



WEB COPY



Crl.O.P.No.6512 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2023

CORAM:

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

Crl.O.P.No.6512 of 2022
and Crl.M.P.No.3665 of 2022

Prakash

...Petitioner

Vs.

1. The State, Represented by
The Inspector of Police,
Grand Bazar Police Station,
Puducherry.
(Crime No.0273 of 2021)

2. Saravanan

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in Crime No.273 of 2021 on the file of the first respondent and quash the same.

For Petitioner : Mr.S.Karthikeyan
For Mr.V.Karnan

For Respondents

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

For R2 : Mr.F.Wellington

ORDER

This petition has been filed to quash the FIR in Crime No.273 of 2021 on the file of the first respondent Police, registered for the offence under Section 420 of IPC, as against the petitioner.



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2. The case of the prosecution is that in order to supply of cloths, the second respondent paid a sum of Rs.6,00,000/- to the petitioner. On receipt of the said amount, the petitioner filed to supply any materials. Hence the complaint. On receipt of the said complaint, the first respondent registered the FIR in Crime No.273 of 2021 for the offence under Section 420 of IPC.

3. The learned counsel appearing for the petitioner submitted that there was absolutely no transactions between the petitioner and second respondent. The second respondent's brother used to purchase cloths from the petitioner, who is running a garments shop in the name and style of Betee. The second respondent's brother and sister-in-law could not able to pay a sum of Rs.50,00,000/- outstanding to the petitioner. Hence, on the complaint lodged by the petitioner, they were arrested and remanded to judicial custody in Crime No.345 of 2020 on the file of the Inspector of Police, CCB, Chennai. After coming out from the prison on bail, they entered into memorandum of understanding with the petitioner. The second respondent's brother owns to pay a sum of Rs.50,00,000/- and on the date of memorandum of understanding, they paid a sum of Rs.15,00,000/- and agreed to pay a sum of Rs.35,00,000/-



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on or before 15.10.2021. Therefore, no prudent man would agree to supply material to the second respondent when his brother was due of Rs.35,00,000/-.

3.1. He further submitted that in fact, on 16.10.2021, on instruction of his brother, the second respondent came to the petitioner's office along with his wife and manager. They told that they could not able to arrange a sum of Rs.35,00,000/- and the second respondent paid a sum of Rs.5,00,000/- and also issued post dated cheques for Rs.11,00,000/-. Further he paid a sum of Rs.1,00,000/- through RTGS and also agreed to pay the balance amount within a period of one month by selling the shops in Puducherry and Dindivanam. Therefore, the said amount was paid only for due by his brother. There is no transaction between the petitioner and the second respondent.

4. The learned counsel appearing for the second respondent would submit that the petitioner sent some designs of garments through Whatsapp message. After having agreed to purchase the same, the second respondent paid a sum of Rs.6,00,000/- and it was categorically admitted by the petitioner. After receiving a sum of Rs.6,00,000/-, the petitioner



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failed to supply the material. Therefore, the offence under Section 420 of IPC is clearly made out as against the petitioner. That apart, it is only FIR and it has to be investigated to unearth the truth.

5. The learned Government Advocate (Crl. Side) appearing for the first respondent submitted that the alleged memorandum of understanding executed between the petitioner and the second respondent's brother. The second respondent is no way connected with the said memorandum of understanding. In order to purchase the garments, the second respondent paid a sum of Rs.6,00,000/- and on receipt of the same, the petitioner failed to supply any garments. Therefore, there are ingredients to constitute the offence under Section 420 of IPC and the FIR cannot be quashed.

6. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

7. The petitioner is the sole accused in the complaint lodged by the second respondent. Admittedly, there was a business transaction between the petitioner and the second respondent's brother viz., Senthil



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@ Manikandan. The said Senthil @ Manikandan was running textile shop in the name and style of B2V New Jean Factory. He used to purchase materials from the petitioner herein. Towards the said purchase, he was in due of Rs.50,00,000/-. In fact, the petitioner lodged complaint against the said Senthil @ Manikandan and same was registered in Crime No.345 of 2020 for the offences under Sections 406, 420 and 506(i) of IPC on the file of the Inspector of Police, CCB, Chennai.

8. In pursuant to the registration of FIR, the said Senthil @ Manikandan and his wife were arrested and subsequently released on bail. Thereafter, a memorandum of understanding was executed between the petitioner and the second respondent's brother. On the date of execution of memorandum of understanding a sum of Rs.15,00,000/- was paid and agreed to pay balance amount of Rs.35,00,000/- on or before 16.10.2021. However, the second respondent's brother failed to settle the amount as agreed by him. Thereafter on 16.10.2021, the second respondent and his wife approached the petitioner and paid a sum of Rs.6,00,000/- and also issued post dated cheques for the sum of Rs.11,00,000/- for the amount payable by the brother of the second respondent.



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9. That apart, no prudent man will pay the huge amount when his brother was in due. On the one hand, the petitioner lodged complaint as against the second respondent's brother alleging that he supplied the garments and his brother failed to pay the dues. On the other hand, the second respondent lodged complaint that he paid money and the petitioner failed to supply the materials. When the second respondent's brother was in due of huge amount for the purchase of material from the petitioner, no prudent man will pay a sum of Rs.6,00,000/- for garments to the petitioner. Therefore, in order to escape from the clutches of memorandum of understanding, the present complaint has been foisted as against the petitioner, that too on instructions of his brother. Therefore, it cannot be sustained and it is liable to be dismissed.

10. Accordingly, the FIR in Crime No.273 of 2021 on the file of the first respondent Police is hereby quashed and the Criminal Original Petition stands allowed. Consequently, connected miscellaneous petition is closed.

01.12.2023

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
rts



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To

1. The Inspector of Police,
Grand Bazar Police Station,
Puducherry.
2. The Public Prosecutor,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN. J.

rts

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