IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.10.2023

PRONOUNCED ON : 10.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.Nos.28408 & 28760 of 2017 and 28662 & 28766 of 2018
and Crl.M.P.Nos.16138 & 16251 of 2017 and 16688 & 16790 of 2018

Chirag Chamoli ...Petitioner in Crl.O.P.Nos. 28408 & 28760 of 2017

Pranay Narayan Srinivasan ...Petitioner in Crl.O.P.Nos. 28662 & 28766 of 2018

-Vs-

1. The State of Tamil Nadu
Rep. by the Inspector of Police,
Central Crime Branch,
Tirupur District. ... First Respondent in all Crl.O.Ps.

2. C.Loganathan ... Second respondent in Crl.O.P.Nos.28408 of 2017 & 28766 of 2018

2. Senthilkumar ... Second respondent in Crl.O.P.Nos.28760 of 2017 & 28662 of 2018

Common Prayer: Criminal Original petitions filed under Section 482 of

Code of Criminal Procedure, to call for the records and quash the FIR registered in Crime Nos.25 of 2017 dated 15.11.2017 and 30 of 2017 dated 05.12.2017 respectively, as against the petitioners, pending investigation of the file of the first respondent police.

In all Crl.O.Ps.

For Petitioner

For Petitioner in Crl.O.P.Nos. 28408 & 28760 of 2017 : Mr.Subhang P.Nair

For Petitioner in Crl.O.P.Nos. 28662 & 28766 of 2018 : Mr.P.T.Perumal

For Respondents

For R1 in all Crl.O.Ps : Mr.L.Baskaran
Government Advocate (Crl.Side)

For R2 in Crl.O.P.Nos.28760 of 2017 & 28766 of 2018 : Mr.N.Umapthi

For R2 in Crl.O.P.Nos.28408 of 2017 & 28662 of 2018 : Mr.V.Suresh

COMMON ORDER

These petitions have been filed to quash the FIR registered in Crime Nos.25 of 2017 dated 15.11.2017 and 30 of 2017 dated 05.12.2017 respectively, as against the petitioners, pending investigation of the file of the first respondent police.

2. The petitioners in Crl.O.P.No.28766 of 2018 & 28408 of 2017 are arrayed as A1 & A2 in Crime No.25 of 2017 on the file of the first respondent. The petitioners in Crl.O.P.Nos.28662 of 2018 and 28760 of 2017 are arrayed as A1 & A2 in Crime No.30 of 2017 on the file of the first respondent police. In both FIRs, the case of the defacto complainant/ second respondent is similar in nature and all the accused are same in both crime numbers in Cr.Nos.27 & 30 of 2017 on the file of the first respondent.

3. The case of the prosecution in Crl.O.P.Nos.28408 of 2017 & 28766 of 2018 is that the defacto complainant in Crime No.25 of 2017 is running banian business in the name and style of M/s. Atlas Textiles and he exports garments to foreign countries. In the month of March 2017, the third and fourth accused approached him and introduced themselves as they are employees of M/s. Sourceasy Manufacturing Services Pvt. Ltd., situated at Hyderabad, which was a subsidiary company of M/s. Sourceasy Inc., USA. They placed orders for export of banians and they represented that the Indian company was managed by the first and second accused. On enquiry, the defacto complainant was informed that

the Indian company was fully owned subsidiary of the US company formed to facilitate finalising and placing export orders, make regular inspection of manufacture and ensure despatch of goods to USA on behalf of the parent US company. For both companies the first accused is the CEO and the second accused is representing the US company.

4. During the period 08.05.2017 till 26.08.2017, a total of 2,16,000 banians worth about Rs.1,64,16,845/- were exported by ship and cargo to the address furnished in the purchase order. However, after receipt of the consignment, they failed to make any payment. At last, they had sent only a sum of Rs.85,56,108/- and there was a due to the tune of Rs.81,60,736/-. The defacto complainant repeatedly made request for payment of the balance amount and in response on 14.09.2017, the first accused had sent a statement in the nature of release copy purported to have been issued by the Bank of America for the balance amount with the Indian bankers of the defacto complainant's bank. On verification, the banker of the defacto complainant informed that no such amount had been credited to his account. Hence, the complaint.

5. Insofar as the allegations levelled in Crime No.30 of 2017 is concerned, the defacto complainant is running business in the name and style of M/s.Vogue Clothing Company. In the course of his business, he had exported knitted garments to the accused company. After receipt of the goods, the accused failed to pay the amount, though the defacto complainant duly complied with their letter of credit terms to the tune of Rs.89,77,396/-. Hence, the complaint.

6. The learned counsel appearing for the first accused in both FIR submitted that no offence is made out as against the petitioner. The entire allegations are relating to business transactions and civil in nature. Therefore, no FIR is warranted for the allegations levelled in the complaint. Even according to the defacto complainant, part of the amount was already paid and only remaining amount to be paid by the accused. Therefore, absolutely no allegation to attract any of the offences as alleged by the defacto complainant. Further the first accused was working as CEO of M/s. Source Easy Inc., USA. However, the defacto complainant failed to add the company as a party to the complaint. Without adding the company as accused, no complaint can be sustained

for prosecution.

6.1. Further there was huge delay in lodging the complaint and the delay has not been explained by the defacto complainants. The defacto complainants lodged the complaint with twisted facts thereby concealing the deficiencies on their part. Even according to the defacto complainant, an amount of Rs.85,56,108/- was paid and balance payment of Rs.81,60,736/- to be made by the accused. Therefore, it is completely business transactions and no offence under Section 420 of IPC, attracted as against the petitioner/A1. In any event, neither the petitioner/A1 nor his company is liable for the payment to be made to the defacto complainants.

6.2. He further submitted that there has been no entrustment of any kind of property by the defacto complainant with the petitioner. Therefore, the offence under Section 407 of IPC, is also not attracted as against the petitioner/A1. In order to constitute the offence of conspiracy, there should be an agreement between two or more person to do an illegal act, which has not been made out, even as per the allegations. Hence, he prayed to quash both the FIRs.

7. The learned counsel appearing for the second accused in both cases submitted that he is one of the Directors and the Chief Technical Officer of M/s.Sourceasy Manufacturing Serviced India Pvt. Ltd. His company had entered into contractual agreement to provide technological support, administrative support, deputation of personnel etc., for a valid consideration of 10,000/- USD per month to M/s.Sourceasy Inc., a company incorporated under the laws of USA. It is also holding with shareholding of 99.90% and the first accused is holding 0.1%. Therefore, the role of the petitioner is very limited and he is an employee and he has no power over the executive decision of the company. The second accused is employed for monthly salary. In fact, his company had entered into a service agreement dated 15.06.2015 with the foreign company for the purpose of rendering administrative services, technological support etc. Insofar as the allegations are concerned, it is purely business transactions between the parties and no offence is made out even according to the defacto complainants.

8. Heard the learned counsel appearing on either side and perused the material placed before this Court.

9. On perusal of FIRs and other records revealed that the first accused is the resident of USA and the second accused in the resident of Hyderabad, India. Both are managing the company called M/s. Sourceasy Manufacturing Services India Pvt. Ltd., India and M/s.Sourceasy Inc., USA. The third and fourth accused are the employees. All the accused persons placed orders to purchase banian and knitted garment merchandise. Though the accused persons paid part of the amount, insofar as the FIR in Crime No.30 of 2017, the accused persons failed to pay any single paise, for the purchase of knitted garment merchandise and insofar as the FIR in Crime No.25 of 2017, they have to pay an amount of Rs.81,60,736/-.

10. That apart, the first accused produced fake release copy as if he deposited the balance due to their bank viz., Bank of America for transfer of the said amount in favour of the defacto complainant. On verification found that no amount has been transferred by the first

accused. Further, the first accused played active role and he was working closely with the third and fourth accused, who are officials of the Indian company, played a key role in export orders.

11. The second accused was the director of M/s. Sourceasy Manufacturing Services Pvt. Ltd., and the company was issued certificate of importer-exporter code, and the same was showing the second accused as director. That apart, the shipping approval certificate was signed by the second accused as authorized signatory for shipment of consignment from India to America, in his capacity as Director of M/s. Sourceasy Manufacturing Services India Pvt. Ltd. The said certificate is crucial for exporting the consignment from India. He had also issued shipping approval certificate enabling despatch of garment consignment by air from Bangalore to reach Los Angeles, USA.

12. Further A3 & A4 are the employees of A1 and A2 and they were authorized to sign all official forms and legal and trade compliances essential to export of garments as spelt out in letter of credit and other documents. For exporting goods, the accepted trade practice determining

export trade is that once agreement is reached between the foreign company placing the export order and the local exporter company, a letter of credit is prepared by the banker of the American company and sent by SWIFT basis to the Indian bank of the local company. The letter of credit is something like a bank guarantee and forms the basis of taking loans from the Indian bank towards manufacturing the export orders. It is also contains details of nominated forwarders through whom only the company can export the orders.

13. Accordingly, the defacto complainants' company exported the goods as per the orders placed by the accused. All the accused persons colluded together in order to misappropriates the garments thereby playing fraud on the defacto complainants and in effect causing undue enrichment to the accused and loss to the defacto complainants. Therefore, there are avernments to constitute the offence under Sections 120B, 406, 407 & 420 of IPC, in both FIRs.

14. The learned counsel appearing for the defacto complainants relied upon the judgment reported in ***(1999) 3 SCC 259*** in the case of ***Rajesh Bajaj Vs. State NCT of Delhi & ors.,*** as follows :-

> *"9. It is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. Splitting up of the definition into different components of the offence to make a meticulous scrutiny, whether all the ingredients have been precisely spelled out in the complaint, is not the need at this stage. If factual foundation for the offence has been laid in the complaint the court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details. For quashing an FIR (a step which is permitted only in extremely rare cases) the information in the complaint must be so bereft of even the basic facts which are absolutely necessary for making out the offence. In State of Haryana vs. Bhajan Lal (supra) this Court laid down the premise on which the FIR can be quashed in*

rare cases. The following observations made in the aforesaid decisions are a sound reminder:

"103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

10. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions. One of the illustrations set out under Section 415 of the Indian Penal Code (illustrations f) is worthy of notice now:

"(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and

thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats."

11. The crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not. The complainant has stated in the body of the complaint that he was induced to believe that respondent would honour payment on receipt of invoices, and that the complainant realised later that the intentions of the respondent were not clear. He also mentioned that respondent after receiving the goods have sold them to others and still he did not pay the money. Such averments would prima facie make out a case for investigation by the authorities.

12. The High Court seems to have adopted a strictly hyper-technical approach and sieved the complaint through a cullendar of finest gauzes for testing the ingredients under Section 415 , IPC. Such an endeavour may be justified during trial, but certainly not during the stage of investigation. At any rate, it is too premature a stage for the High Court to *step in and stall the investigation by declaring that it is a commercial transaction simplicitor wherein no semblance of criminal offence is involved."*

Thus, it is clear that no need to verbatim reproduce in the body of the complaint with all the ingredients of the offence. It is also not necessary for the complainant to state the intention of the accused was dishonest or fraudulent. If factual foundations of the offence has been laid in the complaint, the Court should not hasten to quash the criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details.

15. In the case on hand, the facts narrated in the complaints would reveal a commercial transaction or money transactions. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many cheating were committed in the course of commercial and also money transactions. The intention of the person who induces the victim in his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not.

16. Further on perusal of the First Information Reports revealed that, there are specific allegations as against the petitioners to attract the offence, which has to be investigated in depth. Further the FIR is not an encyclopedia and it need not contain all facts and it cannot be quashed in the threshold. This Court finds that the FIR discloses prima facie commission of cognizable offence and as such this Court cannot interfere with the investigation. The investigating machinery has to step in to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code.

17. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.255 of 2019*** dated ***12.02.2019*** in the case of ***Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors.,*** as follows:-

> *"4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been*

made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.

5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.

....

9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the

Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."

18. In view of the above discussions, this Court is not inclined to quash the First Information Reports. Accordingly, all the Criminal Original Petitions stand dismissed. Consequently, connected miscellaneous petitions are closed.

10.11.2023

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

rts

G.K.ILANTHIRAIYAN. J,

rts

To

1. The Inspector of Police,
   Central Crime Branch,
   Tirupur District.

2. The Public Prosecutor,
   Madras High Court,
   Chennai.

PRE DELIVERY ORDER IN
Crl.O.P.Nos.28408 & 28760 of 2017
and 28662 & 28766 of 2018
and Crl.M.P.Nos.16138 & 16251 of 2017
and 16688 & 16790 of 2018

10.11.2023