDF-1 Central Crime Branch,
Chennai
3.The Government Advocate,
High Court of Madras

G.K.ILANTHIRAIYAN, J.

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CRL.O.P.No.773 of 2021