



Crl.O.P.No.27472 of 2022

In the High Court of Judicature at Madras

Reserved on : 30.8.2023	Delivered on : 01.9.2023
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Criminal Original Petition No.27472 of 2022
& CRL.M.P.Nos.16919 and 16920 of 2022

M.Sooraj Varma

...Petitioner

Vs

1.M/s.MOV & Go Logistics,
rep.by its Authorized Agent
Mr.Sojimon P.T.

2.Mr.P.Prabin Kumar

...Respondents

PETITION under Section 482 of the Criminal Procedure Code to call for the records in C.C.No.9448 of 2021 pending on the file of XIII Metropolitan Magistrate Court, Egmore and quash the same.

For Petitioner :	Dr.G.Krishnamurthy for M/s.G.Anabaya Chozhan
For Respondents :	Mr.Hari Radhakrishnan

ORDER

This is a petition filed by the petitioner seeking to quash the proceedings pending in C.C.No.9448 of 2021 on the file of XIII



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Metropolitan Magistrate, Egmore, Chennai.

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2. The facts leading to filing of this petition are stated as hereunder :

(i) The respondents herein filed a private complaint against one M/s.S2 Logistics and the petitioner herein on the ground that the petitioner, who is said to be the proprietor/partner, had approached the respondents for rendering services of customs clearance for one of his customers (importer) named M/s.Red Exports, who were importing calcium carbonate. The respondents undertook the work and accordingly, the petitioner forwarded the documents required for customs clearance to the respondents and the money for payment of customs duty and also to the shipping line.

(ii) The respondents completed all the customs clearance formalities and the goods were cleared. There was no problem in this particular transaction thereby the petitioner got into the good books of the respondents. The petitioner once again approached the respondents for clearance of uncoated calcium carbonated powder and it was also imported by the said M/s.Red Exports. The respondents received the import documents and after receiving clarification and



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confirmation from the petitioner, the Bill of Entry was filed by the respondents with the Chennai Sea Customs. The customs duty was also paid and at the time when the goods were about to be transported, there was an alert raised by the Directorate of Revenue Intelligence (for brevity, the DRI) and they wanted to examine the contents of the cargo. The inspection was done in the presence of the petitioner, the manager of the said M/s.Red Exports and the respondents. It was found that cigarettes were concealed in the containers.

(iii) Proceedings were initiated by the DRI and along with the proprietor of the importer, the second respondent was also arrested and remanded to judicial custody. Further, the second respondent suffered incarceration for nearly 29 days. The respondents got the impression that the petitioner had intentionally concealed the contents of cigarettes, which were brought along with the declared cargo and thereby the second respondent was made to undergo untold sufferings and mental agony.

(iv) In the complaint, the respondents alleged that the petitioner had cheated and caused wrongful loss to them and that there was a loss of reputation and loss of business for the respondents. Hence, the



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respondents further alleged that the petitioner committed offences under Sections 415, 420, 499 and 500 of the Indian Penal Code (for short, the IPC).

(v) The 13th Metropolitan Magistrate Court, Egmore, Chennai considered the materials placed before it and the sworn statements recorded from the second respondent and took cognizance of the complaint for the offences under Section 420 and 500 of the IPC. This is put to challenge in this quash petition.

3. Heard the learned counsel appearing on behalf of the petitioner and the learned counsel appearing for the respondents.

4. The main ground that was raised by the learned counsel for the petitioner is that none of the offences is made out against the petitioner even if the allegations made by the respondents are taken as they are. It was contended that even the respondents were found guilty by the DRI, that the second respondent also underwent prosecution along with the petitioner, that the defence taken by the respondents in the proceedings initiated by the DRI cannot translate itself into a criminal complaint and that the same is not maintainable.



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5. Per contra, the learned counsel appearing for the respondents submitted that the petitioner intentionally made the respondents believe that a genuine cargo was imported knowing fully well that cigarettes were concealed in the cargo, that the respondents were made to do the customs clearance formalities, that ultimately, the respondents were also caught by the DRI and that the second respondent was made to suffer incarceration and as a result, the respondents incurred wrongful loss and also lost their reputation.

6. It was also brought to the notice of this Court that the proceedings of the DRI ultimately came to an end by the Order-in-Original dated 31.3.2023 and the Additional Commissioner of Customs, Group-II imposed penalty on both the petitioner as well as the second respondent, who, aggrieved by that, filed an appeal before the Commissioner of Appeals and the same is pending.

7. This Court has carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.



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8. There is no dispute with regard to the fact that the services of the respondents were utilized by the petitioner for the import of uncoated calcium carbonated powder and that the respondents were involved in the customs clearance formalities. The DRI conducted an inspection and found that 30,24,000 sticks of cigarettes were concealed in the cargo. An attempt was made to smuggle the same to India by evading customs duty.

9. It is seen from the order passed by the Additional Commissioner that the petitioner and others had organized the illegal import/smuggling of foreign cigarettes by concealing the same in the cargo. All the documents pertaining to the impugned consignment emanated only from the side of the petitioner.

10. The respondents believed the petitioner, who, by then, developed a good relationship with the respondents and they did not suspect the cargo that was imported. Rather, they merely went by the documents furnished by the petitioner. As per the allegations made in the complaint, the respondents came to know about the concealment of the goods in the cargo only after they were detected by the DRI.



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The same resulted in prosecution and the second respondent was also arrested and he suffered incarceration.

11. To constitute the offence of cheating, the ingredients under Section 415 of the IPC must be satisfied. The Section requires the following ingredients :

"(a) deception of any person;

(b) (i) fraudulently or dishonestly induce that person

- to delivery any property to any person or*
- to consent that any person shall retain any property or*

(ii) intentionally inducing the person to do or omit to do anything, which he would not do or omit if he was not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property."

12. In the instant case, as per the allegations made in the complaint, the petitioner is said to have played deception against the respondents and induced them to process customs clearance



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formalities, which they would not have done, if they were not induced and as a result, the DRI found in the impugned consignment that cigarettes were being smuggled and due to that, the second respondent was also roped in as an accused, who suffered harm to body, mind and reputation. Thus, the ingredients of the offence of cheating are prima facie made out on a reading of the complaint along with other materials.

13. The Court below had also taken cognizance for the offence under Section 499 of the IPC punishable under Section 500 of the IPC.

14. To constitute an offence under Section 499 of the IPC, there must be a slander or libel, which is intended to cause harm to the reputation of a person in the eyes of others.

15. In the instant case, none of the ingredients under Section 499 of the IPC is satisfied. The loss of reputation of the respondents, by itself, will not constitute an offence of defamation. Such loss of reputation is also one of the ingredients in the offence of cheating.



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16. In the light of the above discussions, this Criminal Original Petition is partly allowed and the cognizance taken by the Court below for the offence under Section 500 of the IPC is set aside. The cognizance taken by the Court below for the offence under Section 420 of the IPC is sustained and to that extent, this Criminal Original Petition is dismissed. The Court below is directed to proceed further with the private complaint for the offence under Section 420 of the IPC and complete the proceedings within a period of four months from the date of receipt of a copy of this order. It is made clear that any observation contained in this order will not have any bearing on the Court below, which shall consider the case on its own merits and in accordance with law. Consequently, the connected Crl.M.Ps. are closed.

01.9.2023

To

- 1.The 13th Metropolitan Magistrate Court,
Egmore, Chennai.
- 2.The Public Prosecutor, High Court, Madras.

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N.ANAND VENKATESH,J

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