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CrI.O.P.No.8933 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CrI.O.P.No.8933 of 2021 &
CrI.MP.No.5812 of 2021

1. S.G. Engineers,
1216, Sector 37,
Faridabad, Haryana 121 003
D-382/14, Laxmi Nagar,
Central Road, Delhi 110 092.
2. Ms.Ritu Srivastava (Proprietrix)
S.G.Engineers,
1216, Sector 37,
Faridabad, Haryana 121 003
D-382/14 Laxmi Nagar,
Central Road, Delhi 110 092.
3. Mr.Sudhir Mohan Srivastava,
Sales Head,
1216, Sector 37,
Faridabad, Haryana 121 003.
D-382/14 Laxmi Nagar,
Central Road, Delhi 110 092.

.. Petitioner

Vs.

Salcomp Manufacturing India P. (Ltd),
Nokia Telecom SEZ,
SIPCOT Industrial Park, Phase-III,
Sriperumbudur,
Kancheepuram District

.. Respondent



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PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records relating to the private complaint in C.C.No.32 of 2019 on the file of the learned District Munsif-cum-Judicial Magistrate, Sriperumbudur and quash the same.

For Petitioners : Mr.S. Parthasarathy

For Respondent : Mr. M.G. Pranav Charan
for M/s.India Law LPP

ORDER

This Criminal Original Petition is filed to call for the records relating to the private complaint in C.C.No.32 of 2019 on the file of the learned District Munsif-cum-Judicial Magistrate, Sriperumbudur and quash the same.

2. The learned counsel for the petitioners submitted that the petitioners are engaged in the business of providing customized air solutions under the name and style of S.G.Engineers, having office at Faridabad, Haryana. The respondent, who are engaged in the business of



manufacture and sale of charges for mobile phones, in order to set up a factory at Noida, approached the petitioners, for providing customized air solutions at respondent's principal office at Faridabad, Haryana and placed work orders with them. In this regard, for various works done by the petitioners, during July 2016, they raised seven invoices for the total value of Rs.18,57,922.16 and the same was paid. During August 2017, it was realised that an excess payment of Rs.5,41,702.69 was paid by the respondent and a sum of Rs.40,783.68 paise has to be paid to the petitioners. It is alleged by the respondent that the said excess payment was made based on the false invoices raised by the 2nd and 3rd petitioners. Thus the act of the petitioners amounts to conspiracy, criminal misappropriation and forgery. Hence, after issuing legal notice, a complaint was filed against the petitioners in C.C.No.32 of 2019 before the learned District Munsif cum Judicial Magistrate, Sriperimbudur.

3. He further submitted that the complaint filed itself shows that it is clearly a commercial transaction and if at all any amount is paid in excess, the remedy open to the respondent is to file a civil suit before the

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appropriate forum. The complaint has been falsely lodged in order to harass the petitioners. Therefore, no prima facie case has been made out to take cognisance and punish the petitioners. Thus he prayed for quashing the complaint in CC.No.32 of 2019 and allow the Criminal Original Petition. Thus, no offence under sections 403, 409, 465 and 468, 34 and 120B of IPC is attracted. Therefore, the complaint is unsustainable. Hence, he seeks to quash the complaint filed in C.C.No.32 of 2019 pending on the file of District Munsif-cum-Judicial Magistrate, Sriperumbudur.

4. The learned counsel for the complainant/respondent submitted that the transaction between the parties are not disputed, but the petitioners falsely raised invoices to a tune of Rs.5,41,702.69. On audit verification, the respondent realised that the petitioners by raising forged invoices claimed amounts and received Rs.5,41,702.69 from the respondent. Therefore, in order to unearth the forgery committed by the petitioners, trial has to be conducted. Stating so, he pleaded to dismiss this petition.

5. Heard both sides and perused the materials available on record.



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6. On perusal of records, in the complaint, the allegation in the complaint is as follows;

'.... The accused completed the works in July 2016 in all respects. The Accused No.3 issued a statement vide e mail dated 15.07.2016 claiming an amount or Rs.2,36,901.45/- (Indian Rupees two lakhs thirty six thousand none hundred and one and forty five paise) towards full and final settlement. As per the said statement the accused raised seven invoices on the complainant, the first invoice dated 31.05.2016 and the last invoice dated 21.06.2016 , for a total value of Rs.18,57,922.16/- (Indian Rupees Eighteen lakhs fifty seven thousand nine hundred and twenty two and sixteen paise only)

The seven invoices as raised by the accused on the complainant dated 31.05.2016, 05.06.2016, 08.06.2016, 15.06.2016 and 21.06.2016 respectively are produced herewith and marked as Exhibit 3 series.

(i) The complainant submits that the said statement was repeated by the Accused no.3 vide its statement dated 1st August 2016. The invoice dated 21.06.2016 was numbered wrongly as SG/SMI/627 in the statement attached to the email



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dated 15.07.2016 and was corrected as SG/SMI/630 vide the email dated 1st August 2016. The Accused also acknowledge the receipt of an amount of Rs.16,21,020.71/- (Indian Rupees Sixteen Lakhs Twnty One Thousand and Twnty and Seventy One paise Only) vide the said statement dated 1st August 2016. Further it has been admitted by the accused vide mail dated 11 August 2016 that all the bills related to the works have been submitted and only Rs.2,36,901/- (Indian Rupees Two Lakhs Thirty six Thousand Nine Hundred and One only) is due on that date.

The said emails dated 15th July 2016 and 1st August 2016 and their respective statements also the email dated 11th August 2016 are attached and produced herewith and marked as Exhibit 4 series.

(j) The Complainant submits that the Complainant, despite receiving said statement from the Accused, however paid an amount of Rs.5,13,731.24/- (Indian Rupees five lakh thirtten thousand seven hundred and thirty one and twenty four paise only) on 18.08.2016 and an amount of Rs.2,53,502.40/- (Indian Rupees Two Lakhs Fifty Three Thousand Five Hundred and Two and Forty Paise only) on 23.09.2016 towards full and final settlement totalling to



Rs.7,67,233.64/- (Indian Rupees Seven Lakhs Sixty Seven Thousand Two Hundred and Thirty Three and Sixty Four Paise only). The Complainant effected said payments due to overlooking four tranches of payments, made to and acknowledged by the accused as follows;

S.No.	Date	Amount in INR
1.	27.05.2016	51,118.75
2.	27.05.2016	28,667.25
3	15.06.2016	81,584.19
4	15.06.2016	3,80,332.50
Total		5,41,702.69 (Indian Rupees Five Lakhs Forty One Thousand Seven Hundred and Two and Sixty Nine Paise only)

(k) The complainant submits that the accused acknowledged the receipt of said payments in the statement dated 1st August 2016. The complainant's personnel advising the finance department for release of payments were working on manual mode during the time of effecting the payments as factory setting up process in NOIDA was on going and the reason for overlooking the statement of the accused No.3 and tranches of payment as aforesaid was non-implementation of SAP and / or lack of any technical assistance for accounting . The said excess payment was made as a mistake.

(l) The complainant submits that the complainant



realised about the said excess payment only in August 2017. the complainant also realised that an amount of Rs.40,783.68/- (Indian Rupees Forty Thousand Seven Hundred and Eighty Three and Sixty Eight paise only) is due tot he accused. The complainant, immediately on realising the mistake, informed the accused, about the excess payment received by the accused, orally and through a series of emails.

A number of emails issued to the Accused is produced herewith and marked as Exhibit 5 series.

(m) The Complainant submits that the accused, after initially choosing th evade the follow up and demand, forged and invoice, purporting to be that of Accused No.1 and pre-dated it as 21.06.2016 numbered as SG/SMI/632 for a value of Rs.5,31,012.21/0 (Indian Rupees five lakhs Thirty One Thousand and Twelve and Twenty one paise only) and forged the ledger account of the Accused No.1 so as to cause losses to the complainant and to misappropriate the ampount received in excess and provided the same to the complainant on 18.08.2017 for the first time, when the complainant's personnel visited the office of the accused.

The forged ledger account dated 18.08.2017 and forged invoice bearing number SG/SMI/632 dated 21.06.2016



handed over to the complainant for the first time on 18.08.2017 is produced herewith and marked as Exhibit 6 series.

(n) The Complainant submits that the said invoice does not find a mention in any of the statement issued by the Accused claiming payment and was handed over to the personnel of the Complainant by hand for the first time clearly as an after thought so as to defeat the Complainant from claiming the money that was paid in excess to the Accused. The amount stated in the said invoice is almost equivalent to the excess payment of Rs.5,41,702.69/- (Indian Rupees five Lakhs forty one thousand seven hundred and two and sixty nine paise only) received and misappropriated by the accused. The accused levelled unfounded allegations against the complainant for the first time vide an email dated 20.08.2017. That accused No.2 in connivance with Accused No.3 have forged the said invoice. There is no transaction other than the works above referred to in between the accused and the complainant, and the accused is not entitled to the amount of excess payment made by the complainant by mistake.'

7. Perusal of the above extractions of the complaint would reveal that



the respondent/complainant, in his complaint dated 30.10.2018 in paragraph 3(l) admitted that it realised about the excess payment only in August 2017 and also realised that an amount of Rs.40,783.68 is due to the petitioners as an excess amount. Further, it was alleged in the complaint that the petitioners by forgery, prepared invoices and claimed Rs.5,41,702.69, thus they have committed offences punishable under sections 190 and 200 of Cr.P.C., r/w.sections 403, 409, 465, 468, 34 and 120B of IPC.

8. Admittedly, there is a work contract between the parties and after the work has been completed, the amount has been recieved by the petitioners by raising invoices. If there is any dispute with regard to payment of excess amount paid by the respondent towards the invoices raised by the petitioners, the respondent /complainant has to approach a civil court for recovery of excess amount paid by them.

9. Further, Sections 403, 409, 465 and 468 of Cr.P.C. runs as follows;

Section 403 of Cr.P.C.: Dishonest



misappropriation of property —Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 409 of Cr.P.C.: *Criminal breach of trust by public servant, or by banker, merchant or agent.—Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*

Section: 465. Punishment for forgery — *Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

Section: 468. Forgery for purpose of cheating — *Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.'*

9. I have considered the submissions of both sides in the light of the provisions stated above and also considered the allegations in the complaint. Admittedly, for the work done by the petitioner accused, they



claimed the following amounts

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<i>S.No.</i>	<i>Date</i>	<i>Amount in INR</i>
1.	27.05.2016	51,118.75
2.	27.05.2016	28,667.25
3	15.06.2016	81,584.19
4	15.06.2016	3,80,332.50
Total		5,41,702.69 (Indian Rupees Five Lakhs Forty One Thousand Seven Hundred and Two and Sixty Nine Paise only)

10. All these amounts were raised by giving invoices. These facts are also not disputed. After that, the complainant made the excess payment during the month of August 2017 and realised that an excess amount of Rs.40,783.65 is due to the petitioners/accused and thereafter realised the mistake about the excess payment received by the accused.

11. Under these circumstances, this court is of the view that there is no misappropriation of money, no criminal breach of trust, forgery and no making of forged document committed by the petitioners. In the absence of any allegation of misappropriation of money, criminal breach of trust,



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forgeries and making of false documents in the complaint, the offences constituting sections 403, 409, 465 and 468, 34 and 120 B of IPC would not attract. Therefore, the allegations in the complaint do not attract the requirements of the penal provisions under sections 403, 409, 465 and 468, 34 and 120 B of IPC. In view of the above discussions, this court is of the opinion that the complaint is unsustainable and hence the same is liable to be quashed.

12. Accordingly, the criminal complaint in C.C.No.32 of 2019 on the file of District Munsif cum Judicial Magistrate, Sriperumpudur is hereby quashed and the Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

12.07.2023

msr

Index:yes/no

Internet:yes/no

To

The District Munsif-cum-Judicial Magistrate,
Sriperumbudur

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V. SIVAGNANAM, J.

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