



Crl.O.P.Nos.20736, 21029 and 21030 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.06.2023

Pronounced on : 26.06.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.Nos.20736, 21029 and 21030 of 2019

and

Crl.M.P.Nos.10674, 10852 and 10851 of 2019 and

Crl.M.P.Nos.1434, 1435, 1438 of 2020

1.A.Fazlur Rahman	...Petitioner in Crl.O.P.No.20736 of 2019
2.S.Manikandan @ Mani	...Petitioner in Crl.O.P.No.21029 of 2019
3.T.Mahendran	...Petitioner in Crl.O.P.No.21030 of 2019

Vs.

1.State rep. by, The Sub-Inspector of Police, F3, Triplicane P.S., Nungambakkam, Chennai Crime No. 628/2019	
2. Sampath	...Respondent in all Crl.O.Ps.



Crl.O.P.Nos.20736, 21029 and 21030 of 2019

COMMON PRAYER: Criminal Original Petitions have been filed under Section 482 of the Criminal Procedure Code, to call for the records in Crime No.628 of 2019 on the file of the Sub-Inspector of Police, F3, Triplicane P.S., Nungambakkam, Chennai and quash the same.

For Petitioner in

all Crl.O.Ps : Mr.B.Harikrishnan for
Mr.J.Pachiyappan

For R1 in

all Crl.O.Ps : Mr.A.Damodaran
Additional Public Prosecutor

For R2 in

all Crl.O.Ps : Mr.M.Vijay Anand

COMMON ORDER

These petitions have been filed for quashing the FIR in Crime No.628 of 2019 registered for the alleged offences under Sections 294(b), 406, 420 and 506(1) of the Indian Penal Code, 1860.

2. The allegation in the FIR is that the second respondent had placed an order in the Year 2016 for the purchase of a Digital Locker System and Auto Motion Switches, to be fixed in his Villa from a company by the name ***DRASIS SOFTWARE SOLUTIONS PVT. LTD,***



in which Mr.A.Fazlur Rahman, (petitioner in Crl.O.P.No.20736 of 2019) is the Managing Director; that the second respondent had paid the consideration, and the said products were installed after much delay in the Year 2018 and thereafter, the said Mr.A.Fazlur Rahman, introduced Mr. S. Manikandan alias Mani (Petitioner in Crl.O.P.Nos.21029) and Mr. T. Mahendran (Petitioner in Crl.O.P.No.21030 of 2019), who were running the company by name **MAGNUM TELE SYSTEM PVT. LTD**, who installed CCTV cameras for consideration of Rs.6,72,000/- (Rupees Six Lakhs Seventy Two Thousand only); that the said cameras and the other types of equipment installed by the accused did not function properly and in spite of repeated requests, the persons did not rectify the defect in the products; that the second respondent demanded the user ID and also password for all the products from the accused; that they had refused to either rectify the defects or attend to the calls made by the defacto complainant; that the petitioners were using a secret password which is likely to cause a threat to the privacy of the second respondent and his family members, and hence, they are liable for the offences alleged.



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3. Mr.Harikrishnan, the learned counsel for the petitioners, would submit that this is a case of goods sold and delivered by the petitioners; that Mr.A.Fazlur Rahman, is concerned only with his company called ***DRASIS SOFTWARE SOLUTIONS PVT. LTD***, which had provided Auto Motion Switches and Digital Locker; and that he is not concerned with the CCTV cameras said to have been installed by the other accused; that likewise, Mr. S. Manikandan alias Mani and Mr. T. Mahendran are not concerned with the products supplied by the said Mr. A. Fazlur Rahman; that the documents would show that the petitioners had started the installation of the products as early as on 29.02.2017, and completed by February 2018; that thereafter, since the second respondent had not paid the total consideration fixed for the products, he had demanded the balance payment. However, the second respondent, instead of making the balance payment and in order to avoid the said payment has come up with this false complaint; that in any case, the offences alleged are not made out, the allegations do not constitute the offences of misappropriation, breach of trust, cheating or offences of Sections 294 (b), 506(1) IPC; that allegation with regard to secret password is not only misconceived but invented only to somehow maintain the FIR against the petitioners; that it is a matter of common knowledge, that the password



can be reset and there is no question of secret password in any application. In fact, the petitioners explained to the consumer Dr.Arthi, about the functioning of the Digital Locker and also explained to her about creating a user ID and password; that therefore, there is no question of any secret password; that Mr. Mani and Mr. T. Mahendran had allegedly fixed CCTV cameras; that against all the accused, there is a vague allegation that they retained the secret passwords; that this itself would show that these allegations have been invented; that there is no question of secret password maintained and these passwords can be changed by anybody at anytime; that even assuming that there is any defect in the products supplied by the petitioners, the case would not amount to cheating or criminal breach of trust and hence, he prayed for quashing of the FIR.

4. Per Contra, Mr.M.Vijay Anand, the learned counsel for the second respondent/ defacto complainant, submitted that the investigation cannot be scuttled at this stage, that the petitioners had installed defective products and had not disclosed the user ID and password. Therefore, there is a threat to the privacy of the second respondent; that all efforts taken by him to contact the petitioners ended in vain; that the



investigation has to go on, and it is for the Investigation Officer to conclude whether the offences of cheating, criminal breach of trust or other offences are made out. He further pointed out the photographs of the products, which were found in a damaged condition. The learned counsel further submitted that the petitioners had deceived the second respondent and caused a huge loss. He further submitted that criminal proceedings could not be quashed merely because allegations appear to be civil in nature if the ingredients of the offence are *prima facie* made out. He relied upon the Judgment of Hon'ble Supreme Court in ***Sau. Kamal Shivaji Pokarnekar vs. The State of Maharashtra*** in ***Criminal Appeal No.255 of 2019 (arising out of SLP (Crl.) No. 7513 of 2014)*** and ***Vesa Holdings P.Ltd. & Anr. in Criminal Appeal No.2341 of 2011.*** Hence, he prayed for the dismissal of the quash petition.

5. Mr.A.Damodaran, the learned Additional Public Prosecutor, submitted that on the directions given by this Court, Mr.A.Fazlur Rahman and the second respondent were called for an enquiry, and as per the statement of the second respondent, the petitioners had supplied the defective goods and had not rectified the same after receiving consideration; that the said Mr.A.Fazlur Rahman



had given a statement stating that anybody can reset the password and there is no question of secret password in any application; that the defacto complainant had also not paid the full consideration and he was still due to pay a sum of Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand only) to the said Mr.A.Fazlur Rahman. The learned Additional Public Prosecutor further submitted that the matter has to be investigated further.

6. This Court, on perusal of the impugned FIR and on hearing the submissions made by the learned counsels on either side and the learned Additional Public Prosecutor, finds that the allegations primarily are that the petitioners had independently supplied two products to the second respondent. Mr.A.Fazlur Rahman had allegedly supplied the Digital Locker System and Auto Motion Switches and installed it at the second respondent's Villa. Mr.S.Manikandan and Mr.T.Mahendran are said to have installed CCTV cameras. The allegation is that within few months after installation, the products were damaged and could not be put to effective use. That apart, the petitioners are said to have retained a secret password, thereby, endangering the privacy of the second respondent. This Court finds from the records that the petitioners had installed the



products at various stages from 2016 to 2018. The allegation, even if it is accepted to be true, only discloses a dispute in the contract entered into between the petitioners and the second respondent. In order to attract the offence under Section 415 IPC, there must be a deception at the inception. The allegations in the FIR do not suggest that there was any deception at the inception to attract the offence of Section 420 IPC. Further, this Court is of the view that the respondent Police cannot investigate a complaint of this nature, which in effect, states that the goods supplied were defective in nature. This involves the assessment of technical details and ought to have been addressed only before the appropriate forums, such as the consumer disputes redressal forum, which are meant to resolve such issues. The technical aspects cannot be decided by the first respondent, and the criminal law cannot be strained to permit such complaints merely because it gives shortcut solutions sometimes. Admittedly, in this case, the products were installed as per the contract between the parties. The only grievance is that damages occurred after some time, and the product did not function properly. Thus, it would be a case of a supply of goods which were found to be defective later. It is pertinent to point out that the complaint was lodged one year after the installation was completed. The second respondent



who is aggrieved by the alleged supply of defective goods by the petitioners, ought to have resorted to the other remedies which are available in law. By-passing those remedies and resorting to Criminal Proceedings without satisfying the ingredients of the offence alleged would amount to an abuse of the process of law. There cannot be any dispute with the proposition of law that criminal Proceedings cannot be quashed merely because the allegations appear to be in civil in nature as held in the Judgments relied upon by the learned counsel for the second respondent. However, in the instant case, it is not a case of deception at the inception to attract cheating. The allegations, at best, only suggest a case of breach of contract.

7. That apart, this Court finds the allegations with regard to other offence of Section 406 IPC is not made out. There is no entrustment of any property with the petitioners to allege the misappropriation to attract the offence under Section 406 IPC. It is also seen that the impugned FIR does not state as to what are the alleged obscene words said to have been uttered in a public place to the annoyance of others. In the absence of such an allegation, Section 294 (b) IPC is not made out. The Hon'ble Supreme Court in the Judgment reported in **2022**



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K.Lalitha, has held as follows:

“It has to be noted that in the instance case, the absence of words which will involve some lascivious elements arousing sexual thoughts or feelings or words cannot attract the offence under Section 294(b). None of the records disclose the alleged words used by the accused. It may not be the requirement of law to reproduce in all cases the entire obscene words if it is lengthy, but in the instant case, there is hardly anything on record. Mere abusive, humiliating or defamative words by itself cannot attract an offence under Section 294(b) IPC. To prove the offence under Section 294 of IPC mere utterance of obscene words are not sufficient but there must be a further proof to establish that it was to the annoyance of others, which is lacking in the case. No one has spoken about the obscene words, they felt annoyed and in the absence of legal evidence to show that the words uttered by the appellants accused annoyed others, it can not be said that the ingredients of the offence under Section 294 (b) of IPC is made out.”



8. This Court has repeatedly held that the words spoken must cause a real threat to constitute the offence of criminal intimidation. However, on a reading of the FIR, there is nothing to suggest that there was any real threat to attract the offence of criminal intimidation. The petitioners had nothing to do with the alleged acts of cruelty. Useful reference can be made to the Judgment of this Court in **Noble Mohandass Vs. State**, reported in **Manu/TN/0026/1988**, wherein this Court has held as follows:

“7. Further for being an offence under [Section 506\(2\)](#) which is rather an important offence punishable with imprisonment which may extend to seven years, the threat should be a real one and not just a mere word when the person uttering it does exactly mean what he says and also when the person at whom threat is launched does not feel threatened actually.”

Hence, Section 506(1) of IPC is not made out. There is no alleged threat said to have taken place in criminal intimidation.



9. As regards the alleged secret password, this Court is of the view that the vague allegation has been made against all petitioners that they retained a security password. No offence has been made out on the basis of such vague allegations. Further, it is a matter of common knowledge that the second respondent can always reset the password according to his needs, and that cannot be the basis for sustaining an FIR, which is clearly an abuse of process the of law.

10. The Hon'ble Supreme Court in ***Neeharika Infrastructure Pvt., Ltd. Vs. State of Maharashtra and others*** reported in ***2021 SCC Online SC 315*** while summarising the principles relating to quashing of complaints had held as follows :

“80... (iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

(x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the state of investigation of offences.”



11. The instant FIR is liable to be quashed based on the dictum of the Hon'ble Supreme Court referred to above, as the offences are not made out, and non-interference by this Court would result in the miscarriage of justice. Hence, this impugned FIR is quashed. Criminal Original Petitions are allowed. Consequently, the connected Miscellaneous Petitions are closed.

26.06.2023

dk

NCC: Yes/No

Index :Yes/No

Speaking/Non Speaking Order

To

1.The Sub-Inspector of Police,
F3, Triplicane P.S.,
Nungambakkam,
Chennai.

2.The Public Prosecutor
High Court of Madras
Chennai – 600 104.



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SUNDER MOHAN. J,
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Pre Delivery Common Order in

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