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Crl.O.P.No.2169 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2023

CORAM:

THE HON'BLE MR.JUSTICE **SUNDER MOHAN**

Crl.O.P.No.2169 of 2021 and
Crl.M.P.Nos.1193 & 1195 of 2021

Sugavanam Vijayakumar

... Petitioner

Vs.

1. State Rep. By
Inspector of Police,
Central Crime Branch EDF-II, Team-III,
Egmore, Chennai-600 008.

2.G.Karthik

... Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records relating in C.C. No.5061 of 2020 on the file of Metropolitan Magistrate, Special Court for CCB & CBCID Cases, Egmore, Chennai-8 and quash the same as against the petitioner.

For Petitioners : Mr.Shanmugavelayutham,
Senior Counsel for
Mr.T.Vijayaraghavan

For Respondents : Mr.Leonard Arul Joseph Selvam
Govt. Advocate (Crl.Side) for R1
Mr.G.Peranban for R2



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ORDER

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2. It is alleged in the final report that the petitioner represented to the second respondent/defacto complainant that if he invested in his company by name and style of M/s. Heritage India Properties, he would give huge profits; that believing the representation to be true, the second respondent and his friends invested a sum of Rs.1,55,00,000/- by making payments on various dates; that the petitioner paid only a sum of Rs.77,85,000/- and refused to pay the balance sum of Rs.84,15,000/- as promised by him and; that when questioned, he threatened him with his henchmen.

3. Mr.Mr.Shanmugavelayutham, the learned senior counsel for the petitioner would submit that (a) the records would reveal that the petitioner had received only Rs.1 crore and repaid the entire money received from the second respondent; (b) He had also filed a suit in O.S.No.6613 of 2019 before the VIII Assistant City Civil Court, Chennai seeking mandatory injunction directing the defacto complainant to return all the cheques given as security.



However, the said suit was dismissed on 30.09.2022 and as against which, he preferred A.S.No.100 of 2020 on the file of the VI Additional City Civil Court, Chennai; (c) that even if the entire allegations are accepted to be true, the offences under Sections 417, 418 and 420 IPC would not be made out. It is only a case of breach of promise and there is no allegation to show that there was deception at the inception; and (d) that initially the respondent Police had closed the case as civil in nature and it is only on the basis of a direction issued by the learned Magistrate, the case was registered which culminated in the impugned final report.

4. Learned Government Advocate (Criminal Side) would submit that there are materials available in the final report to implicate the petitioner and that the points raised by the petitioner could be adjudicated only during trial.

5. The learned counsel for the second respondent would submit that (a) the petitioner had cheated the defacto complainant by making a false representation that he would give huge profits and had induced the defacto complainant to make payments to the petitioner; (b) that even in the suit filed by the petitioner there is a finding that the petitioner is due to make payments to the defacto complainant. The defacto complainant has filed a complaint



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under Section 138 of the Negotiable Instruments Act and the same is pending; (c) that all the above would show that the petitioner intended to cheat the defacto complainant and the offence alleged are made out.

6. This Court, on perusal of the impugned final report finds that there is nothing on record to show that there was deception at the very inception. Even if the allegations in the final report are accepted to be true, it only reveals a monetary transaction between the petitioner and the defacto complainant, in which the petitioner had paid a sum of Rs.70 lakhs out of Rs.1 crore 55 lakhs received by him. It only confirms that there was a breach of promise. Further the issue whether the petitioner has paid the entire amount due is also pending adjudication in A.S.No.100 of 2020 on the file of VI Additional City Civil Court, Chennai. Besides that a complaint under Section 138 of Negotiable Instruments Act in C.C.No.4111 of 2019 on the file of FTC-V, Saidapet, Chennai, is pending against the petitioner for alleged dishonour of the cheque. It is for the parties to sort out the issue with regard to liability in those proceedings. There is nothing in the impugned final report to suggest that the petitioner has committed the offences of cheating. The judgment of the Hon'ble Apex Court in *Tambrapari Containers P. Ltd. vs. A.P.Varghese*



reported in **2014 4 MLJ Criminal 472** is squarely applicable to the facts of the present case, wherein this Court has held as follows:

“16. A simple reading of these provisions would make it abundantly clear that basically, there should be an allegation that the act of the accused amounts to deception. Secondly, the persons, so deceived should have been induced to deliver any property by any fraudulent or dishonest manner. In order to satisfy these essential requirements of Section 415 of the Indian Penal Code, there should be materials on record.

17. In the case on hand, as has been rightly contended by the learned counsel for the petitioners, absolutely there is nothing on record even to make out a prima facie case of deception. No-where, it is stated in the complaint that from the very inception, the accused deceived the respondent. Thus, the first essential ingredient has not been satisfied by the allegations made in the complaint. Further, there is absolutely no allegation that the accused acted either fraudulently to enter into the lease agreement. Thus, the second essential ingredient of Section 415 of the Indian Penal Code also has not been satisfied by means of any allegation in the complaint.”

As regards the offence of criminal intimidation, it is seen that the allegations do not reveal that there was any real threat.



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7. Hence, the impugned final report in C.C.No.5061 of 2020 on the file of the Metropolitan Magistrate, Saidapet Court for CCB & CBCID cases, Egmore, Chennai-8, is liable to be quashed. However, the learned Magistrate trying the offence under Section 138 of the Negotiable Instruments Act in C.C.No.4111 of 2019 on the file of FTC-V, Saidapet, Chennai, shall not be influenced by any of the observations made in this order. This order is made only in the context of Section 420 IPC. It is needless to say that the learned Magistrate shall independently consider the question of liability in the said case. It is once again needless to say that the V Additional City Civil Court, Chennai, shall decide the appeal in A.S.No.100 of 2020 without being influenced by any of the observations in this order.

8. Hence, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

20.03.2023

Index: Yes/No

Speaking / Non Speaking Order

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1. The Inspector of Police,
Central Crime Branch EDF-II, Team-III,
Egmore, Chennai-600 008.
2. The Metropolitan Magistrate,
Special Court for CCB & CBCID Cases, Egmore,
Chennai-8
3. The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN, J

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