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Crl.O.P.No.3613 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2023

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

Crl.O.P.No.3613 of 2021

and

Crl.M.P.No.2125 of 2021

Vijay Anand

... Petitioner

-Vs-

1. State by:

Inspector of Police,
District Crime Branch,
Tiruvanamalai,
Tiruvanamalai-606 604.
(Crime No.1 of 2016)

2. Manivannan

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records and quash the proceedings in C.C.No.258 of 2020 on the file of the learned Judicial Magistrate-I, Thiruvannamalai District against the petitioner.

For Petitioner : Mr.A.Vignesh

For R1 : Mr.A.Gopinath
Government Advocate (Crl.side)

For R2 : No appearance



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ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.258 of 2020 on the file of the learned Judicial Magistrate-I, Thiruvannamalai District against the petitioner.

2. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.side) for the first respondent and perused the materials available on record. There is no representation on behalf of the second respondent.

3. The case of the prosecution is that the defacto complainant had constructed a shopping mall in No.162, Vijay Mall, Vettavalam Road, Tiruvannamalai. In order to start Fast Food Centre in the said shopping mall, the defacto complainant found an advertisement of Hot Bitez, South Paw company through internet and for the same, he transferred an advance amount of Rs.50,000/- to confirm the booking of the said South Paw company's fast food. On 15.07.2015, the accused came to the defacto complainant's shopping mall and the accused stated that to start the Fast Food Centre in the shopping mall, the defacto complainant has to deposit a sum of Rs.17,50,000/- in their



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company's account. They also gave a written agreement document to the defacto complainant. Thereafter, the defacto complainant had transferred a sum of Rs.17,50,000/- to the account of South Paw Company. It is further alleged that on 19.10.2015, on the opening date of shopping mall, when the defacto complainant contacted the accused and asked why they have not started the Fast Food Centre in the shopping mall as per the agreement, the accused demanded further money. Thereafter, the defacto complainant found that there was no such company functioning in the name of South Paw Company. Hence, the complaint.

4. On receipt of the complaint, the first respondent registered FIR in Crime No.1 of 2016 for the offence under Section 420 of IPC and after completion of investigation, the first respondent filed final report and the same has been taken cognizance in C.C.No.258 of 2020 for the offences punishable under Sections 420, 418, 471 of IPC and Section 74 of Information Technology Act, 2000.

5. The learned counsel for the petitioner would submit that on receipt of the money from the second respondent, the petitioner placed orders in abroad



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that too mentioning the address of the second respondent to deliver the goods.

That apart, the second respondent failed to fulfill the Franchise Agreement and as such, the petitioner was unable to start the Fast Food business as agreed by them. That apart, the entire allegations are civil in nature and no offence is attracted as against the petitioner under Sections 420, 418, 471 of IPC and Section 74 of Information Technology Act, 2000.

6. In support of his contention, he relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2023 SCC OnLine SC 210** in the case of **Sarabjit Kaur Vs State of Punjab and Another**, in which the Hon'ble Supreme Court of India held that a breach of contract does not give rise to criminal prosecution for cheating, unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely the allegation of failure to keep up promise will not be enough to initiate criminal proceedings.

7. He also relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2011 13 SCC 412** in the case of **Thermax Limited and others Vs K.M.Johny and others**, in which the Hon'ble Supreme Court of India held that in order to attract the offence under Section 420 of IPC, there has to



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be dishonest intention to deceive another person. In the case on hand, there was no dishonest intention to deceive the second respondent to receive the amount. Therefore, he prayed for quashment of the entire proceedings.

8. A perusal of records and the statement recorded under Section 161 of Cr.P.C revealed that the second respondent paid a sum of Rs.17 ½ lakhs in order to start a business of Fast Food. The petitioner is represented as if he is the Managing Director of South Paw company. In the said name, the petitioner also entered into franchise agreement on 15.07.2015. Subsequently, the petitioner did not start the business of Fast Food and also failed to bring any machineries to the second respondent's premises to start the business. On verification, the second respondent found that the company called South Paw company is not in existence. Therefore, in order to cheat the second respondent, the petitioner induced the second respondent to pay a sum of Rs.17 ½ lakhs with a dishonest intention.

9. It is true that the breach of contract does not give rise to criminal prosecution for cheating. However, in the case on hand, there are materials to show the dishonest intention of the petitioner to cheat the second respondent



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after receipt of Rs.17 ½ lakhs money. Though the petitioner produced so many photographs showing that the petitioner started to purchase machineries from abroad and also part of the amount was deposited to the third party to purchase the machineries, these documents cannot be tested here and it can be established only before the Trial Court during the trial.

10. In this regard, 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.***, which is 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



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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.

11. Recently, the Hon'ble Supreme Court of India dealing 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



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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.”

12. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** 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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.....

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....."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioners are mixed question of facts and it cannot be considered in a quash petition under Section 482 Cr.P.C.

13. The provisions of inherent jurisdiction under Section 482 Cr.P.C can be invoked only to meet out the ends of justice and to prevent the abuse of process of law.

14. In view of the above, this Court is not inclined to quash the proceedings in C.C.No.258 of 2020 on the file of the learned Judicial Magistrate-I, Thiruvannamalai District. However, the personal appearance of the petitioner is dispensed with and he shall be represented by a counsel after filing appropriate application. However, the petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning



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under Section 313 Cr.P.C. and at the time of passing judgment. The petitioner is at liberty to raise all the grounds before the Trial Court.

15. Accordingly, this Criminal Original Petition is dismissed.

Consequently, connected Miscellaneous petition is closed.

03.11.2023

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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G.K.ILANTHIRAIYAN. J,

mn

To

1. The Judicial Magistrate-I, Thiruvannamalai District.
2. The Inspector of Police,
District Crime Branch,
Tiruvannamalai,
Tiruvannamalai-606 604.
3. The Public Prosecutor,
High Court, Madras.

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