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Crl.OP.No.1883 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2023

CORAM:

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

Crl.OP.No.1883 of 2021
and
Crl.MP.Nos.1073 & 5127 of 2021

1.M/s.Sri Sai Balaji Gas Cylinders Pvt.Ltd.

Rep. By its Managing Director M.Muruganandam,
Door No.28, Besant Avenue,
Adyar, Chennai-20

2.M.Muruganandam

3.M.Sushmitaa Priya

... Petitioners

Vs.

1.The State

Rep. By the Inspector of Police,
EDF-II, Team 9-A, Central Crime Branch,
Vepery, Chennai-7
(crime No.56 of 2017)

2.B.Murugesan

... Respondents

PRAYER:

Criminal original petition is filed under Section 482 of Cr.P.C. to quash the proceedings in CC.No.6014 of 2018 on the file of the Special Metropolitan Magistrate's Court for CCB Cases, Allikulam, Chennai-3 as illegal.

For Petitioners

: Mr.V.Karthik,



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Senior Counsel
for Mr.N.G.P.Rajaram

For Respondents

For R1

: Mr.A.Gopinath,
Government Advocate(Crl.side)

For R2

: Mrs.B.N.Sivaganasundari
for Mr.S.Ramachandran

ORDER

This Criminal Original Petition has been filed to quash the proceedings in CC.No.6014 of 2018 on the file of the Special Metropolitan Magistrate's Court for CCB Cases, Allikulam, Chennai thereby taken cognizance for the offences under Sections 420, 506(i) r/w 120(b) of IPC as against the petitioners.

2. The case of the prosecution is that the complainant is a businessman and the accused are running a unit for manufacturing cylinders under the name and style of M/s.Sri Sai Balaji Gas Cylinders Private Limited in Chennai. They also have another unit named MM Cylinders and GDR Cylinders at Tirupathi. The first accused approached the complainant through one, Srinivasan of Tirupathi. They represented that they owned a commercial gas cylinders manufacturing unit and they had good reputation in market.



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Further represented that they were tiding over some financial crisis due to non payment of service and commercial taxes. Therefore, they requested for some source funding for which they promised to repay the total amount within few months of time. They wanted a sum of Rs.2 crores. Thereafter, they were persistent with the complainant stating many stories and lured the defacto complainant into parting with money. They assured that if a sum of Rs.5 crores invested with them, the defacto complainant would be getting 35% of the share of the company. Believing the said words, the defacto complainant agreed to pay a sum of Rs.5 crores. The defacto complainant inspected M/s.Sri Sai Balaji Gas Cylinders Private Limited. However, it was not in using condition because of financial crisis. Therefore, the defacto complainant decided to invest money to the tune of Rs.5 crores and initially paid a sum of Rs.10 lakhs by way of cash on 18.07.2012. Thereafter, on 02.09.2012, though bank paid a sum of Rs.5 lakhs and on 07.09.2012, another sum of Rs.5,00,000/- paid through bank. Once again on 08.09.2002, a sum of Rs.5,00,000/- was paid through bank and finally on 17.09.2012, paid a sum of Rs.10 lakhs. The property which stands in the name of his wife to an extent of 31 cents was sold out for a sale consideration of Rs.38,60,000/- and the same was paid to the first accused on 15.10.2012. Thereafter, the property worth about Rs.80 lakhs belongs to his wife was also sold out and sale consideration was paid to the first accused. In



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total, the complainant paid a sum of Rs.1,53,60,000/-. On receipt of the entire amount, the accused also issued acknowledgment dated 21.02.2013. However, the accused failed to transfer share to the tune of 35% in favour of the complainant and did not repay the said amount. On receipt of the said complaint, the first respondent registered FIR in crime No.56 of 2017 for the offence under Section 420 & 506(i) of IPC. After completion of investigation, final report was filed and the same has been taken cognizance by the trial court in CC.No.6014 of 2018.

3. Mr.V.Karthik, the learned Senior Counsel appearing for the petitioners submitted that it is only money transaction between the petitioners and the defacto complainant. In fact, the defacto complainant agreed to pay the entire amount of Rs.5,00,00,000/-. However, he could not able to pay the same on single stroke and as such, the entire business was collapsed and due to which the petitioners could not run the unit. Even according to the defacto complainant, he paid only a sum of Rs.1,53,60,000/- and the remaining amount of Rs.3,46,40,000/- was not paid in time. Therefore, the company was in financial trouble. With an intention to revive the company by getting investment from third party, the petitioners offered 35% share of the company for the total price of Rs.5 crores. Therefore, there was no deception at the



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inception to cheat the defacto complainant. The entire allegations are civil in nature. Even according to the defacto complainant, the non fulfilment of the obligation of the oral commercial contract between the petitioners and the defacto complainant caused only a civil cause of action for which criminal colour was given. A frivolous criminal complaint was lodged by the complainant. In support of his contention, he relied upon the judgments of the Hon'ble Supreme Court of India in the case of ***Vesa Holdings Private Limited and another Vs. State of Kerala and others*** reported in ***(2015) 8 SCC 293*** and in the case of ***Dalip Kaur and Others Vs. Jagnar Singh and another*** reported in ***(2009) 14 SCC 696***.

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

5. On perusal of the records, revealed that on receipt of the amount, the first petitioner issued letter of acknowledgment in which he categorically stated that the complainant had proposed to invest total sum of Rs.5 crores in M/s.Sri Sai Balaji Gas Cylinders Private Limited. The company accounts are to be separated from groups accounts. It takes time upto 31.03.2013. As Auditor for the entire group, the first petitioner has to legally comply the formalities in



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connection with separation as well as the induction of the complainant by allowing share 35% for the company to the complainant after 14.04.2013.

However, the first petitioner failed to transfer any share to the tune of 35% of share in favour of the complainant. Admittedly, the complainant had paid a sum of Rs.1,53,60,000/-. Therefore, the accused fraudulently and dishonestly induced the complainant to deliver money. Therefore, the offence under Section 420 of IPC is clearly made out as against the petitioners. The ingredients of the Section 420 of penal code are that (i) deception of any persons, (ii) fraudulently or dishonestly inducing any person to deliver any property or (iii) to consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything he would not do or omit.

6. As stated supra, there was clear dishonest intention on the part of the accused and deceived the complainant to pay huge sum. Therefore, the ingredients in order to attract offence under Section 420 of IPC very much available. As such, the judgments cited by the learned counsel for the petitioners are not helpful to the case on hand. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed 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:-

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" 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.

6. 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



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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.”

7. 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



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in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

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....."

8. In view of the above discussion, this Court is not inclined to quash the impugned proceedings. However, the petitioners are at liberty to raise all the grounds before the trial Court.

9. Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petitions are also closed.

07.11.2023

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

G.K.ILANTHIRAIYAN, J.

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To



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- 1.The Special Metropolitan Magistrate's Court for CCB Cases,
Allikulam, Chennai
- 2.Inspector of Police,
EDF-II, Team 9-A, Central Crime Branch,
Vepery, Chennai-7
- 3.The Government Advocate,
High Court of Madras

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