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Crl.O.P.No.27893 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2023

CORAM:

THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

Crl.O.P.No.27893 of 2019

and

Crl.M.P.No.14865 of 2019

1.A.S.K.Ashraf Ali
2.A.Sathik Ali
3.A.Pilal Ali

...Petitioners

-Vs-

1.The State Rep.by
The Inspector of Police,
District Crime Branch,
Salem District.

2.R.K.Santhalakshmi

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for records relating to the proceedings in C.C.No.771 of 2019 on the file of the Judicial Magistrate – VI, Salem and to quash the same.



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For Petitioner : Mr.K.Samidurai
For R1 : Mr.A.Damodaran,
Additional Public Prosecutor
For R2 : No appearance.

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.771 of 2019 on the file of the Judicial Magistrate – VI, Salem, filed for the offences under Sections 406, 420 and 506(i) IPC.

2.It is alleged that the petitioners had purchased textile goods from the defacto complainant to the tune of Rs.5,29,659/- on various dates; that they had not made any payment towards the liability; that they had returned the goods worth of Rs.1,30,000/-; that thereafter they issued eight cheques for a total sum of Rs.1,20,735/- and all the cheques were dishonoured. Thereafter, the parties approached the High Court Legal Aid Centre, in which a compromise was arrived at between the parties. The petitioners paid only Rs.2,00,000/- and they were due to pay Rs.3,29,659/- to the de-facto complainant. Hence, the complaint.



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3.The learned counsel for the petitioner submitted that the entire allegation even if accepted to be true, does not disclose the offences under Sections 420 and 506(i) IPC. There is no deception at the very inception. It is a case of commercial transaction, which is sought to be given a criminal colour. In fact, on 10.02.2015, a demand notice was issued on behalf of the defacto complainant calling upon the partnership firm, by name M/s.Maharaja Textiles & Readymades, in which the petitioners are partners to pay a sum of Rs.1,68,146/-. Thereafter, the petitioners has come up with this false complaint on 28.02.2019, four years after the alleged transactions and hence, the learned counsel for the petitioner prayed for quashing of the proceedings in C.C.No.771 of 2019.

4.The learned Additional Public Prosecutor submitted that the allegations in the impugned complaint has to be adjudicated only before the trial Court and cannot be quashed at the initial stage itself. As to whether there was deception at the inception or it is only the case of breach of promise has to be adjudicated only before the trial Court and hence, prayed for dismissal of the quash petition.



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5.Though the learned counsel has entered appearance on behalf of the 2nd respondent, there was no appearance when the matter was called on 23.03.2023. Even today when the matter is listed under the caption 'for orders' there is no representation for the 2nd respondent.

6.This Court finds that the allegations in the complaint is that, the defacto complainant had supplied textiles to the petitioners to the tune of Rs.5,29,659/-; and that the textile worth of Rs.1,30,000/- was returned to the defacto complainant. Thereafter, the petitioners had made payment to the tune of Rs.2,00,000/- subsequent to the compromise arrived at before the High Court Legal Aid Centre. The only allegation is that the petitioners has not paid the balance amount of Rs.3,29,659/-. The allegation even if accepted to be true, is only a breach of promise and does not constitute the offences of Section 420 or Section 406 IPC as alleged.

7.Further, the allegation with regard to the threat would not constitute the offence under Section 506(i) IPC as there is no real threat, which is necessary in order to attract the said offence.



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8.All the above would show that the transactions are civil in nature and none of the alleged offences are made out. Therefore, this Court is inclined to quash the final report in C.C.No.771 of 2019 on the file of the Judicial Magistrate – VI, Salem. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Criminal Miscellaneous Petition is closed.

31.03.2023

smv

Internet: Yes

Index : Yes/No

Speaking : Yes / No

Neutral Citation : Yes / No

To,

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

2.The Public Prosecutor,
High Court of Madras.

3.The Judicial Magistrate No.VI,
Salem.



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SUNDER MOHAN,J.

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