IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2023

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Crl.O.P.No.28678 of 2019 and
Crl.M.P.No.15268 of 2019

1.N.Jothimani
2.Amsaveni ... Petitioners / Accused 1 & 2

/vs/

1.The Inspector of Police,
District Crime Branch,
Erode District. ... Respondent / Complainant

2.R.Yuvaraj ... Respondent / Defacto Complainant

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the entire records pertaining to FIR No.5 of 2019 dated 23.02.2019 registered on the file of the first respondent and to quash the same in so far as the petitioners are concerned.

For Petitioners ... Mr.C.E.Pratap

For Respondents ... Mr.A.Gopinath,
Govt. Advocate (Crl.Side) for R1
Mr.C.S.Saravanan for R2

ORDER

This Criminal Original Petition has been filed to call for the entire records pertaining to FIR No.5 of 2019 dated 23.02.2019 registered on the file of the first respondent and to quash the same in so far as the petitioners are concerned.

2. Heard the learned counsel for the petitioners and the learned Government Advocate (Crl.Side) for the first respondent and the learned counsel for the second respondent.

3. The petitioners are the accused 1 and 2. The second respondent / defacto complainant has preferred a complaint by stating that he is conducting the business in textile yarn in the name and style of M/s.Ragavendra Sales Corporation. During the month of October 2017, the first accused and his wife who is the second accused have approached the second respondent to supply yarn to them on credit basis and assured that they would repay the bill amount in time. Believing their words, the second respondent supplied yarns to the tune of Rs.15,42,151/- between the period from 09.10.2017 to 13.12.2017. Though they agreed to settle the bill amount within one month, they have not repaid the same. The petitioners dragging to pay the amount by stating some lame reasons. When the second respondent went to the house of the petitioners to demand the bill amount, he was threatened by them. Therefore, the second respondent preferred a complaint against the petitioners. On the above allegations given in the complaint, FIR has been registered in Crime No.5 of 2019 on the file of the first respondent police.

4. The learned counsel for the petitioners submitted that the transaction between the petitioners and the second respondent is a business transaction and criminal colour has been given for recovering the dues; since the process of recovery is not permissible through criminal proceedings and the allegations made in the complaint does not disclose any ingredient to make out an offence under Sections 120B, 420 & 506(i) of IPC., the FIR should be quashed.

5. The learned Government Advocate (Crl.Side) submitted that the intention to cheat the second respondent was present in the minds of the petitioners from the inception of their dealing with the second respondent and that has substantiated by the conduct of the petitioners; even though the transaction is a business transaction, the conduct of the petitioners would show their intention to cheat the second respondent and hence, the investigation should be allowed to go.

6. On perusal of the records, it is seen that the petitioners got themselves introduced to the defacto complainant only during the month of October 2017. As they approached the second respondent to supply yarn on credit basis and on their undertaking to settle the dues to the bill within the prescribed time, the second respondent / defacto complainant has supplied the yarns between the period from 09.10.2017 to 13.12.2017 under five invoices aggregating to a total sum of Rs.15,42,151/-. The petitioners did not repay the said invoice amount within a month as agreed.

7. Though it is correct on the part of the petitioners to state that the transaction between the petitioners and the second respondent is a business transaction and the failure to repay the same by the petitioners is in violation of the terms of contract, it should be seen whether the violation was done with the criminal intention of cheating the second respondent. Had the petitioners were doing business with the defacto complainant for quite some time and the default in payment had occurred at some point of time, it cannot be presumed that the petitioners would not have any intention to cheat the second respondent.

8. The impugned supply was made from October 2017 to December 2017 and the petitioners did not settle the invoice amount even after 1 ½ years. In fact the petitioners themselves appear to have sent a complaint to the first respondent police by alleging that their customers to whom they supplied the materials did not settle the amount due to them. But all those dues appear to have occurred subsequent to the alleged purchase made with the second respondent. Even if it is presumed that the petitioners were not able to settle the invoice amount to the second respondent, it would have been within the knowledge of the petitioners themselves about the shortage of money at the time when the order was placed. So the conduct of the petitioners can not only reveal the violations of the terms of the contract but might also some of their intentions. Since there are *prima facie* materials available for continuing the investigation and find out the intention of the petitioners, it is prematured to quash the proceedings now.

9. In view of the above stated reasons, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

30.01.2023

Index: Yes/No
Internet: Yes/No
gsk

To

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

2.The Public Prosecutor,
High Court, Madras.

R.N.MANJULA ,J.

gsk

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