IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **31.01.2023**

CORAM:

THE HONOURABLE MR. JUSTICE **G.CHANDRASEKHARAN**

Crl.O.P.No.22670 of 2022
and
Crl.M.P.Nos.14537 & 16744 of 2022

N.G.Shantini ... Petitioner

Vs.

P.Bhavanisankar ... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for records in C.C.No.83 of 2022 on the file of learned Judicial Magistrate – I, Poonmallee and quash the same.

For Petitioner : Mr.M.Kalyanasundaram Senior Counsel for Mr.P.Mohanraj

For Respondent : Mr.N.Manoharan

ORDER

This Criminal Original Petition is filed to call for the records in C.C.No.83 of 2022, on the file of learned Judicial Magistrate – I, Poonamallee, and quash the same.

2.The learned counsel for the petitioner submitted that the petitioner's father was a qualified Engineer and doing mechanical enterprise, a small manufacturing unit since 1983. After completing 12^{th} standard, petitioner joined in her father's business. The firm is named as M/s.Broachshala. Her father transferred his firm in her name by way of a registered settlement deed dated 01.04.2007 and thereafter, petitioner was running the business. Respondent was her father's friend and was a Mechanical Engineer. He approached her father for the post of technical consultant and job worker in the company. Out of his father's compulsion, petitioner took him as technical consultant under certain terms. He was not paid monthly salary, but was paid on order basis for production of goods. Respondent's work involved with heavy machinery and it required a separate shed and a Giant crane and other tools, computer and furniture etc., to be established for which, respondent was advanced Rs.12,92,000/- between 1^{st} October 2015 to 9^{th} June 2016 through cash. He was working with the 2^{nd} unit of Broachshala from the year 2016 to until he intended to leave the company i.e. in July 2019. Petitioner returned the said amount to respondent as follows:

i) On 29.10.2016 the respondent received Rs.8,50,000/-

ii) On 20.01.2017 the respondent received Rs.3,00,000/-

iii) On 11.04.2017 the respondent received Rs.40,000/-

iv) On 22.09.2017 the respondent received Rs.5,000/-

v) On 28.09.2017 the respondent received Rs.1,00,000/-

3.Apart from that, respondent received Rs.25,50,000/- for his work without bills and Rs.93,82,000/- under bills. Totally, he was paid Rs.1,19,32,000/-. Petitioner's father died on 06.08.2020. Thereafter, respondent started raising disputes. In July 2019, respondent wanted some unethical invoices for payment of Rs.29,50,000/- in the name of a consultancy company. Petitioner objected and questioned since there was no approval from her and she stopped payments for a while. Respondent aggrieved against that, initiated prejudicial complaints in various forms (1) to the President SIDCO Women Industrial Association (2) to the Inspector of Police, Avadi Tank Police Station (3) to the Inspector of Police, Central Crime Branch, EDF – III Wing – 21 and (4) filed a private complaint in C.C.N.83 of 2022, before the Judicial Magistrate – I, Poonamallee. Respondent took petitioner's 2nd unit of Broachshala by entering into a rental agreement with the Landlady K.Mohana, which was behind her back and has taken over the entire property of the establishment worth of Rs.15,00,000/-. He has to handover the Giant Crane and its accessories, computer along with rental advance to premises at No.328, SIDCO Women Industrial Park. The complaint given by respondent against petitioner seeking Rs.12,92,000/- was closed by the Inspector of Police, Avadi T-7 Tank Factory Police Station. Another complaint given before the CCB Inspector of Police EDF – III, Wing 21, Vepery, Chennai - 600007 was also rejected. Thereafter, this complaint is filed. This complaint is filed without any basis and continuation of this complaint would be an abuse process of law. Therefore, this petition is filed for quashing.

4.In response, the learned counsel for the respondent submitted that petitioner's father is a friend of respondent and he entered into a joint venture with Broachshala to carry on the business of Special Purposes Machines (SPM). Respondent invested Rs.12,92,000/- during 2015-16 in Broachshala. A fresh rental agreement dated 12.10.2015 was entered into in respect of the premises at DP 328, SIDCO. Petitioner was doing her business in No.T-14 B, SIDCO Women Industrial Park and respondent was doing SPM business and both are different entities, but in the name of Broachshala. Respondent used his vast experience and business contacts to get various orders from leading MNC companies to the tune of Rs.5,45,01,877/- between October 2015 and

March 2019. Petitioner indicated her liability of Rs.12,27,915/- in the Balance Sheet dated 31.03.2017 and Rs.12,92,964/- in the Balance Sheet dated 31.03.2018 as the amounts payable to respondent. In March 2019, both petitioner and respondent agreed to put an end to the joint venture. Thereafter, respondent entered into a separate rental agreement, dated 02.04.2019. At the time of giving quietus to joint venture, petitioner's Auditor had prepared a comprehensive statement for the income and expenses for the financial years 2015-2016 to 2019-2020, wherein, total amount payable to the respondent is shown as Rs.27,94,103/- , which includes the investment and profit of the respondent, Rs.12,92,000/- and Rs.15,02,103/- respectively. The said amount is the disputed amount. Petitioner had not paid this amount and dishonestly acted against her promise and dragged the issue. Therefore, respondent gave a complaint to T7, Tank Factory Police Station, on the allegation of cheating. Petitioner appeared before the Inspector of Police and agreed to settle the liabilities. Therefore, complaint was closed but the amount was not settled as promised. Therefore, respondent gave a complaint dated 31.01.2020 to the Commissioner of Police, Chennai. Due to Covid-19 situation, the complaint could not be proceeded. In such circumstances, private complaint was filed. The claim that petitioner paid Rs.12,95,000/- is not supported by any material. Respondent is a senior citizen and he is cheated of his rightful amount. The private complaint filed is appropriate. In such circumstances, the trial has to go on and therefore, he prayed for dismissal of this petition.

5.Considered the rival submissions and perused the records.

6.Respondent gave a private complaint under Section 200 Cr.P.C. for the offences under Section 406 IPC. The gist of the complaint is as follows: Respondent was doing business with petitioner in Special Purposes Machines (SPM). He paid a sum of Rs.2,50,000/- on 01.10.2015, Rs.6,00,000/- on 12.10.2015, Rs.35,500/- on 16.03.2016, Rs.50,000/- on 20.04.2016, Rs.1,00,000/- on 09.06.2016 for purchase of machines. He paid Rs.10,35,000/- through Cheque and Rs.2,57,000/- through Cash. Totally, he paid Rs.12,92,000/-. He also gave the petitioner Rs.5,45,01,877/- in connection with the SPM business. Petitioner has to pay Rs.12,92,000/- along with profit, totally a sum of Rs.27,94,103/-. In this regard, he gave a complaint before the Avadi Tank Factory Police Station on 16.11.2019 and enquiry was conducted. Petitioner appeared for enquiry on 20.11.2019 and agreed to pay the amount after consulting with the Auditor. Again, respondent gave a complaint on 31.01.2020 to the Commissioner of Police, Vepery, Chennai and the complaint was forwarded to Central Crime Branch, EDF – III Wing – 21. That complaint was also closed for the reason that no action can be taken. Petitioner indicated in the accounts statement for the period 2015-16 to 2019-20 (upto August 2019) that she owes Rs.27,94,103/- to respondent. It was also informed to her through E-mail, however, petitioner had not paid the amount. Therefore, respondent gave this private complaint.

7.The entire allegations made in the complaint show that respondent claims two amounts, viz., investment made by him in the business Rs.12,92,000/- and Rs.15,02,103/- as a profit from the business. It is the contention of the learned counsel for the petitioner that a sum of Rs.12,95,000/- was paid through NEFT. However, this claim is refused by the learned counsel for the respondent in the counter stating that the amount of Rs.12,95,000/- relates only to the business profit for the year 2016-17. Though it is claimed by the respondent that a sum of Rs.15,02,103/- was agreed to be paid by the petitioner to the respondent as profit in the accounts statement for the year 2015-16 to 2019-20, perusal of the accounts statement of these years does not reflect any admission or undertaking on the part of the petitioner to pay Rs.15,02,103/- as profit. Allegations made in the complaint *prima facie* reveals that in the matters of investment made in the business, on account of failure to repay the invested amount and the profit, this complaint is given. It has to be borne in mind that the second complaint before the police was not acted upon. Rather, the complaint given before the Central Crime Branch, EDF – III Wing – 21, was closed for the reason that no action can be taken on the complaint. Only thereafter, respondent filed this private complaint. The case was taken cognizance for the offences under Section 406 IPC.

8.Section 405 IPC reads as follows:

> ***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 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".

To make out an offence under Section 405 IPC which is punishable under Section 406, following has to be established. (i) entrustment of property (ii) dishonest misappropriation or conversion of the property to own use or (iii) dishonest usage and disposal of the property in violation of any direction of law or any legal contract, express or implied, which was made touching the discharge of such trust, making any other person suffer willfully.

9.In the case before hand, there is no written agreement with regard to investment. However, it is admitted by both parties that Rs.12,92,000/- was invested by the respondent. Now, there is a contradictory claim with regard to repayment. As already referred, there is no material to show that petitioner had agreed to pay Rs.15,02,103/- as profit to respondent.

10.Consideration of entire materials only show that the allegations made in the complaint did not constitute/make out a case against petitioner for prosecuting petitioner for the offences under Section 406 IPC. At best, respondent can only initiate civil proceedings for recovery of the investment made and the profit, if any, due to him.

11.In this view of the matter, this Court finds that taking cognizance against petitioner for the offence under Section 406 IPC is without any factual or legal basis. Therefore, C.C.No.83 of 2022 on the file of Judicial Magistrate – I, Poonmallee, has to be necessarily quashed and accordingly quashed.

12.In fine, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

31.01.2023

sli
Internet:Yes
Index:Yes/No
Speaking/Non speaking order

To:

1.The Judicial Magistrate – I,
Poonmallee.

2.The Public Prosecutor,
High Court of Madras.

G.CHANDRASEKHARAN, J.
sli

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