



WEB COPY



CrI.O.P.No.15385 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

CRL.O.P.No.15385 of 2021
and
CRL.M.P.Nos.8421 and 8423 of 2021

Sheik Abdul Kadher

... Petitioner

Vs

1.The State represented by
The Inspector of Police,
CCB, Coimbatore City,
Crime No.55 of 2018

2.S.Srinivasan

... Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records relating to the criminal case in C.C.No.1772 of 2019 on the file of the Learned Judicial Magistrate No.VII, Coimbatore and quash the same.

For Petitioner : Mr.N.Manokaran

For R1 : Mr.A.Gopinath
Government Advocate (CrI Side)

For R2 : Mr.V.Jeyachandran



CrI.O.P.No.15385 of 2021

ORDER

WEB COPY

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.1772 of 2019 on the file of the Judicial Magistrate No.VII, Coimbatore.

2. The case of the prosecution is that the second respondent had supplied cotton, on commission basis. The said cotton was procured from various persons. He supplied cotton to the tune of Rs.4,32,49,570/- between the period 09.04.2015 and 10.07.2015. So far, the accused had repaid a sum of Rs.2,39,01,903/- and the balance of Rs.1,93,47,607/- is due. When the defacto complainant demanded the amount from the accused, he has informed that he is in dire need of money to purchase Kangotri Mills and that after purchasing the mill, he will return the entire amount. Further, he had stated that he was in need of money to the tune of Rs.1,17,00,000/- to purchase the said mill. Believing the said words, the second respondent arranged money from the cotton suppliers and paid money to the tune of Rs.1,17,00,000/- to the accused. However, the accused did not purchase any mill and also cheated the entire amount payable by him to the complainant. Hence, the complaint.



CrI.O.P.No.15385 of 2021

3. On receipt of the complaint, the first respondent registered

FIR in Crime No.55 of 2018 for the offences under Sections 406, 420 and 506(i) of IPC. After completion of investigation, the first respondent filed final report and the same has been taken cognizance in C.C.No.1772 of 2019 on the file of the Judicial Magistrate No.VII, Coimbatore.

4. The learned counsel appearing for the petitioner would submit that the petitioner is a sole accused. There are averments to attract the offence of cheating viz., Section 415 of IPC. Admittedly, there was business transaction between the petitioner and the second respondent. There was absolutely no intention for the petitioner to induce the second respondent to supply material without paying any money. He had no intention to cheat the defacto complainant. Even according to the defacto complainant, he supplied cotton to the tune of Rs.4,32,49,570/-. The petitioner had repaid a sum of Rs.2,39,01,903/-. There was balance. Therefore, it is only a business transaction and no offence is attracted for the offences under Sections 406 and 420 of IPC. When the defacto complainant demanded the balance amount on 15.12.2015, the petitioner threatened the defacto complainant with dire consequences and also failed to keep up his words. However, the



complaint was lodged only in the year 2018. There is no proper explanation for lodging a complaint belatedly. Since, the entire allegations are civil in nature and to file a suit for recovery of money the time expired and as such, the second respondent lodged a complaint with false allegations. It is nothing but an attempt to collect the amount, through a criminal complaint.

5. In support of his contention, he relied upon the Judgment reported in **(2011) 13 SCC 412** in the case of ***Thermax Limited and others Vs. K.M.Johny and others***, in which the Hon'ble Supreme Court of India held that in view of inordinate delay and laches on the part of the complainant and of the fact that the complaint does not disclose any ingredients of Section 420 of IPC and also the fact that at the most it is the dispute of civil nature, this Court quashed the orders of the Magistrate under Section 156(3) of the Cr.P.C. It was further held that the essential ingredients for the offences under Sections 420, there has to be dishonest intention to deceive another person.

6. He also relied upon the Judgment reported in **(2019) 11 SCC 706** in the case of ***Anand Kumar Mohatta and another Vs. State***



CrI.O.P.No.15385 of 2021

(NCT of Delhi), Department of Home and another, in which the

Hon'ble Supreme Court of India held that the dispute has the contours of a dispute of civil nature and does not constitute a criminal offence.

7. A perusal of the records reveals that admittedly the petitioner purchased cotton from the second respondent. Though the second respondent got a mediator, he only placed the orders before the various persons to supply cotton and he acted as a commission agent. The petitioner had purchased the cotton to the tune of Rs.4,32,49,570/- from 09.04.2015 to 10.07.2015. So far, he repaid a sum of Rs.2,39,01,903/-. At that juncture, the petitioner approached the defacto complainant to arrange further loan of Rs.1,17,00,000/- to purchase Kangotri Mill. It was stated that after purchase of the said mill, after running the mill, he will be returning the entire amount. Believing the said word and also in order to get the balance amount, the defacto complainant arranged a loan from LW4.

8. LW4 categorically deposed that on the request made by the second respondent, he had lent a sum of Rs.1,17,00,000/- to the petitioner herein. Two witnesses were there, while lending the said



CrI.O.P.No.15385 of 2021

amount. They were also examined and they categorically stated that in order to pay a sum of Rs.1,17,00,000/-, the said LW4 had lent money.

After receiving a sum of Rs.1,17,00,000/-, the petitioner had spent the entire amount lavishly and was also involved in Iridiyam business.

9. A perusal of the confession statement of the petitioner reveals that he was involved in the case in Crime No.476 of 2010 on the file of the Udumalpet Police Station for the Iridiyam case. Therefore, he had illegal business such as Iridiyam. Thereafter, he was also involved in a murder case in Crime No.481 of 2015 on the very same police station. He was arrested and remanded to judicial custody from the amount, which was borrowed from the second respondent, he had not purchased any mill, as promised by him. Therefore, the petitioner has kept up his promise and thereby committed breach of trust. Though the complaint was lodged after a period of three years, it is hit by the provision under Section 468 of Cr.P.C. Therefore, all the allegations very much constitute the offence under Section 406, 420 and 506(i) of IPC. It cannot be said that all the allegations are civil in nature. Therefore, the judgments relied upon by the learned counsel for the petitioner is not helpful to the case on hand.



WEB COPY

10. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***CrI.A.No.579 of 2019*** dated ***02.04.2019*** in the case of ***Devendra Prasad Singh Vs. State of Bihar & Anr.***, which reads as follows:-

" 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13.In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.



WEB COPY

11. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in ***CrI.A.No.1572 of 2019*** dated 17.10.2019 in the case of ***Central Bureau of Investigation Vs. Arvind Khanna***, wherein, it has been held as follows:

“19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for.”



12. Further the Hon'ble Supreme Court of India also held

in the order dated **02.12.2019** in **CrI.A.No.1817 of 2019** in the case of

M.Jayanthi Vs. K.R.Meenakshi & anr, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."



CrI.O.P.No.15385 of 2021

The above judgments are squarely applicable to this case and as such, the points raised by the petitioner cannot be considered by this Court under Section 482 Cr.P.C.

13. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.1772 of 2019 on the file of the Judicial Magistrate No.VII, Coimbatore. Accordingly, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

17.10.2023

Lpp
Index: Yes/No
Internet: Yes/No

To

1. The Judicial Magistrate No.VII,
Coimbatore.

2. The Inspector of Police,
CCB, Coimbatore City.

3. The Public Prosecutor,
High Court, Madras.



WEB COPY



CrI.O.P.No.15385 of 2021

G.K.ILANTHIRAIYAN,J.

Lpp

CRL.O.P.No.15385 of 2021
&
CRL.M.P.Nos.8421 and 8423 of 2021

17.10.2023