



CRL.O.P.No.23401 of 2019



9.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 04.01.2023

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

Crl.O.P.No.23401 of 2019

and

Crl.MP.No.12298 of 2019

1. Selvakumar

2. Sumathi

3. Velavan

.. Petitioners/Accused

Versus

1.State By

The Inspector of Police,
District Crime Branch,
Krishnagiri District,
Krishnagiri. (FIR No.12/2019)

2.Jayachandran,

The General Manager,
Dharmapuri Co-operative
Milk Producers Union Limited,
Salem Main Road, Krishnagiri-001

... Respondents

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in connection with FIR No.12/2019 on the file of 1st respondent police herein and quash the same.



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For Petitioners : Mr.A.Esakkiappan
For Respondents-1 & 2 : Mr.A.Gopinath
Government Advocate(crl.side)
For Respondent-3 : No appearance

ORDER

This Criminal Original Petition has been filed to quash the proceedings in Crime No. 12/2019 on the file of 1st respondent police.

2. The petitioners are the accused 1 to 3 in this case. On the complaint given by the second respondent, a case has been registered.

3. The short facts of the case is that the first petitioner was the Managing Director, second petitioner was the Director and the third petitioner was the General Manager of M/S.Aaruthra Milk International Pvt., Ltd'. During the relevant point of time the second respondent, the General manager, Dharmapuri Cooperative Milk Producers Union Limited, Salem Main Road, Krishnagiri was supplying milk to AAVIN Chennai, by virtue of an agreement entered into between the petitioner's company and the second respondent on 03.01.2019 and a letter dated 04.01.2019. The petitioners 1 and 3 would purchase milk from the second respondent, the General Manager, Dharmapuri Cooperative Milk Producers Union Limited, Salem



Main Road, Krishnagiri and supply it to the general public through AAVIN.

The second respondent has sent a bill to the petitioners towards the cost of milk on various dates and the balance amount as on date of the complaint is Rs. 2,31,12,232.00. Since the amount was not paid despite several demands, a legal notice was sent and subsequently a sum of Rs.50,00,000/- was paid on 25.01.2019 through RTGS and for another sum of Rs.50,00,000/- a cheque dated 01.02.2019 was given. The rest of the cheques issued towards discharge of the balance amount got dishonored. On these allegations the case has been registered against the petitioners for the offence of cheating under Sec.420 IPC.

4.The learned counsel for the petitioners submitted that the second respondent has already initiated criminal proceedings under Sec.138 NI Act for dishonor of cheque and the Registrar of Cooperative Societies has also initiated an enquiry proceedings against the petitioners and the same is pending; under such circumstances, another complaint has been given without getting the final report from the Registrar of Cooperative Societies at the culmination of Sec.81 enquiry; since this complaint is the second complaint and it has been given in a premature manner, the FIR should be



quashed.

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5.The learned Government Advocate(crl.side) appearing for the first respondent police submitted that there is no bar to initiate criminal proceedings for the offence under Sec.420 IPC for the same transaction which also involves a proceedings under Sec.138 NI Act for dishonor of cheques; the complaint has been given after getting the preliminary report in accordance with Sec.81 enquiry and hence, there is no illegality.

6.The petitioners are purchasing milk from the second respondent cooperative milk society in accordance with an agreement entered into between themselves. Since the outstanding accrued was Rs.2,31,12,232/-, the second respondent demanded to settle the dues. The outstanding due was not denied by the petitioners and in view of discharging the same they issued three cheques. Even though the learned counsel for the petitioners submitted that the milk supplied by the second respondent at some point of time was contaminated and the payment was stopped, it is seen that the cheques have been issued towards discharge of the outstanding without any protest. When the cheques were presented for collection they have been either returned for insufficient funds or stopped by the drawer of the cheque.



7. It is true that the second respondent has also initiated proceedings under Sec.138 NI Act for the offence of dishonor of cheques. Apart from the same, the enquiry officer appointed by the Registrar of Cooperative Societies have also initiated enquiry under Sec.81 of the Tamil Nadu Cooperative Societies Act. The preliminary report was submitted and subsequently the second respondent has given a criminal complaint for the offence of cheating under Sec.420 IPC. It has been held in plethora of judgments that 138 proceedings is not a bar for initiating criminal action of cheating in connection with the same transactions.

8. In this regard, it is relevant to refer the judgment of the Hon'ble Supreme Court reported in **1999 CRL.L.J. 4571/1** in the case of ***Central Bank of India Vs. Saxons Farms***. The relevant portion is extracted hereunder:

*“13. Under **Section 142** of the Act, Court can take cognizance of an offence punishable under **Section 138** only on a complaint in writing made by the payee. Therefore, the police could not have started investigation under **Section 138** of the Act. But if a cheque is dishonoured drawer may expose himself to prosecution under various sections of the **Indian Penal Code** which are cognizable and police could take up investigation. What was indicated in the notice was*



that in addition to the legal action by the appellant-bank under the Act, option was kept open for taking action against the respondents under the provisions of Indian Penal Code by informing the police. Therefore, the contention of learned Counsel for the respondents has no force.

A perusal of the complaint shows that there is an allegation to the effect that the accused had issued a post-dated cheque without making proper arrangements of funds into the credit of his account and as such it is clear that the accused had dishonest intention not to honour the amount even at the time of issuance of the cheque and the act of issuing the cheque which was dishonoured amounts to an offence of cheating. In this case, in the charge sheet also it is specifically mentioned that A-1 to A-5 in pursuance of common intention to cheat witnesses 1 to 6, A-3 issued a post-dated cheque, dated 03.04.2002 in favour of them for various amounts to the extent of Rs. 3,88,500/- to be drawn in the ICICI Bank, Namakkal, without sufficient fund. Therefore, there are enough materials available on record to implicate the petitioners, who have been arrayed as A-3 to A-5 for the alleged offence of cheating.”

9. However the learned counsel for the petitioners submitted that the violation of contractual obligation between two contracting parties can only give rise to a civil cause of action and no criminal color can be given to such



transactions. In support of his above contention, the learned counsel for the petitioners cited the judgment of the Hon'ble Supreme Court held in **Crl.A.No.9/2019 dated 03.01.2019**. In the said judgment, it is held as under:

“14. Now coming to the charge under [Section 415](#) punishable under [Section 420](#) of IPC. In the context of contracts, the distinction between mere breach of contract and cheating would depend upon the fraudulent inducement and mens rea. (See [Hridaya Ranjan Prasad Verma v. State of Bihar](#), (2000) 4 SCC 168). In the case before us, admittedly the appellant was trapped in economic crisis and therefore, he had approached the respondent no. 2 to ameliorate the situation of crisis. Further, in order to recover the aforesaid amount, the respondent no. 2 had instituted a summary civil suit seeking recovery of the loan amount which is still pending adjudication. The mere inability of the appellant to return the loan amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, as it is this mens rea which is the crux of the offence. Even if all the facts in the complaint and material are taken on their face value, no such dishonest representation or inducement could be found or inferred. “

10.In the case in hand, the complainant is the Managing Director of



the Cooperative society, a large amount of milk is being supplied by the second respondent who procures milk from farmers and sell it to M/S.Aaruthra Milk International Pvt., Ltd. The farmers who supplied milk to the Dharmapuri Co-operative Milk Producers Union Limited, depend upon the second respondent to sell their milk through the petitioners. Since large number of farmers are affected due to non-payment and late payment, the second respondent was forced to take legal action. Even though there is violation of terms of contract given the gravity of the circumstances, it has to be seen whether the petitioners have any intention to cheat the second respondent and in turn the farmers who supplied the milk by violating the terms of contract. Hence to stop the investigation at this stage is a premature one. Only if the investigation is allowed to go the various facts will come to light and that will bring light about the intention of the petitioners in stopping the payments. I feel it is not a case, which on the face of it does not disclose any suspicion about the criminal intention and hence there is a prima facie case.

In view of the above stated reasons this Criminal Original Petition is **dismissed** and the first respondent police is directed to complete the



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investigation within a period of three months and submit their report.

Consequently, connected miscellaneous petition is closed.

04.01.2023

Index: Yes/No

Internet: Yes/No

Speaking Order/Non speaking Order

Neutral: Yes /No

jrs

To:

1.The Inspector of Police,
District Crime Branch,
Krishnagiri District,
Krishnagiri.

2.The Public Prosecutor,
High Court, Madras.



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R.N.MANJULA, J.,

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