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Crl.O.P.No.8383 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2023

CORAM :

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.8383 of 2020
and Crl.M.P.No.4113 of 2020

T.Murugesan

.. Petitioner

Vs.

1.State represented by,
The Inspector of Police,
Tharamani Police Station,
Chennai – 600 113.
(Crime No. 522 of 2019)

2.M. Dilip Vincent.

.. Respondents

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in Crime No. 522 of 2019 on the file of respondent police and quash the same.

For Petitioner : Mr.R.Vivekananthan

For R1 : Mr.L.Baskaran
Government Advocate (Crl.Side)

For R2 : Mr.G.Prabakaran
For M/s. R & P.Partner's



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ORDER

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This Criminal Original Petition has been filed to quash the FIR in Crime No. 522 of 2019 on the file of first respondent.

2. The second respondent lodged a complaint as against the petitioner alleging that he is running a business in the name and style of M/s. Refimac and he engaged in the sales of household and home need articles on a whole sale basis. The nature of business transactions adopted by the second respondent with various vendors is sale and delivery of goods on credit basis as well as montly installment basis.

3. While doing so, the accused/petitioner approached the second respondent for credit as that they are in the business of selling household and home made articles in the name and style of M/s. Subha Stores. The petitioner had purchased the goods from the second respondent on credit basis and repaid the same. Subsequently, the petitioner purchased goods on credit basis and to the tune of Rs. 13,65,290/- and thereafter, failed to repay the said amount. When it was questioned by the second respondent, the



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accused/petitioner threatened him with dire consequences. Hence the present complaint has been lodged by the second respondent.

4. On the receipt of the said complaint, the first respondent police registered First Information Report in Crime No. 522 of 2019 for the offences under Sections 420 and 506(1) of IPC.

5. The learned counsel for the petitioner would submit that even according to the second respondent, the entire transactions are business transactions. Admittedly, the petitioner and his wife had a business transactions with the second respondent from the year 2013. He also produced statements of accounts from the year 2013 to 01.06.2018. It shows that the accused/petitioner and his wife had purchased the household articles from the second respondent on credit basis and subsequently, they used to repay and settle the amount. Therefore, right from the very inception of the crime, no deception has been uttered on the part of the petitioner and as such, the present case falls within the ambit of a pure civil transaction and it doesn't in any manner create criminal liability over dues



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payable by the petitioner to the second respondent.

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6. That apart, while considering the petitioner's Anticipatory Bail, this Court imposed condition to deposit a sum of Rs. 3,00,000/- and accordingly the petitioner had deposited a sum of Rs. 3,00,000/- and the same was permitted to withdraw by the second respondent. Therefore, it is mere transactions of goods with an intent to obtain the monetary consideration would amount only to business transactions in nature and the same does not amount to offences of cheating. Because, the second respondent had delivered the goods for credit with a true consent which implies a free flow of confidence on the transferee in order to attract the offences under Section 420 of IPC. It must be shown that the petitioner with a malafides intention had deceived the second respondent to deliver the goods to them. It is necessary to consider the state of mind of the petitioner at the very inception while entering into a contract with the Defacto-Complainant/second respondent to deliver the goods to them.



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7. Admittedly, the case of the second respondent is that the petitioner and his wife had paid part amount to the goods delivered by the second respondent. Therefore, the essential ingredients to constitute the offences under Section 420 of IPC is absent in this case.

8. The mere breach of contract and subsequent non-fulfillment of a promise does not amount to cheating the second respondent. Unless, it is shown that there was dishonest intention existed in the minds of the petitioner from the very inception, the dishonest intention cannot be inferred from a mere fact of subsequent breach of promise. Therefore, the offence under Section 420 of IPC cannot be made out as against the petitioner.

9. Insofar as the offence under Section 506(i) of I.P.C is concerned, to attract the offence, threat and intention to cause an alarm are main ingredients. The third ingredient is that the intention must be to cause any person to do any act which he is not legally bound to do or to omit to do any act which that person is legally entitled to do, subsequent to the main ingredients. Whereas in the case on hand, even according to the case of the



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prosecution, the alleged threats issued by the petitioner were only empty threats and they had no effect on the complainant.

10. In this regard, It is relevant to rely upon the judgment of this Court made in ***Crl.O.P.(MD)No.11030 of 2014*** in the case of ***Abdul Agis Vs. State through the Inspector of Police***, which reads as follows:-

“7.It is seen from the statements recorded under Section 161(3) of Cr.P.C. of the second respondent/ defacto complainant that it does not contain any obscene words, which were uttered by the petitioner herein and the entire allegations are very simple in nature. It is also seen from the statement of one Uthami, that the petitioner threatened the defacto complainant with dire consequences when he dashed the defacto complainant. The entire allegations are trivial in nature. Further, to attract the offence under Section 506(i) of I.P.C., there was a threatening only by words. As pointed by the learned counsel appearing for the petitioner, the threat



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should be a real one and not just a mere word when the petition uttering does not exactly mean what he says and also when the person to whom threat is launched does not feel threatened actually. Therefore, the offences under Sections 294(b) and 506(i) of I.P.C. are not made out as against the petitioner herein and also the entire criminal proceedings is clear an abuse of process of Court. Therefore, this Court is inclined to quash the entire proceedings.”

11. Therefore, the First Information Report cannot be sustained since no offence is made out against the petitioner. In view of the above facts and circumstances, the impugned First Information Report registered in Crime No. 522 of 2019 is liable to quashed, and accordingly quashed. This Criminal Original Petition is allowed and consequently, connected miscellaneous petition is closed.

12.10.2023

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
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G.K.ILANTHIRAIYAN,J.

nsI/veda

To

- 1.The Inspector of Police,
Tharamani Police Station,
Chennai – 600 113.
2. The Public Prosecutor,
High Court, Madras.

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