



Crl.O.P.No.6528 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2023

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THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P. No.6528 of 2021

&

Crl. M.P.No.4334 of 2021

Mahesh Prasad

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep by the Inspector of Police,
N1 – Police Station, Royapuram,
Chennai.

2. Sukhdev Singh

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records in C.C.No.492 of 2021 on the file of the Metropolitan Magistrate Court, George Town, Chennai and quash the same.

For Petitioner : Mr. S.Ilamvaludhi



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For Respondent 1 : Mr. A.Damodaran
Additional Public Prosecutor

For Respondent 2 : Mr. A.Karthikeyan.

ORDER

The petition is filed to quash the final report for the alleged offences under Section 407 of IPC.

2. It is alleged in the final report that the 2nd respondent / defacto complainant had engaged the petitioner to transport 21 parcels weighing 500 Kgs, through one Ram Dev Transport Service, Mumbai and that the said Transport services handed over 21 parcels to the petitioner herein, who is the proprietor of Air Cargo Enterprises, Mumbai to be delivered at Shree Murali Krishna Garments, Chennai. It is further alleged that out of 21 parcels, the 2nd respondent / defacto complainant received only 4 parcels; that the petitioner promised to make good the loss and failed to keep up the promise and thus the petitioner was guilty of the offence under Section 407 IPC.

3. The learned counsel for the petitioner would submit that the



allegations in the final report are misconceived. The petitioner, no doubt undertook to transport the goods. The goods were transported in a Train Compartment and the said goods were stolen and the petitioner had lodged several complaints to the Deputy Regional Manager, Central Railways, Mumbai complaining about the theft made in the Train compartment. However, no action was taken.

4. The learned counsel in any case would submit that it is the case of theft of goods and the petitioner is also a victim. Though the petitioner may be liable civilly to the 2nd respondent, however the offence of Section 407 IPC would not be made out. The learned counsel also pointed out to the order passed by the Principal Sessions Judge, Chennai, at the time of grant of anticipatory bail. The Principal Sessions Judge, Chennai had observed that no offence is made out and the allegation of misappropriation would not be proper.

5. The learned counsel for the 2nd respondent / defacto complainant would submit that the question as to whether the petitioner has



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misappropriated has to be adjudicated before the Trial Court. Further, the petitioner has not taken any steps to pursue the complaint given before the Railways. The petitioner promised to pay the value of the goods. However, he failed to pay the same. Hence, he prayed for dismissal of the quash petition.

6. This Court is of the view that the admitted facts are that the petitioner has lodged a complaint before the Railways about the theft of goods. Merely because that the petitioner had not taken steps to pursue the complaint, it cannot be said that the petitioner had committed misappropriation of goods. In order to attract the offence of criminal breach of trust, the allegation must be that the property entrusted to the petitioner was dishonestly misappropriated or converted to his own use by him or he had disposed the property in violation of direction of law etc,. No such allegation has been made in the instant case. The only allegation is that the petitioner promised to pay the compensation for the lost goods and failed to keep up his promise. That would only furnish a ground for civil action and not attract the offence of criminal breach of trust. It is no doubt true that the petitioner is liable civilly to compensate the 2nd respondent, but the 2nd



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respondent cannot allege misappropriation in the absence of the ingredients to attract the said offence.

7. Therefore, this Court is of the view that the allegation does not disclose the alleged offences and the impugned final report is liable to be quashed. Further, this Court is of the view that non-interference in a case of this nature would lead to miscarriage of Justice.

8. The petition is allowed with the above observation. Consequently, the connected Miscellaneous Petition is closed. No costs.

26.06.2023

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Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

To

1.The Metropolitan Magistrate Court,

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George Town,
Chennai.

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2. The Inspector of Police,
N1 – Police Station, Royapuram,
Chennai.

SUNDER MOHAN. J,

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