



Crl.O.P.No.12227 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2023

CORAM:

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

Crl.O.P.No.12227 of 2019

and

Crl.M.P.Nos.6404 and 13165 of 2019

1. Prime Industry
represented by its Partner P.Srinivasan
No.13/14, SIDCO Industrial Estate,
VennaiMalai Post,
Karur-639 006.
residing at 75 & 76
Ramanujam Nagar,
Sengunthapuram, Karur-639002.

2. R.Padmanabhan
3. P.Srinivasan
4. S.Akshasri
5. S.Preethi Sri
represented by her
father/guardian P.Srinivasan

...Petitioners

-Vs-

1. The Inspector of Police,
CCB, Coimbatore City P.S.,
Coimbatore District.
2. V.R.Foundries,
Represented by authorised
representative
R.Rajendran

...Respondents



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Prayer : Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, 1973, to call for the records and quash the FIR/Crime No.14 of 2019 on the file of the respondent police.

For Petitioners : Mr.G.Surya Narayanan

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

For R2 : Mr.A.Nagarajan
for Mr.S.Kathiravan

ORDER

This Criminal Original Petition has been filed to quash the FIR in Crime No.14 of 2019 on the file of the respondent police.

2. The second respondent lodged a complaint alleging that the complainant is a registered partnership firm carrying on business, with repute, for a long number of years. They are manufacturing rough castings and they have a registered corporate office. The first accused is a partnership firm and was running a factory and using rough castings. In order to make them into automobile components, namely, sprocket for bullet motor bikes, they used to purchase rough castings as raw materials. They entered into a criminal conspiracy and with a view to cheat the complainant and to misappropriate valuable goods by deceitful means, they have adopted a modus operandi by buying rough castings and issuing cheques for the value of the purchase from



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their current account. They deliberately preplanned that all the cheques had to be dishonoured in due course of time. All the materials were purchased by the accused from the complainant on credit and they resold the materials in the market, thereby they have generated money and made profit out of it. When the cheques given for every purchase were presented for collection, they were returned dishonoured and the complainant initiated proceedings under Sections 138 and 141 of Negotiable Instruments Act as against the accused. The accused had derived valuable movable goods from the complainant by deceiving the complainant fraudulently and has deceitfully induced the complainant to deliver the goods and has intentionally induced the complainant to supply materials by misrepresenting that all the cheques towards the value would be credited to the account of the complainant, thereby they benefited to the tune of Rs.2,20,24,466/- of the materials manufactured and supplied by the complainant. When it was questioned, they also threatened the complainant. It was further alleged that the accused had issued cheques from the current account and not from the cash credit account. It shows the intention of cheating and defrauding the complainant. Even after dishonouring the cheques, the accused never bothered to give a responsible reason for dishonouring the cheques. Hence, the complaint.



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3. On receipt of the complaint, the first respondent registered the FIR in Crime No.14 of 2019 for the offences under Sections 120B, 406, 420 and 506(1) of IPC.

4. The learned counsel for the petitioners would submit that the petitioners are arrayed as A1 to A5. The first petitioner is represented by its partner, the second petitioner and third petitioner is the son of the second petitioner. The fourth and fifth petitioners are daughters of the third petitioner. All the petitioners are partners of A1 firm. The petitioners 4 and 5, being daughters of the third petitioner, were added as partners of the first petitioner firm. However, they are no way connected to the transactions between the petitioners and the defacto complainant, since they are not involved in the day-to-day affairs or administration of the partnership firm. The petitioners placed orders with the defacto complainant for supply of automobile sprockets to Eicher motors for bullet bikes. There was various supply and many were defective. The supply was made with credit facility of one month by issuance of cheques. The understanding is after verification of the materials supplied by the defacto complainant, the cheques will be honoured. The materials were



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purchased between 06.10.2018 to 02.02.2019. There was about 200 transactions for which 200 cheques were issued for the purchase of materials in favour of the defacto complainant. Except 42 cheques, all other cheques were honoured for the supply of materials. However, in respect of 42 supply of materials, the petitioners found the goods supplied were defective and as such, they had stopped payment of the cheques numbering 42. Further, the petitioners' factory was also closed by pollution control authorities for some other reasons. Now, the petitioners are also facing the proceedings under Sections 138 and 141 of the Negotiable Instruments Act. Even then, with an oblique motive the present complaint has been lodged for the commercial transactions between the petitioners and the defacto complainant. The entire allegations are civil in nature and no offence is made out as alleged by the defacto complainant. In fact, the defective materials were duly returned to the defacto complainant by delivery of challans and E-way bills from time to time viz., from 13.06.2018 to 20.12.2018. According to the petitioners, from the inception of placing orders, there was absolutely no intention to deceive the defacto complainant. The entire complaint does not disclose any criminal offence and the transaction is of civil in nature. The present impugned FIR is nothing but arm twisting method, since the defacto complainant failed to take



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any action to recover the amount and the entire claim is barred by limitation and as such, the complaint has been foisted as against the petitioners.

5. The learned counsel for the defacto complainant would submit that if at all the petitioners found the materials supplied by the defacto complainant are defective one, the petitioners ought to have returned the defective materials. So far, they failed to return the defective materials and on the other hand, they had sold them to third parties and gained huge profit. Further, they had issued cheques for the supply of materials from the current account and not from their cash credit account. After issuance of cheques, they issued letter to stop payment of those cheques. Now, they are facing prosecution for the offences under Sections 138 and 141 of the Negotiable Instruments Act. Further, the present FIR is completely different one and has been registered for the offences under Sections 120B, 406, 420 and 506(1) of IPC. They had hatched criminal conspiracy with a view to cheat the defacto complainant and to misappropriate the valuable goods by deceitful means and have adopted a modus operandi by buying rough castings and issuing cheques for the value of the purchase from their current account. They deliberately preplanned that all the cheques had to be dishonoured in due course of time. That apart, the petitioners are facing so



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many cases from the similarly placed complainants for non settling the amount for supply of materials. Further, the FIR cannot be quashed on its threshold, since it has to be investigated in depth to unearth the truth and as such, it cannot be said that the allegations does not constitute any offence. The defacto complainant made out a prima facie case to register the FIR for the offences under Sections 120B, 406, 420 and 506(1) of IPC. Therefore, he prayed for dismissal of this petition.

6. The learned Government Advocate (Cr.side) appearing for the first respondent would submit that the petitioners had intention to cheat the defacto complainant and after receipt of materials, they issued cheques. Wantonly they failed to honour the cheques by issuance of stop payment letter to their banker. It shows their intention to cheat the defacto complainant. That apart, they had sold the defective goods to their parties and gained huge money. He also submitted that insofar as the petitioners 4 and 5 are concerned, they are deleted from the FIR. Now, the investigation is pending and as such, he prayed for dismissal of this petition.



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7. Heard the learned counsel for the petitioners, the learned Government Advocate (Crl.side) for the first respondent and the learned counsel for the second respondent and perused the materials available on record.

8. There are totally five accused, in which the petitioners are arrayed as A1 to A5. Now, the petitioners 4 and 5 are deleted from the FIR. The petitioners are manufacturers of automobile components, namely, sprocket for bullet motor bikes. They used to purchase rough castings as raw materials from the complainant. Accordingly, the petitioners placed order from 06.10.2018 to purchase rough castings. As per the orders, the defacto complainant supplied raw materials under various invoices. The petitioners used to issue cheque for each supply of materials on one month credit basis. On verification of materials supplied by the defacto complainant, the petitioners would clear the cheques for the supply of materials. There were totally 200 transactions between the petitioners and the defacto complainant from 06.08.2018 to 02.02.2019 on various dates. As per the orders, the defacto complainant supplied the materials. For each supply of materials, the petitioners issued cheque for the said sum. Out of 200 transactions, except 42 supply of materials, remaining 158 supply of materials were duly paid by the petitioners.



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9. Admittedly, there is no dispute between the petitioners and the defacto complainant, that insofar as 42 supply of materials, the cheques were not honoured. According to the petitioners, the defacto complainant supplied defective materials and as such, immediately, the petitioners issued stop payment through their bank. Therefore, the cheques which were presented by the defacto complainant returned dishonoured. However, the petitioners are now facing prosecution for the offences under Sections 138 and 141 of the Negotiable Instruments Act. Therefore, the entire transactions are commercial transactions and all the allegations levelled as against the petitioners are civil in nature. Even according to the defacto complainant, the petitioners failed to pay due for the supply of raw materials. On the complaint lodged by the defacto complainant, the first respondent registered FIR for the offences under Sections 120B, 406, 420 and 506(1) of IPC.

10. It is relevant to extract the provisions under Section 420 of IPC as follows:-

“420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being



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converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

11. Hence, in order to establish the offence of cheating, the defacto complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. On the accused making failure to keep up a promise subsequently, such a culpable intention, right at the beginning, that is at the time when the promise was made, cannot be presumed.

12. It is seen from the records that the petitioners purchased raw materials from the defacto complainant in 200 transactions, out of which 158 transactions were duly paid by the petitioners. Insofar as the remaining 42 transactions are concerned, the petitioners found the raw materials as defective one and issued stop payment to their banker. Therefore, there was no fraudulent or dishonest intention of the petitioners right at the time of placing orders. As there was absence of dishonest and fraudulent intention, the question of committing the offence under Section 420 of IPC does not arise. Though the complaint was cleverly drafted (might be with the assistants of an Advocate), as stated supra, the entire transactions are commercial in nature and allegations are



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civil in nature. Therefore, there was no intentional deception or fraudulent/dishonest intention on the part of the petitioners right from the time of making the promise of misrepresentation. Therefore, the petitioners could not be attributed with any mens rea to cheat the defacto complainant.

13. The learned counsel for the defacto complainant vehemently contended that even assuming that the defacto complainant had supplied a defective materials, the petitioners should have returned the materials immediately. Whereas, even till now, the petitioners failed to return the defective materials. They also had sold out the raw materials and profited by them. However, no allegations made to that effect in the complaint. On the other hand, the learned counsel for the petitioners produced the delivery challan and E-way bills from 13.06.2018 to 20.12.2018. These challans reveal that the defective materials were returned to the defacto complainant by delivery challans and E-way bills. Even assuming that the defective materials were not returned to the complainant, it would not constitute any offence either under Section 406 or 420 of IPC. Therefore, the present impugned complaint was lodged only to collect money which was allegedly due from the petitioners.



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14. The Hon'ble Supreme Court of India and this Court repeatedly held that the Police should not act and should not be used as collection/recovery agent for commercial transaction between the parties. The entire allegations in the complaint are that after purchase of materials, the petitioners failed to pay the dues. Therefore, the dispute between the petitioners and the defacto complainant is consequently a civil wrong. A mere breach of a promise, agreement or contract does not, ipso facto, constitute a criminal breach of trust, without there being a clear case of entrustment.

15. Further, in order to attract the offence under Section 406 of IPC, it is necessary to examine the ingredients of the above offences and whether the allegations made in the complaint, read on their face, attract those offences under the Penal Code. Section 405 of Penal Code reads thus:-

405. Criminal breach of trust — Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or



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implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

16. A careful reading of Section 405 of IPC shows that the ingredients of a criminal breach of trust are as follows:-

- (i) A person should have been entrusted with property, or entrusted with dominion over property;
- (ii) That person should dishonestly misappropriate or convert to their own use that property, or dishonestly use or dispose of that property or willfully suffer any other person to do so; and
- (iii) That such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.

Entrustment is an essential ingredient of the offence. A person who dishonestly misappropriates property entrusted to them contrary to the terms of an obligation imposed is liable for a criminal breach of trust and is punished under Section 406 of the Penal Code.



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17. It is relevant to extract the provisions under Section 420 of the Penal

Code as follows :-

420. Cheating and dishonestly inducing delivery of property — Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

The ingredients to constitute an offence under Section 420 of IPC are as follows :-

(i) A person must commit the offence of cheating under Section 415 and

(ii) The person cheated must be dishonestly induced to (a) deliver property to any person or (b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.

Cheating is an essential ingredient for an act to constitute an offence under Section 420.



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18. It is relevant to rely upon the judgment made by the Honourable Supreme Court of India in the case of *M/s. Indian Oil Corporation Vs. NEPC India Limited and others* reported in (2006) 6 SCC 736, held that the civil liability cannot be converted into criminal liability and it is necessary to take notice of a growing tendency in business circle to convert a purely civil dispute into a criminal case. This is obviously on account of prevalent impression that civil law remedies are time consuming and do not adequately protect the interest of lender/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claim which do not involve any criminal offence by applying pressure through criminal prosecution should be deprecated and dishonoured.

19. In the case of *G.Sagar Suri Vs. State of Uttar Pradesh* reported in 2000 (2) SCC 636, the Honourable Supreme Court of India held as follows:-

“It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence, criminal proceedings are not a short cut of other remedies



available in law. Before issuing process a criminal Court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

20. It is relevant to rely upon the land mark Judgment of the Hon'ble Supreme Court of India in the case of ***State of Haryana and others Vs. Bhajanlal and others*** reported in ***1992 Supp (1) SCC 335***, in which, the Hon'ble Supreme Court of India has laid down the following categories of instances wherein inherent powers can be exercised in order to secure the ends of justice as follows:-

“(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the



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Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on



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the accused and with a view to spite him due to private and personal grudge.”

21. Thus, what has to be seen, whether a matter which is essentially of a civil nature has been given a cloak of a criminal offence. Where the ingredients required to constitute a criminal offence are not made out from a bare reading of the complaint, the continuation of the criminal proceeding will constitute an abuse of the process of the Court.

22. In view of the above, the impugned FIR cannot be sustained as against the petitioners and it is liable to be quashed. Accordingly, the FIR in Crime No.14 of 2019 on the file of the respondent police, is hereby quashed. This Criminal Original Petition is allowed. Consequently, connected Miscellaneous petitions are closed.

29.11.2023

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

1. The Inspector of Police,
CCB, Coimbatore City P.S.,
Coimbatore District.
2. The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN. J,

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