



Crl.O.P No.21886 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **02.01.2023**

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THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Crl.O.P No.21886 of 2019
and Crl.M.P. No.11369 of 2021

T.M.Venu

... Petitioner

Vs.

1. The State represented by
The Inspector of Police,
V3-J.J.Nagar Police Station,
Chennai.

2. Ravikishan Raye

... Respondents

Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records relating to the case in Crime NO.349 of 2019 on the file of the first respondent police and quash the same as against the petitioner / accused.

For Petitioners : Mr.S.Shankar

For Respondent-1 : Mr. A.Gopinath
Government Advocate (crl.side)

2 : No appearance



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ORDER

This Criminal Original Petition has been filed to call for the records relating to the case in Crime NO.349 of 2019 on the file of the first respondent police and quash the same as against the petitioner / accused.

2. The petitioner is the sole accused. The short facts of the complaint is that the second respondent / defacto complainant who is a Non-Residential Indian with a plan to start an Ice cream production company had ordered some mega refrigerators from the petitioner's concern by name 'Bharat Refrigerator'. The petitioner is the proprietor of Bharat Refrigerator. An ice cream production machine having 500 to 1000 litre capacity was agreed to be purchased by the defacto complainant from the petitioner for a consideration of Rs.35,00,000/- and for which, an agreement has been entered into between the petitioner and the second respondent's father Ramana Rao towards the payment of the price of the refrigerator. The payments have been made through cheques and RTGS on three different dates to the tune of Rs.15,00,000/-. The petitioner offered his premises for rent for the purpose of keeping the refrigerator of the second respondent and that was agreed by the second respondent and his father. The lease



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agreement in this connection was also entered between the parties and the second respondent made payments on several dates. A contractor known to the petitioner had undertaken to construct a building within three months. It is seen that neither the building was handed over nor the machine was delivered to the second respondent. The first petitioner is dodging to pay a total sum of Rs.45,00,000/- to the second respondent. Whenever the second respondent went to the petitioner's company by demanding the ice cream making machine to be delivered and warned him that they are going to lodge a police complaint, the petitioner threatened the defacto complainant and his father. Hence a complaint has been given to recover a sum of Rs.45,00,000/- from the petitioner.

3. The learned counsel for the petitioner submitted that the transaction between the petitioner and the second respondent is a business transaction based upon a written contract; the lease agreement in respect of the premises belonging to the petitioner is a civil transaction; after having agreed to take the premises belonging to the petitioner for rent at the rate of Rs.50,000/- per month and on payment of advance amount of Rs.6,00,000/-, the second respondent and his father had paid Rs.17,00,000/- in different



dates to the petitioner's individual account for the construction of the rental building.

3.1. It is the defacto complainant's father Raja John who introduced the petitioner to the building contractor namely Raj Babu for constructing the building at the petitioner's property; the contractor agreed to complete the building withing a period of forty days within the budget of Rs.30,00,000/-; to that effect an agreement was also entered into between themselves; after construction of the building, the father of the defacto complainant insisted the petitioner to enter into the rental agreement for the purpose of getting CST and TNGST registration and BSNL telephone service connection in the name of the proposed company having the name and style "Corner Stone Frozen Foods"; the petitioner had also entered into a rental agreement on 22.12.2010 and the building was also constructed within the time.

3.2. A cold room worth Rs.10,00,000/- was constructed and the entire room was handed over to the father of the defacto complainant during February 2011; however after taking possession of the building, Raja John



who is the father of the defacto complainant and his men were using the building for Christian Missionary purposes like prayers and meetings and not for the purpose of business; rent was also not paid subsequent to the rental agreement; so the petitioner had sent several letters demanding rent and it was of no avail; hence the petitioner asked to vacate the premises; Raja John had paid a sum of Rs.15,00,000/- as advance amount to the petitioner but he has not paid the balance amount for the supply of machinery; hence the petitioner had to invest money from his hands for completing the order and during that course, he was even forced to take loan from Religare Finvest Ltd.; even after the machine was ready, Raja John did not pay the balance amount immediately to take delivery of the machine.

3.3. On 28.01.2012, Raja John visited the petitioner's company at Ramapuram and told that he was in a financial crisis and asked the petitioner to supply the machine; however, the petitioner cannot hand over the machinery without receiving the balance amount; on 09.02.2012 Raja John and two unknown persons entered into the petitioner's office and the defacto complainant was one among them; he proclaimed that he is an Assistant Commissioner of Police attached with Central Crime Branch,



Chennai and threatened the petitioner that the machine should be delivered immediately otherwise the petitioner will be arrested; hence the petitioner has lodged a complaint at Valasaravakkam police on 11.02.2012 seeking police protection; after the complaint was received C.S.R. number was given and no action has been taken.

3.4. The defacto complainant and his associates kept on threatening the petitioner and his staff members; hence, the petitioner had lodged a complaint to the Commissioner of Police on 06.06.2012 and the Police officials asked the petitioner to approach the civil forum by stating that it is a commercial transaction; hence the petitioner had filed a civil suit before the Principal District Court, Alandur in O.S. No.253 of 2014 seeking permanent injunction against Raja John and his henchmen from indulging in unlawful and illegal means for taking the delivery of machinery without the paying the balance amount due to the petitioner's company; since Raja John did not receive summons, he was set exparte and an exparte decree was also passed in favour of the petitioner; in the year 2017, the defacto complainant gave a complaint to Assistant Commissioner of Police, Thomas Mount, and he was called for enquiry and thereafter it was closed; suppressing the



earlier complaint he had filed a fresh complaint to the respondent police who has got no *locus standi* on jurisdiction.

3.5. The transaction is between the petitioner and Raja John and the defacto complainant is not a party to the transaction; whenever the petitioner is called for enquiry, the petitioner would cooperate by making his presence and producing the relevant documents; the said Raja John and the defacto complainant have always threatened the petitioner and his family in order to extract money unlawfully; the petitioner had resigned his Directorship in Bharat Refrigeration Pvt. Ltd., on 15.12.2016 and he sold his entire share to one Chadrakant Popatbhai Patel and he has become the Managing Director of the Company; the lease agreement was entered into between the petitioner and Chadrakant Popatbhai Patel to release his property located at No.2/21 A Shanthi Nagar, Kanniappan Street, Ramapuram, Chennai- 600 089, to run the company; however, they have vacated the premises and shifted the company to Ambattur in the year 2018; since the defacto complainant has given a complaint just to harass the petitioner, FIR should be quashed.



4. The learned Government Advocate (Crl.side) submitted that investigation is at the final stage and only if a detailed investigation is allowed to go, the real intention of the parties in the transactions will be known; even though a civil suit is said to be pending, the allegations made in the complaint would show that the petitioner had scolded the defacto complainant and his father in filthy language and threatened that he would kill them; since there are materials available to make out a criminal case, the petition should be dismissed.

5. The petitioner got introduced to the defacto complainant's father Raja John during the month of December 2010 for getting quotation for an order to be placed in connection with Ice cream machine. The petitioner's company is involved in an Ice cream manufacturing plant and hence the introduction between the petitioner and the defacto complainant was purely for a business purposes. After having placed an order for the Ice cream machineries for a sum of Rs.79,53,267/- Raja John started to find out a premises for running his proposed business in the name and style "Corner Stone Frozen Foods". On getting the order, the petitioner started to manufacture the machine as required by Raja John. The defacto complainant



is the son of Raja John who is living at abroad and for whose benefit Raja John had taken steps to start business in frozen foods.

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6. The petitioner himself offered his own property on rental basis to Raja John to run his business. In this regard, a building was also erected by one Raj Babu after entering into an agreement with the petitioner and the contractor. So on the side of the petitioner it seems that he had completed the construction of the building as well as the manufacturing of the machinery. As agreed, the defacto complainant's father did not take delivery of the machine by paying the balance amount. Instead he was demanding the machine to be delivered without the payment of the balance. The petitioner who had invested lot of money in erecting the machinery was not able to deliver the machine without receiving the balance amount.

7. In this regard, the defacto complainant has already given a complaint to the Assistant Commissioner of Police, St.Thomas Mount, Chennai and the petitioner was called for enquiry. Since the petitioner is also facing threat at the hands of the defacto complainant and his persons, he gave a complaint to the Valasaravakkam Police Station on 11.02.2012



itself and he had given another complaint before the police on 06.06.2012.

After enquiry, the said complaint had also been closed as 'Matter civil in nature'. Subsequently, the petitioner had filed a civil suit in O.S. No.253 of 2014 and got an ex parte decree also. The petitioner had rightly approached the Civil Court and got a decree in his favour. Had the defacto complainant's father paid the balance amount to take delivery of the machine, nothing would have become a fuss. The manufacturing agent cannot be expected to deliver the machinery without paying its entire cost. Both the parties have given rival complaints and they were already closed as Civil in nature. Once again for the very same allegation, the defacto complainant has given an yet another complaint by slightly adding the averments that the petitioner had abused the defacto complainant and his father and threatened them that he would kill them.

8. The manner in which the business transaction had been taken place between the petitioner and defacto complainant's father and the earlier complaints given by both sides and the subsequent civil suit would only show that the present complaint has been given by the second respondent just to give a criminal colour for a civil dispute. Without any details, the



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bald averment like life threat at the hands of the petitioner cannot make out a case. The entire materials available will not make out a criminal case but only reveal some civil dispute between the parties due to certain contractual obligation in connection with manufacturing of the Ice cream machine. In fact the petitioner had accepted the advice given to him by the police for seeking recourse by filing a civil suit. When a civil suit has been filed by the petitioner himself, the defacto complainant's father could have made his appearance and contested the same. Having failed to make his appearance and contest the civil suit and after allowing it to be decreed in favour of the petitioner, his son the defacto complainant herein had filed a criminal complaint without any basis. In this context, it is relevant to refer the judgment of the Hon'ble Supreme Court in the case of ***Parbatbhai Aahir Vs. State of Gujarat [AIR 2017 SC 4843]***. The relevant portions of the said judgment is extracted hereunder:

“ 15...

(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned.



9. The actions of the defacto complainant would only show that unnecessary complaints have been repeatedly given for a civil matter to be resolved between the parties before a civil forum. Allowing investigation in these kind of matters would only waste the time of investigation agency. Since the civil dispute has been given with criminal appearance, I feel it is appropriate to invoke the powers of this Court under Section 482 Cr.P.C. to quash the same.

10. Accordingly, this Criminal Original Petition is allowed and the FIR in Cr. No.349 of 2019 on the file of the first respondent is quashed. Consequently, connected miscellaneous petition is closed.

02.01.2023

Index : Yes/No
Speaking Order : Yes / No
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Crl.O.P No.21886 of 2022

To:

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1. The Inspector of Police,
V3-J.J.Nagar Police Station,
Chennai.
2. The Public Prosecutor,
High Court, Madras.



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R.N.MANJULA, J.,

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