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CRL.O.P.No. 13647 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2023

CORAM:

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

Crl.O.P.No. 13647 of 2021

Ganesan

... Petitioner

Vs.

Jayaram Textiles
rep. By N.Thangavel
Door No.3/39, Valayanthottam,
Kittampalayam PO,
Karumathampatti,
Coimbatore.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C.

praying to call for the records in C.C.No.186 of 2019 on the file of the Judicial
Magistrate, Sulur and quash the same.

For Petitioner : Mr.G.Maniprabhu

For Respondent : Mr.N.Ponraj

ORDER

This petition has been filed to call for the records in C.C.No.186 of
2019 on the file of the Judicial Magistrate, Sulur and quash the same.



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2. The case of the prosecution is that the respondent filed private complaint under Section 200 of Cr.P.C., before the learned Judicial Magistrate, Sulur alleging that petitioner is one of the partners of M/s. Jayaram Textiles. Respondent is the partner of M/s. Sudha Textiles. Petitioner is supplying threads to many persons and he agreed to supply threads to the respondent. As per the terms and conditions in the contract, respondent placed order by transferring the amount through RTGS in favour of the petitioner. Respondent has to supply threads within a period of thirty days. However, respondent has failed to supply any thread and thereby, they cheated the respondent. When it was questioned by the respondent, petitioner made death threat with dire consequences. Hence, respondent lodged a complaint before the jurisdiction police station and the same was not considered. Therefore, respondent instituted a complaint under section 200 of Cr.P.C before the learned Judicial Magistrate, Sulur. The learned Magistrate has taken cognizance on the complaint lodged by the respondent for the offence under Sections 294(b), 147, 420, 447, 506(ii) of IPC and issued summons to the petitioner.

3. The learned counsel for the petitioner submitted that, petitioner and others, being partners of partnership firms of M/s. Sudha Textiles, respondent police ought to have impleaded M/s. Sudha Textiles as respondent in this case.



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Further, all the allegations are civil in nature and as such, no criminal offence is made out against the petitioner. In support of his contention, he relied upon the judgment of this Court reported in **(2019) 2 MWN (Cri) 184** dated **23.07.2019**, in which, this Court held that, the bar of suit insofar as an unregistered firm is concerned will confine itself only to enforcement of a right arising from a contract. This cannot even be extended for enforcing a common law right. It is trite law that when the provisions of criminal laws are interpreted, the concept of strict construction will apply. Therefore, the effect of non-registration of the partnership firm under Section 69 of the Partnership Act is applicable only to cases involving Civil Rights and it has no application to criminal cases.

4. It is true that the above judgment is applicable only for cases involving Civil Rights and not for the offences registered under Indian Penal Code. The contention of the learned counsel for the petitioner that petitioner being partner of partnership firms could not be prosecuted when such partnership firm had not been arrayed as accused. While such contention may hold good under special enactments which provided for vicarious liability of Partners, Directors, etc., the same will not be applicable for the offences registered under Indian Penal Code. That apart, there are specific averments as against the petitioner in order to attract the offence under Sections 294(b),



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147, 420, 447, 506(ii) of IPC and it is relied in the charge sheet. Therefore, the judgement relied by the learned counsel for the petitioner is not applicable to the case on hand. Thus, this Court is not inclined to entertain the quash petition to quash the proceedings in C.C.No.189 of 2019 on the file of the learned Judicial Magistrate, Sulur.

5. Accordingly, this Criminal Original Petition is dismissed.

04.10.2023

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order
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To
Judicial Magistrate, Salem



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G.K.ILANTHIRAIYAN, J.
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